PART 5

A  Members’ Code of Conduct

Introduction and scope

1. You are an elected or voting co-opted member of the Royal Borough of Greenwich. You must comply with this Code whenever you carry out the Royal Borough’s business, and your business as an elected or co-opted member.

2. Where you act as the Royal Borough’s representative:

   (a) on another local authority body, you must comply with that body’s code of conduct.

   (b) on any other body, you must comply with this Code, except to the extent that it conflicts with any lawful obligations which that body is subject to.

General principles

3. You must have regard to the following principles:

   Selflessness: Holders of public office should act solely in terms of the public interest.

   Integrity: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

   Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

   Accountability: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty: Holders of public office should be truthful.

Leadership: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**General conduct**

4. You must treat others with respect.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Royal Borough or your position into disrepute.

6. You must not bully any person.

7. You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness or be dealing with an investigation or proceedings in relation to an allegation that a member (including yourself) has failed to comply with this code of conduct.

8. You must not do anything which compromises or is likely to compromise the impartiality of those who work for the Royal Borough or on its behalf.

9. You must not do anything which may cause the Royal Borough to breach the Equality Act 2010.

**Disclosing and accessing information**

10. You must not disclose information given to you in confidence, or information which you believe or ought reasonably to know is confidential, except where:

    (a) you have the consent of a person authorised to give it; or

    (b) you are required by law to disclose the information; or
(c) you disclose the information to a third party to obtain legal advice, provided that the third party agrees not to disclose the information to any other person; or

(d) you disclose the information reasonably, in the public interest, in good faith and in compliance with the Royal Borough’s whistleblowing procedure.

11. You must not prevent another person from gaining access to information which that person is legally entitled to.

Using the Council’s resources

12. You must act in accordance with the Royal Borough’s reasonable requirements when using or authorising others to use the Royal Borough’s resources. You must not use those resources improperly for political purposes, including party political purposes.

Making decisions

13. When reaching decisions on any matter you must have regard to any relevant advice provided to you by the chief executive, chief finance officer or monitoring officer. It is your responsibility to seek advice in good time should you have any doubt as to the application of this Code.

Abusing your position as a councillor

14. You must not use or attempt to use your position to give or secure for yourself or any other person an advantage or disadvantage.

Interests

Personal interests

15. You have a personal interest where any business is likely to affect:

(a) you, or

(b) a relevant person or a relevant body (where you are aware that they have the interest);

more than a majority of those in the ward you represent.
16. A **relevant person** means your spouse or civil partner, a person who you are living with as husband and wife or as civil partners, or a person with whom you have a close association.

17. A **relevant body** means:

(a) any organisation, school governing body or outside committee or trust which you are appointed to by the Royal Borough or by the Leader, or

(b) any other voluntary organisation, school governing body or commercial organisation where you are a management committee member, school governor, trustee or director.

**Financial interests**

18. You have a financial interest where any business is likely to affect an interest in the table below, and where the interest is:

(a) your interest, or

(b) the interest of a relevant person or a relevant body (where you are aware that they have the interest)

<table>
<thead>
<tr>
<th>Financial interest</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>Any employment, office, trade, profession or vocation carried on for profit or gain. This includes any clients of a consultancy firm to which you have personally provided advice, or which you know have benefited from your advice.</td>
</tr>
<tr>
<td>Sponsorship and election expenses</td>
<td>Any payment or other financial benefit in respect of any expenses incurred by you in carrying out your duties as a member, or towards your election expenses made or provided in the 12 months before you declared your interests on becoming a member.</td>
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1 See the guidance in Annex 1
<table>
<thead>
<tr>
<th>Financial interest</th>
<th>Description</th>
</tr>
</thead>
</table>
| Contracts | Any contract with the Royal Borough for works, services or supplies which has not been fully discharged.  
This includes any contract with a body in which you, or your spouse or civil partner or a person who you are living with as husband and wife or as if you are civil partners, has a beneficial interest |
| Land | Any beneficial interest in land in Royal Greenwich. |
| Licences | Any licence (alone or jointly with others) to occupy land in Royal Greenwich for a month or longer. |
| Corporate tenancies | Any tenancy where (to your knowledge)  
1 the landlord is the Royal Borough; and  
2 the tenant is a body in which you, or your spouse or civil partner or a person who you are living with as husband and wife or as if you are civil partners, has a beneficial interest. |
| Securities | Any beneficial interest in securities of a body which (to your knowledge) has a place of business or land in the Royal Borough; and either  
(1) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  
(2) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your spouse or civil partner or a person who you are living with as husband and wife or as if you are civil partners has a beneficial interest exceeding one hundredth of the total issued share capital of that class. |
| Gifts and hospitality | Any gift or hospitality with an estimated value of £100 or more, and the name of the person who provided it. |
Part 5

Members’ Code of Conduct

Registering your interests

19. you must give written notice to the monitoring officer:

(a) of any financial interest (except the financial interests of persons you have a close association with and of relevant bodies) and

(b) of the name of any relevant body and a brief description of its purpose within 28 days of becoming a member, and within 28 days of any new or any change to your interest.

Disclosing your interests

20. If you are present at a meeting and you know you have a personal or financial interest in any matter to be considered, you must disclose the existence and nature of the interest at the start of the meeting, or when the interest becomes apparent. You must continue to disclose the name of any relevant body for six months after ceasing to be appointed to that body, or a director of that body.

21. If you have a sensitive interest, you need not disclose the nature of your interest but merely the fact that you have an interest in the matter.

22. If you propose to make an executive decision in relation to a matter, then:

(a) if you have a personal interest in that matter, you must ensure that the written statement of your decision records the existence and nature of your interest; and

(b) if you have a financial interest or a personal interest described in paragraph 23, you must not make an executive decision or take any steps in relation to the matter, except to enable it to be dealt with by someone else.

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2 See paragraph 27
Taking part in meetings

23. If you are present at a meeting, you must leave the room and not take part in any discussion or vote (unless you have obtained a dispensation) if

   (a) you have a **financial** interest in a matter to be considered, or

   (b) you have a **personal** interest in a matter to be considered, and your interest would be affected financially, or by any approval, consent, licence, permission or registration which the meeting will determine.

24. Paragraph 23 does not prevent you from speaking, answering questions or giving evidence at the meeting, provided:

   (a) the public are also allowed to attend the meeting for the same purpose, and;

   (b) you leave the room immediately after making representations, answering questions or giving evidence and before any discussion.

25. Paragraph 23 does not apply where the matter concerns the Royal Borough’s functions in respect of:

   (a) housing, provided the matter does not relate to a particular tenancy or lease;

   (b) school meals or school transport and travelling expenses, provided the matter does not relate to a particular school or child;

   (c) statutory sick pay;

   (d) an allowance, payment or indemnity given to members;

   (e) any ceremonial honour given to members; and

   (f) setting Council tax or a precept.

26. Paragraph 23 does not apply where the matter relates to the interests of a person from whom you have received a gift or hospitality more than three years before the date of the meeting.


Sensitive interests

27. Where the nature of your interest is such that you and the monitoring officer consider that disclosure of the details could lead to you, or a person connected with you, being subject to violence or intimidation:

(a) you need not disclose your interest at a meeting but merely the fact that you have an interest in the matter concerned; and

(b) copies of the register that are made available for inspection, and any published version of the register, will not include details of your interest (but may state that you have an interest the details of which are withheld under this paragraph.

Dispensations

28. The Standards Committee, or Chief Executive in cases of urgency, may grant a dispensation if, after having had regard to all relevant circumstances, it:

(a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;

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3 See the dispensation request form in Annex 2
Annex 1

**Close association**

In deciding whether you may have a close association with someone who is likely to be affected by a decision, you should consider the following guidance.

**Guidance**

You have a close association with someone who you are in either regular or irregular contact with over a period of time.

This would be more than an acquaintance - someone who a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them because of your connection with them.

It may be a friend, a colleague, a business associate or someone who you know through general social contacts.

You should consider the following questions when deciding whether a close association exists:

- How often do you meet?
- Where do you meet?
- Do you regularly attend the same social events?
- Do you know each other’s families?
- Do you visit one another’s homes?
- Do you have regular business dealings?
- Do you work for or are involved with the same organisation?
- Are you close or connected in other ways?

This is not an exhaustive list. It is the cumulative evidence of these factors and others like them that will establish a close association.
Annex 2
DISPENSATION REQUEST

If you need any help completing this form please contact the Head of Legal Services

<table>
<thead>
<tr>
<th>Your name</th>
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<tbody>
<tr>
<td>The meeting, agenda item number and report</td>
</tr>
<tr>
<td>title for which you seek a dispensation</td>
</tr>
<tr>
<td>Details of your interest in that matter</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of the meeting or the period (up to 4 years) for which you are seeking a dispensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you seeking a dispensation to take part in any discussion</td>
</tr>
<tr>
<td>Are you seeking a dispensation to take part in any vote</td>
</tr>
</tbody>
</table>

**REASON(S) FOR DISPENSATION**

- Without the dispensation the number of persons unable to participate in the transaction of business would be so great as to impede the transaction of the business (the Chief Executive may grant a dispensation in these circumstances)
- Without the dispensation the representation of different political groups would be affected so as to alter the likely outcome of any vote

Signed:  
Dated:

**DECISION:**
Dispensation Given: YES/NO  LENGTH OF DISPENSATION:  
Date:  
Signed:  Chief Executive/Chair, Standards Committee
BOfficers’ Code of Conduct

To be issued following Government guidance to be published during 2006
Councillor/Officer Protocol

1. **Background**

1.1 The Parliamentary Committee on Standards in Public Life, in its third report “Standards of Conduct in Local Government” (July 1997) commented that “No Local Authority can function properly without a good relationship between its Councillors and its Officers”. A particular concern was the potential for harm if the normal professional relationship between Councillors and Officers became unsatisfactory by being either too close or combative.

1.2 The Parliamentary Committee consequently recommended that authorities draw up a statement or “Protocol” to set out principles and give guidance concerning the working relationships between Councillors and Officers of the Authority, having regard to their different roles. This document aims to do that. It supplements the separate Code of Conduct for Councillors and the Code that will be prepared in due course for Employees of the Council.

1.3 This Protocol has been agreed by the Full Council following consideration and recommendation by the former Probity and Conduct Panel.

2. **General Principles of Conduct**

2.1 The following general principles of conduct are based on principles which have been agreed by Parliament (SI 2001/1401), and which underpin the more detailed and binding requirements set out in the Code of Conduct for Councillors. They in turn embody principles initially identified by the Parliamentary Committee on Standards in Public Life (often referred to the Nolan Principles) and as such are a succinct summary of principles which are expected to be observed by Councillors and Officers alike.

- **Selflessness:** Holders of public office should act solely in terms of the public interest.

- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty: Holders of public office should be truthful.

Leadership: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

3. The Roles of Councillors and Officers

3.1 Understanding and having respect for each other’s roles is fundamental to successful and effective working relationships.

Councillors

3.2 Councillors have a number of different roles as follows:

- **Politician** – belonging to a political group, and supporting the policies and political values of that group

- **Policy Maker** – Councillors have personal and collective responsibilities for the Council’s activities. They set the direction of the Council; are responsible for ensuring that adequate management arrangements are in place; develop and allocate the Council’s physical, financial and human resources and monitor the performance and effectiveness of the organisation.

- **Community Representative/Community Leader** – Councillors interpret and express the wishes of the electorate and are accountable for determining local authority service priorities, the allocation of resources and the ultimate performance of the Council.
democratically elected community representatives, they scrutinise and monitor the quality of Council and NHS services, and can influence other statutory agencies, business and voluntary organisations to meet the needs of their community.

- **Ward Representative** – councillors have a duty to represent the interests of their ward and all their constituents.

- **Representative of the Council** – on outside bodies ranging from local authority associations and joint committees to local charities and trusts; the role varies from representing the Council’s views to acting according to individual judgement. Councillors should behave and conduct themselves in a way which is consistent with the General Principles of Conduct (section 2 of this document) in their work with and on behalf of other organisations as well as in carrying out their Council duties.

3.3 Councillors, collectively, have a role to:

- Determine vision and values, and ensure staff commitment and motivation.
- Ensure standards are properly established and monitored.
- Link service and corporate objectives.
- Ensure council policies and service planning are based on community needs and priorities.
- Develop and support the authority’s links and relationships with other local agencies and organisations in order to promote the interests of the Borough and its residents.
- Ensure that public funds are used efficiently and properly to meet community needs.
- Ensure that the Council carries out its statutory duties and fulfils its legal obligations.
3.4 Officers of the Council have, in broad terms, the following main roles:

- Developing and recommending policy proposals as well as being implementers of policy.
- Assisting in initiating policy and management proposals, in conjunction with the relevant Cabinet Members or leading Councillors.
- Managing the services for which the Council has given them responsibility. They are responsible for the efficiency and effectiveness of those services and for proper professional/managerial practice in discharging their duties and taking decisions, within agreed policy.
- Providing professional/managerial advice to the Council, the Cabinet, Committees, Councillors and the public in respect of council services.
- Ensuring that the Council acts in a lawful way.
- Delivering services in accordance with Council policies and service standards and values.

Working Relationships

3.5 Councillors can expect officers to:

- Behave and conduct themselves in a way consistent with the General Principles of Conduct (see Section 2 of this document), to comply with the provisions of the Officer Code of Conduct (when introduced), and to maintain the highest standards of integrity including acting impartially and declaring, and where appropriate not participating in matters, when they have a personal or private interest.
- Maintain confidentiality.
- Perform their duties effectively and efficiently.
- Behave in a ‘professional’ manner.
- Be politically impartial in carrying out their Council duties.
- Provide readily available non-confidential information on request.
- Be helpful to councillors and respect their roles.
- Be pro-active in informing councillors of matters coming to their knowledge which are likely to affect the residents of the ward that they represent.
- Observe the Council’s consultation, public participation, open government, equal opportunities and other relevant policies in carrying out their duties, and ensure such policies are incorporated in all Council activities as appropriate.
3.6 Officers can expect Councillors to:

- Behave and conduct themselves in a way consistent with the General Principles of conduct (see Section 2 of this document), to comply with the provisions of the Councillor Code of Conduct, and to maintain the highest standards of integrity in serving the public interest.
- Respect and understand the requirement upon officers to serve the Council as a whole in an impartial and non-political manner.
- Promote respect for the role of officers.
- Make any criticism of reports or of actions taken by officers in a constructive manner.

4. Councillors and Officers – The Local Authority

4.1 Although the Council may be ‘controlled’ by a political group, i.e. have a majority of Councillors elected on the basis of a political party ideology or manifesto, it is an independent statutory body which is responsible for serving the interests of the local community as a whole. Therefore, although Councillors may have regard to the views of their party colleagues in setting policies and making decisions, their first responsibility for which they are individually accountable is to act in the interests of the local community. Similarly an officer’s first duty is to the Council as a whole and not to an individual Councillor or to a political or other group of Councillors.

4.2 All officers (except political assistants if such appointments are made in the future) are required to observe political neutrality in carrying out their duties – they serve the council as a whole and whilst they are required to implement and act in accordance with council policies and decisions, must not act in a party political manner in carrying out their duties.

Politically Restricted Posts

4.3 The Local Government and Housing Act 1989 restricts the political activities of officers holding “politically restricted” posts. It prohibits such officers from being councillors in another local authority, and from carrying out certain political activities such as canvassing. This normally includes posts which have been so designated by the Council and who regularly advise Members or speak to the media on behalf of the Council. Also, the Local Government Act 1972 prevents officers for standing for election as Greenwich councillors.
5. **At Meetings**

5.1 Officers and Councillors will most frequently come into contact with each other at the variety of meetings held to conduct the Council’s business. The respective roles of the participants may vary according to the purpose of the meeting and therefore their relationship to each other will also vary. For example, some meetings will be formal and be conducted in accordance with legal requirements and rules set out in the Council’s Standing Orders. In such cases officers will represent their department, answer detailed questions and provide appropriate advice. Other types of meetings may be more informal with officers able to participate to a greater extent, joining in the debate and contributing their own comments. It is the responsibility of the Chair of a meeting to ensure that it is conducted in an appropriate format and manner, and that acceptable standards of etiquette and behaviour are maintained.

5.2 At all times Officers and Councillors should show respect to one another. Although Councillors are entitled to question Officers at meetings and require them to justify their actions, any criticism should be constructive and well founded. Officers should have the opportunity to explain what appears to be a performance failure or inconsistency. Officers should present information at meetings in an impartial and constructive manner.

5.3 Whenever a public meeting is organised to consider a local issue, all the Councillors representing the ward(s) affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

5.4 Local authorities are often invited and in some instances have a right to be represented on other bodies, both statutory and voluntary. These may be executive, influential or advisory bodies and may involve agency arrangements. The role to be exercised by the Council’s representatives may be to represent the collective view of the local authority or to act according to individual judgement.

5.5 Councillors may also have to represent the Council at meetings with outside organisations where they may be negotiating or putting forward the Council’s views. Councillors should bear in mind that council decisions may only be made by Cabinet, by committees or by officers who have delegated authority, and a councillor at a meeting with an outside body as a representative of the council may need to make this clear in their dealings with that body. Officers may need to attend to provide professional/managerial advice to Councillor representatives and may also be asked to provide appropriate briefings.
6. **Working Arrangements**

**Councillors with Special Responsibilities**

6.1 Some councillors have special responsibilities on behalf of the Council; for example the Mayor, Leader of the Council, Deputy Leader, Cabinet Members, Chair of Overview and Scrutiny Committee, other Committee Chairs and Party Group Leaders. Such councillors are likely to receive particular support from the Council or have greater access to officers but they should not seek to use their office, nor council officers, to by-pass recognised systems of working. Similarly Council officers should not use their working relationships with senior Councillors to their own personal advantage.

**Political Guidance and Officer Recommendations**

6.2 Directors and Heads of Service are likely to develop a close working relationship with their relevant Cabinet Member. They will need to meet regularly to discuss current issues, policy and budget matters, service delivery, and reports to be prepared. Officers also will often require political guidance in framing proposals. However, when officers write committee reports for Member-decision they have a duty to give advice on the basis of their professional and management expertise and in accordance with any relevant professional codes of conduct. The integrity and political neutrality of officers must be respected and Councillors should not seek to influence or require officers to present reports in a politically biased way, withhold information or make recommendations that they cannot support.

**Statutory Officer Duties**

6.3 In some situations an officer will be under a duty to submit a report on a particular matter. In particular the Head of Paid Service (Chief Executive) has a duty to report to the authority, where appropriate, on her proposals relating to:

- the manner in which the authority’s functions are co-ordinated;
- the number and grades of staff required by the authority to carry out its functions;
- the organisation of the authority’s staff; and
- the appointment and proper management of the authority’s staff.

(Chart: Officer employment procedures, including provisions in relation to the appointment and dismissal of Chief Officers and other staff, and disciplinary action,)

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are specified in Council policy and procedure documents, and in the Council’s Constitution).

The Monitoring Officer (Head of Legal Services) has a duty to prepare a report to the authority if at any time it appears to him that any proposal, decision or omission by the authority, or one of its committees, sub-committees or officers constitutes or may give rise to a contravention of any enactment, rule of law or statutory code of practice, or maladministration. The Chief Finance Officer (Director of Finance) has similar responsibilities in relation to the use and stewardship of public finances.

**Overview and Scrutiny**

6.4 Councillors appointed to serve on the Council’s Overview and Scrutiny Committee or a Scrutiny Panel have a responsibility to scrutinise and review the discharge of the Council’s functions and the exercise of its powers, including decisions made and actions taken, and to hold Cabinet Members and Officers to account.

6.5 As well as having the right to see documents as described in paragraphs 6.7 and 6.8 and to be able to call for reports, the Overview and Scrutiny Committee and Scrutiny Panels can require members of the Cabinet and/or senior officers to attend before them to provide information in relation to matters within their remit. It is the duty of those Members and Officers to attend if so required. It is not anticipated that Officers below third tier level will be called to give evidence, except in exceptional circumstances when those Officers have specific technical knowledge or expertise. All requests for Officer attendance must be made through the appropriate Chief Officer or his/her nominated representative.

**Access to information and advice**

6.6 It can be helpful to councillors and officers alike for there to be direct communication between councillors and officers at all levels. However, councillors and officers alike must ensure that appropriate conventions are observed in such contacts and not seek to use them to exert improper influence.
If a Councillor is aware that a request may be sensitive or complex, he/she should refer the matter to the Chief Officer and avoid making the request inappropriately to a junior officer. Similarly officers must not by-pass or use their access to councillors to lobby on specific issues or in a way that could undermine normal management or supervisory arrangements. In case of any doubt both the councillor and officer concerned have a responsibility to ensure that the Chief Officer or a senior manager is aware of what is being communicated.

**Access to documents**

6.7 Councillors have a statutory right to see documents relating to business to be transacted at a meeting of the Council, Cabinet, committee or sub-committee. This includes background papers, and applies whether or not the councillor is a member of that body. But this does not apply to drafts of report, or to documents which disclose information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from counsel and criminal investigations.

6.8 Councillors have a common law right to see Council-held documents where they can demonstrate a need to know. This means it must be reasonably necessary for the councillor concerned to see the document in order to carry out his or her duties as a councillor. Mere curiosity or desire is not sufficient - the councillor has to demonstrate a need to know. The ‘need to know’ must be decided by a Chief Officer (or Senior Officer with authority to act on his/her behalf) and Councillors who wish to request confidential information should normally do so through the appropriate Chief Officer or Senior Manager.

**Council Facilities**

6.9 Councillors and Officers must comply with Council policies and procedures relating to the use of Council facilities, including guidelines on appropriate use. Councillors with special responsibilities and officers with particular needs arising from their Council duties, may be provided with facilities which are not ordinarily provided, for example, a mobile telephone, a lap top PC, authority to use a Council account with a private service provider. In such circumstances the individuals concerned must comply with any arrangements or requests for information concerning the use of such facilities, by the relevant chief officer or budget manager.
Communication and Publicity

6.10 Publicity and other material issued by or on behalf of the Council must not be party political. Publicity about individual councillors’ proposals, policies or decisions should be relevant to their position within the Council, objective and explanatory and should avoid personalisation of issues or personal image making.

6.11 The period between the notice of an election and the election itself should preclude “pro-active” publicity, in all its forms, of candidates and other politicians involved directly in the election i.e. publicity initiated by the Council, not arising in response to external events. “Pro-active” events arranged in this period should not involve members likely to be standing for elections. However it is appropriate for members holding key political or civic positions to be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the Council’s control.

6.12 Where councillors wish to express political views, they should ensure that it is clear their comments are made personally and do not necessarily represent the views of the Council as a whole.

The Media

6.13 The Council’s press and public relations staff will provide support and guidance to councillors in their dealings with the press and other media. However, press and communications staff cannot be called upon to assist in party political communications.

6.14 Councillors have freedom to contact and discuss issues with the media but must have regard to their conduct relating to breaches of confidentiality and the need to represent the Council’s best interests. It is also important that councillors stress to reporters, when giving a personal view on an issue, that their views may not reflect Council policy. Councillors who issue press releases or make statements to the press or the general public or part of it, without firstly seeking officer guidance may be personally liable if there are subsequently claims made for defamation, or if another party acts on incorrect information about a council decision or proposals given by a councillor.
Bullying or Harassment

6.15 Bullying or harassment of officers or of councillors, including sexual and racial, is unacceptable and any such complaints may be referred to the Chief Executive. Councillors and senior managers should be aware of how their position of authority may impact on junior or inexperienced individuals.

(Workplace bullying has been described as ‘offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an individual or group of employees and which may cause them to suffer stress’. Racial harassment has been defined as ‘offensive conduct of a racial nature, or conduct based on race, which is offensive to the recipient’. Sexual harassment has been defined as ‘unwanted conduct of a sexual nature, or conduct based on sex, which is offensive to the recipient.’)

7. Action/decisions made under delegated authority

7.1 Councillors who are Cabinet Members and Officers may have authority delegated to them to make decisions or to act on the Council’s behalf. In such cases the individual concerned must consider whether they have full and sufficient information before taking a decision, and may need to consult others: a councillor should ensure that they have the advice of the relevant Chief Officers, and officers may need to consult the relevant Cabinet Member on the proposed decision. When a decision is taken under delegated powers the person to whom that authority has been delegated is personally responsible and accountable for their actions.

7.2 In some cases authority delegated to an officer is on the basis that it is to be exercised in consultation with the relevant Cabinet Member. Whilst, the officer must have due regard to the comments of the Cabinet Member concerned, he/she cannot be instructed on the decision by the Member and will remain accountable for the action taken. However, if there is a significant disagreement between the officer and the Cabinet Member the matter will normally be referred to the appropriate Member-level body for decision.

7.3 Chief Officers have delegated responsibility for the general management of their department and the day-to-day delivery of services. They also have powers and duties specifically delegated to them as well as a general delegated authority for executive functions which are not identified in the Council’s constitution as being reserved for Member-level decision. Within this framework decisions are frequently delegated below Chief Officer level. While Officers will be sensitive to political guidance on how they exercise
their delegated authority and will always consider requests and comments by Members, all delegated action must be in accordance with overall Council policies and procedures or Cabinet or Committee decisions but not individual Member instructions. Where Cabinet Members have authority to take decisions individually under delegated powers, they must be taken formally, based on officer reports and recorded and published in accordance with Access to Information Procedures.

7.4 A Councillor who gives an undertaking or commitment to a third party in excess of their powers of authority, may be personally liable in law for any costs or damages incurred by the third party if they act on that undertaking or commitment and it is not subsequently confirmed by the Council. An officer who similarly wrongly advises or misleads a third party may be subject to the Council’s disciplinary procedures.

8. **Party Group Meetings**

8.1 Senior officers can be called upon to provide advice to Party groups or leading Members, and when doing so should act impartially and non-politically. This requirement upon officers should be understood and respected by Members. Party group meetings have no formal role in the Council’s management arrangements - they are organised by Councillors, but may have officer support as matters relevant to council business will be discussed and it is appropriate for senior officers to be called upon to give advice, information and answer questions on specific items. Senior Officers should give, if requested, support and advice to Opposition Parties similar to that which they would give to the Majority Party. Officers should respect arrangements for confidentiality relating to party group meetings. Similarly Members should respect the limit to which officers may go in contributing to party political debate.

8.2 The following points should be clearly understood by councillors and officers when officers attend party group meetings:

- officer attendance is at the request of the party group concerned; officers do not have any rights to attend but when they do, they and councillors, and other attendees should observe the same protocols and formalities that would be expected at other meetings;

- officer support must not extend beyond providing information and advice on Council business. Officers must not be involved in advising on matters concerning the organisation or business of political parties,
and should not be present when those matters are discussed;

- persons who are not councillors are not bound by the Code of Conduct, including the provisions relating to declaration of interests and confidentiality. Care should therefore be taken when officers provide information and advice to party group meetings which include such persons, and officers may not be able to provide the same level of information and advice as they would to a councillor-only meeting;

- party group meetings form part of the preliminaries to Cabinet or Council decision making. But they cannot make decisions on behalf of the Cabinet or Council, and their decisions cannot be acted on as if they were Cabinet or Council decisions;

- officer information and advice to party group meetings does not substitute for their providing all necessary information and advice to Cabinet or Council when the matter is discussed.

9. **Personal and Social Relationships**

9.1 It is important that Councillor and staff relationships are correct and businesslike. There will be occasions when councillors and officers come into contact outside of council business and in such circumstances professional and personal matters must be kept separate.

9.2 Under their Code of Conduct, councillors are required to declare, when relevant in considering business at council or committee meetings, any private relationship with an officer which might be regarded as influencing their actions. This includes family, business or close personal relationships. Officers similarly should inform their manager of such relationships with a councillor.

10. **Members and Officers Personal Dealings with the Council**

10.1 Councillors and Officers who are residents of the Borough will enjoy the same entitlement as other residents to Council services. Where services are subject to administrative decisions, or specified eligibility criteria, or competitive assessment, Councillors and Officers must not use their position or contacts to influence decisions in which they have a private interest. For example, a Councillor applying for planning permission or housing benefits should be careful in speaking to Officers on their personal application in order to avoid any suggestion of improper pressure. In some cases it may be appropriate for a Councillor to employ a third party to act on his/her behalf
in his/her dealings with the Council. Similarly, an Officer must not lobby a Councillor, or use his/her working relationship with any Councillor, to gain support or influence any employment application or service delivery to his/her advantage.

10.2 An officer must not allow situations to develop in which there may be, or appear to be, a conflict of interest between their responsibilities to the Council and their personal and private concerns; or situations which could create the impression that they may receive preferential treatment because of their employment by the Council. To help avoid such situations, an officer must declare any conflict of interest in writing to his/her chief officer, and as appropriate in informal discussions with other officers or with councillors must declare orally such a conflict when the matter concerned is discussed. Officers must comply with procedures relating to such situations as may be set out in the Officer Code of Conduct (when introduced).

10.3 Because of their employment by the Council, officers who are borough residents, in some circumstances may not be able to exercise rights which are normally available to other borough residents, such as speaking at council meetings under public participation procedures, or representing organisations or groups of residents in their dealings with councillors or with the Council. In cases of doubt the advice of the employee’s Chief Officer, or of the Chief Executive, should be sought.

11. **Complaints**

11.1 Councillors have the right and a duty to criticise reports or the actions taken by officers when they consider that acceptable standards have not been met, but they should always:

- Avoid personal attacks on officers;
- Ensure that criticism is constructive and well-founded;
- Not seek to undermine respect for, or the role of, officers;
- Raise any complaint directly with the relevant Chief Officer; or with the Chief Executive if still unsatisfied or if the complaint relates to a Chief Officer;
- Not seek to influence any disciplinary action which is the responsibility of managers to take.

11.2 Complaints about councillors by officers arising from their council duties should be made to the officer’s manager and referred to the Chief Officer.
12. **Other Individuals who are Members of Council Bodies**

12.1 Individuals who are not councillors nor officers but who are co-opted to serve on Council Committees, or appointed to serve on partnership or liaison bodies established by the Council, may have access to information and advice in carrying out community duties which is not available to other members of the public, and may have contact with senior councillors and officers. Such individuals should comply with the principles of conduct and requirements outlined in this protocol for maintaining proper and effective working relationships with councillors and officers. Individuals may be appointed to positions on council bodies because of their involvement in local voluntary, community business or other organisations which have separate dealings with the Council, and should not use their position on the Council, or information gained through their service on council bodies, to improperly influence decisions or gain advantage on behalf of their organisation.

13. **Breaches of this Protocol**

13.1 This protocol gives guidance as to the arrangements to promote effective working relationships between councillors and officers having regard to the standards of conduct expected (Section 2) and the different roles of members and officers (Section 3). Individual minor breaches of etiquette are unlikely to have significant implications apart from indicating a less than satisfactory councillor /officer relationship which, if allowed to continue could eventually be detrimental to the overall success of the Council. Major or persistent breaches by officers should be dealt with under the Council’s disciplinary procedures. Major or persistent breaches by councillors should be referred the Chief Executive.

13.2 All complaints will be processed in accord with the Procedure agreed by full Council. Initially, the Chief Executive will consult the Monitoring Officer on whether the complaint appears to involve a breach of the Code of Conduct and will inform the Group Leader of the Member complained against (or the Deputy Leader if the complaint concerns the Leader). If there is a potential breach of the Code, a copy of the complaint will be sent to the Member complained against unless the Chief Executive decides that this would prejudice any investigation.

13.3 Generally, upon receipt of a complaint the Chief Executive will explore the potential for an informal resolution in discussion with the relevant Group Leader, or if the complaint involves them, the Deputy Group Leader. If the matter is resolved informally, the complaint will not proceed further. However, the Chief Executive may determine that an investigation is
warranted, and can appoint an investigator who will carry out an investigation and write a report. This will then be considered by the Standards Committee who may wish to hold a hearing into the matter.

13.4 If the Standards Committee decides, after consulting with the Independent Person, that a Member has failed to comply with the Code, the measures available are:

- Recommendation that the Member make an apology to full Council, which should address any matters specified by the Committee;
- Recommendation to Council that the Member be censured;
- Recommendation to the Member’s Group Leader (or in the case of un-grouped Members, a recommendation to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommendation to the Leader of the Council that the Member be removed from the Cabinet, or removed from any of their portfolio responsibilities or from any other position of responsibility;
- Recommendation that the Member should be provided with training on specific matters;
- Recommendation to Council that the Member be removed from any or all outside body appointments to which they have been appointed or nominated by the Council;
- Decision to exclude the Member from the Council’s offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings and constituent surgeries.

13.5 The Standards Committee’s decision, including a summary of its reasons and any recommendations and comments, is published after the hearing.
D Guidance on good practice in planning

Introduction

1. The Member Code of Conduct sets out the conduct which is expected of elected and co-opted members in carrying out their duties. The government will introduce a similar code of conduct for officers. Both Codes primarily concern individual probity and other aspects of conduct across the whole range of members’ and officers’ duties.

2. This Guidance is concerned with the integrity of the planning system. It is directed at members of the Planning Board and of Area Planning Committees, and at officers who are involved in the planning process and planning procedures, and sets out the conduct which is expected of them. The Codes and this Guidance overlap, but have different targets.

3. This Guidance applies to all decisions on planning matters, whether they are made by the Planning Board, by Area Committees or by officers. It is based upon the provisions of the Member Code of Conduct, the Royal Town Planning Institute’s Code of Professional Conduct, advice issued by the Audit Commission, the Commissioners for Local Administration in England and Wales (the Ombudsmen) and the National Planning Forum. Failure to follow its recommendations without good reason could be taken into account in an investigation into possible maladministration by the Council. It may also result in an allegation that a member or officer has breached their respective Code of Conduct.

The need for guidance on the conduct of planning matters

4. Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it invites public opinion before taking decisions) and the legal nature of development plans and decision notices.

5. One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings.
6. This Guidance therefore seeks to ensure that the Council makes planning decisions which affect public and private interests openly, transparently and impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way. Decisions should be properly recorded and supported by adequate reasons.

7. This Guidance also seeks to explain the respective roles of councillors and officers, and to ensure they act in a way which is not only fair and impartial but is also clearly seen to be so. The successful operation of the planning system relies on mutual trust and understanding of the respective roles of councillors and officers.

**The general role of members**

8. The basis of the planning system is the consideration of development proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. While councillors should take account of these views, they should not favour any person, company, group or locality, nor should they put themselves in a position where they appear to do so.

9. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

**Gifts and hospitality**

10. Members should be very cautious about accepting gifts and hospitality. The Member Code of Conduct requires any member to provide the Head of Legal Services with written details of any gift or hospitality over the value of £100 which they receive in their capacity as a member. The details must be provided within 28 days of receipt, and they will go in a register of gifts and hospitality, which will be open to inspection by the public.

11. Similarly officers, in the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be politely declined. If the receipt of hospitality is unavoidable, officers should ensure that it is minimal and must declare its receipt as soon as possible. Each department has a hospitality book to record such offers, whether or not accepted. The requirement to register hospitality is likely to be a feature of the statutory code of conduct for employees.
Registration and declaration of interests

12. The Member Code of Conduct attempts to separate members’ personal interests from those interests which arise from their wider public life.

13. A member who has a personal interest must always declare it.

14. A member who has a prejudicial interest must leave the room, not take part in the discussion or vote and not seek improperly to influence the decision.

15. The Member Code of Conduct says a member may regard their interest as not being a prejudicial interest if it relates to another body on which he or she serves as the Council’s representative. This is because their interest is not a personal interest - it arises from their wider public life. However, the member should still consider whether a member of the public, knowing all the facts, would reasonably regard their membership of that other body as so significant that it would be likely to prejudice their judgement of the public interest. If they believe a member of the public would think this, the member should regard himself or herself as having a prejudicial interest.

16. A member who serves as the Council’s representative on another body may therefore vote on a planning proposal on which that body has made representations, but only if they have scrupulously avoided forming a fixed view on the matter in advance and only if the proposal does not directly affect that body. If they have taken a firm view of a proposal before the decision-making meeting, they should declare this and not vote. This is not because they would have a prejudicial interest. It is because they could not demonstrate that, in voting, they have taken into account all the relevant facts and arguments. In legal terms, they would have fettered their discretion. Were they to vote, an aggrieved party might seek judicial review of the decision. If the proposal directly affects that body, they should regard themselves as having a prejudicial interest and leave the meeting.

17. Members who are unsure whether an interest should be declared, or whether they may vote, should seek the advice of the Head of Legal Services or the Cabinet Secretary or their representative. However the decision rests with the member.
Development proposals made by members
and officers, and council development

18. Proposals to the Council by members and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So can proposals for the Council's own development. Proposals can take the form of either planning applications or development plan proposals.

19. It is perfectly legitimate for such proposals to be made. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Accordingly:

- members who act as agents for people pursuing planning proposals with the Council must play no part in the decision-making process;
- members or officers who submit their own proposals to the Council must play no part in its processing;
- members and officers must inform the Director of Regeneration, Enterprise and Skills and the Head of Legal Services of such proposals. The proposals must be reported to the Planning Board or Area Planning Committee as main items and not dealt with by officers under delegated powers; and
- proposals for a council's own development must be treated in the same way as proposals from private developers, in accordance with DoE Circular 19/92, particularly in relation to officers' advice.

20. Members would of course have a prejudicial interest in their own proposals and would be required to withdraw from any consideration of the matter. The Member Code of Conduct provides that the member should "not seek improperly to influence a decision about the matter". This means that a member should have the same right as a member of the public to seek to explain and justify their proposals to an officer, before a committee considers it.

Lobbying of members

21. Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's third report states: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves" (paragraph 288).
22. However, unless all the parties involved exercise care and common sense, lobbying can lead to the impartiality and integrity of a member being called into question. When being lobbied, members of a planning committee should take care about expressing an opinion. If they give the impression that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments, they would not be able to vote. This mirrors the approach in paragraph 16.

23. In such situations, members of a planning committee who are lobbied should restrict themselves to giving procedural advice, including suggesting that those who are lobbying should speak or write to the relevant officer, in order that their opinions can be included in the officer's report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

24. Members, of a planning committee, need to take account of the public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner, and that members will take account of all the evidence presented before arriving at a decision. To commit themselves one way or another before hearing all the arguments makes members vulnerable to an accusation of partiality. Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. An aggrieved party may seek judicial review of the way in which a decision has been arrived at, or may complain to the Local Government Ombudsman on grounds of maladministration or to the Chief Executive that a member has breached the Member Code of Conduct.

25. In reality, members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. However, members of planning committee (at least those who are not councillors of the affected ward - see the following paragraphs) should not openly declare which way they intend to vote in advance of the planning meeting, and of hearing evidence and arguments on both sides.
Ward members

26. Political reality suggests that it is often important to distinguish between the role of a planning committee member who is, and who is not, a ward member for the area affected by a planning application. A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application, and to wait until the committee meeting before declaring one way or another.

27. A planning committee member who does represent the ward affected by an application is in a difficult position if it is a controversial matter around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - it will be very difficult for them to argue that they have carefully weighed the arguments presented - perhaps in some respects for the first time - when the committee comes to take a decision on the application. The proper course of action for such a member would be to declare they have already taken a view and not vote. However they would have the right to speak on the matter at the meeting.

28. A ward member who is not a member of the planning committee should be permitted by the Chair to speak on the matter at the meeting, unless they have a prejudicial interest.

Party groups

29. A decision on a planning application cannot be made before the planning committee meeting, when all available information is to hand and has been considered. Any political group meeting should not therefore be used to decide how members of a planning committee should vote. The view of the Ombudsman in relation to the former national code of conduct was that the use of political whips to seek to influence the outcome of a planning application could amount to maladministration.

Lobbying by members

30. Members including ward members are entitled to express their views on a planning application, and this may include lobbying other members. But if they are members of planning committees, they should not lobby other members unless they accept they will not take part in or vote at any meeting which considers the application.
31. Members should not put pressure on officers for a particular recommendation, and should not do anything which compromises, or is likely to compromise, their impartiality.

**Pre-application discussions**

32. Discussions between a potential applicant and the Council before the submission of an application can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or to be seen, as part of a lobbying process by the applicant.

33. In order to avoid such perceptions, pre-application discussions should take place within the following guidelines. Although the term "pre-application" has been used, the same considerations should apply to any discussions which take place before a decision is taken:

- It should always be made clear at the outset that discussions will not bind the Council to making a particular decision, and that any views expressed are personal and provisional. By the very nature of pre-application discussions, not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;
- Advice should be consistent and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision-maker;
- A note should be made of all potentially contentious meetings. At least one planning officer should attend such meetings and a follow-up letter is advisable, at least when documentary material has been left with the Council. A note should also be made of potentially contentious telephone discussions;
- Care must be taken to ensure that advice is not partial, nor seen to be, otherwise a subsequent report could appear to be advocacy; and
- Members and officers must register any gifts and hospitality received.

Decisions contrary to officer recommendations and/or the development plan

34. The law requires that where the development plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
35. This gives rise to two main issues:

- an application which is not in accordance with the development plan must be identified as soon as possible and advertised as such;
- if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and the reasons why they justify overriding the development plan must be clearly demonstrated. The application may then have to be referred to the Secretary of State, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

36. If a planning committee intends to make a decision contrary to the officers' recommendation (whether for approval or refusal), the officer should first be given an opportunity to explain the implications of the contrary decision. The Chair should ensure that the committee's reasons are made clear at the meeting. A full record of the reasons should be made in the minutes and a copy placed on the application file. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

**Site visits**

37. The Member Code of Conduct applies whenever members are conducting official business, which will include site visits. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial. They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit.

38. Requests for site visits should normally be acceded to where they are made by the ward member, as this is a proper part of their representative role, provided the expected benefit is substantial. A record should be kept of the reasons why a site visit is requested.

39. Site visits are only likely to be necessary:

- if the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by
officers (although if that is the case, additional illustrative material should have been requested in advance); or

- if there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

40. Site visits consisting simply of an inspection by a viewing sub-committee, with officer assistance, are in most cases the most fair and equitable approach as between applicant and objectors. Such an inspection could be unaccompanied (i.e. without applicant and objectors) or accompanied and run on the strict lines of a planning inspector's site inspection, so that no discussion takes place during the inspection.

Further guidance

41. The two appendices provide guidance on what are relevant planning considerations and on the procedures and arrangements for members of the public to address meetings.
Appendix 1

KEY PRINCIPLES

Planning Items

When determining planning applications and related matters Council Officers and Councillors must adhere to important principles set out in legislation and Central Government Guidance.

The Key Principles are:

- Applications shall be determined in accordance with the Local Development Framework unless material considerations indicate otherwise. (Section 54A, Town and Country Planning Act, 1990.)
- If there are other material considerations, the Local Development Framework the starting point and other considerations weighed up against it.
- Where the Local Development Framework is not relevant or there are policy conflicts, the application must be treated on its merits.

Material Planning Considerations include:

- Central Government planning policy and advice as contained in Circulars, Planning Policy Guidance Notes.
- The Local Development Framework.
- Planning Briefs and other Supplementary Planning Guidance, e.g. Home Extension Guidelines.
- Site specific issues such as availability of infrastructure, density, car parking.
- Environmental effects such as effect on light, noise, overlooking, effect on the street scene.
- The need to preserve or enhance the Special Character or appearance of Conservation Areas and protect Listed Buildings.
- Previous planning decisions, including appeals.
- Desire to retain and promote certain uses.
- Precedent.
Certain matters must not be taken into account when determining planning applications and include:-

- Moral and religious issues.
- Unfair competition.
- Breach of private covenants or other property rights.
- Devaluation of property.
- Protection of a private view.
- Identity of an applicant or occupier.
Appendix 2

PROCEDURE NOTE FOR THE PLANNING BOARD and AREA PLANNING COMMITTEES

Note: All persons who have written to the Council in connection with any of the applications on the agenda will have been invited to attend the meeting.

At the start of the meeting the Chair will summarise the procedure to be followed, read out the names of all those who have indicated their wish to speak on planning, highways and licensing matters. The Chair will also announce that anyone wishing to address the Committee should give the Committee Officer his or her names. If they are not included on the list before the proceedings they will not be permitted to speak.

According to the number of applications for consideration, the Chair will strictly control the time that people will be allowed to speak either in support of or against the granting of planning permission for which an application has been made.

Planning Items

1. Council Officers will introduce each item, outlining Officers’ recommendations on the matter, and answer any questions from the Committee. The Chair will then invite members of the public on the list to come to the table and address the Committee.

2. Both supporters and objectors will each be allowed a total of five minutes to address the Committee. The five minutes need to be shared if more than one speaker on behalf of the supporters or the objectors wish to speak. The Chair has the discretion to extend this time.

3. Comments should be confined to highways and planning matters and the public will be advised to include everything they wish to say in one contribution, as normally no further opportunity will arise. It must be noted that only relevant planning considerations can be taken into account when considering planning applications (see information pages for details).

4. Members of the Committee may wish to ask questions. The speaker should return to the public seating area.
5. The public will be able to listen to the Councillors discussing the item and coming to a decision. The Chair will then announce the decision.
E - Guidance on good practice in licensing

Introduction

1 The Member Code of Conduct sets out the conduct which is expected of elected and co-opted members in carrying out their duties. The government will introduce a similar code of conduct for officers. Both Codes primarily concern individual probity and other aspects of conduct across the whole range of members’ and officers’ duties.

2 The Council has agreed Guidance on Good Practice in Planning which is directed at members and officers who are involved in the planning process, and sets out the conduct which is expected of them.

3 This guidance is directed at members of the Licensing Committee and its sub-committees, and at officers who are involved in the licensing process, and sets out the conduct which is expected of them. It applies to all decisions on licensing matters, whether they are made by members or by officers. Failure to follow its recommendations without good reason could be taken into account in an investigation into possible maladministration by the Council. It may also result in an allegation that a member or officer has breached their respective Code of Conduct.

The need for guidance on the conduct of licensing matters

4 The Council must make licensing decisions which affect public and private interests openly, transparently and impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way. Decisions should be properly recorded and supported by adequate reasons.

5 This guidance seeks to explain the respective roles of councillors and officers, and to ensure they act in a way which is not only fair and impartial but is also clearly seen to be so. The successful operation of the licensing system relies on mutual trust and understanding of the respective roles of councillors and officers.
The general role of members

6 The basis of the licensing system is the consideration of licensing applications against the licensing objectives set out in the Licensing Act 2003, the Gambling Act 2005 and the Council’s statement of licensing policy. Much is often at stake in this process, and opposing views are often strongly held by those involved. While councillors should take account of these views, they should not favour any person, company, group or locality, nor should they put themselves in a position where they appear to do so.

7 Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a licensing committee.

8 Because the technical issues concerning licensing are complex, and matters of propriety are not always straightforward, appointment to a licensing committee creates a requirement for new members to undertake training on appointment, and for all members to have refresher training. Seminars may also be organised where Members may develop their specialist knowledge and where topical issues may be aired. Members are advised not to accept nomination to the Sub-Committee unless they are prepared to take on this responsibility. Members also need to familiarise themselves with the provisions of these procedures.

Gifts and hospitality

9 Members should be very cautious about accepting gifts and hospitality. The Member Code of Conduct requires any member to provide the Head of Legal Services with written details of any gift or hospitality over the value of £100 which they receive in their capacity as a member. The details must be provided within 28 days of receipt, and they will go in a register of gifts and hospitality, which will be open to inspection by the public.

10 Similarly officers, in the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be politely declined. If the receipt of hospitality is unavoidable, officers should ensure that it is minimal and must declare its receipt as soon as possible. Each department has a hospitality book to record such offers, whether or not accepted. The requirement to register hospitality is likely to be a feature of the statutory code of conduct for employees.
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12 A member who has a personal interest must always declare it.

13 A member who has a prejudicial interest must leave the room, not take part in the discussion or vote and not seek improperly to influence the decision. This applies to all members, and not just those who are members of the committee concerned.

14 The Member Code of Conduct says a member may regard their interest as not being a prejudicial interest if it relates to another body on which he or she serves as the Council’s representative. This is because their interest is not a personal interest - it arises from their wider public life. However, the member should still consider whether a member of the public, knowing all the facts, would reasonably regard their membership of that other body as so significant that it would be likely to prejudice their judgement of the public interest. If they believe a member of the public would think this, the member should regard himself or herself as having a prejudicial interest.

15 A member who serves as the Council’s representative on another body may therefore vote on a licensing proposal on which that body has made representations, but only if they have scrupulously avoided forming a fixed view on the matter in advance and only if the proposal does not directly affect that body. If they have taken a firm view of a proposal before the decision-making meeting, they should declare this and not vote. This is not because they would have a prejudicial interest. It is because they could not demonstrate that, in voting, they have taken into account all the relevant facts and arguments. In legal terms, they would have fettered their discretion. Were they to vote, an aggrieved party might seek judicial review of the decision. If the proposal directly affects that body, they should regard themselves as having a prejudicial interest and leave the meeting.

16 Members who are unsure whether an interest should be declared, or whether they may vote, should seek the advice of the Head of Legal Services or the Head of Democratic Services or their representative. However the decision rests with the member.
Licensing proposals made by members and officers

17 Proposals to the Council by members and officers and their close friends and relatives can easily give rise to suspicions of impropriety.

18 It is perfectly legitimate for such proposals to be made. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Accordingly:

- members who act as agents for people pursuing licensing proposals with the Council must play no part in the decision-making process;
- members or officers who submit their own proposals to the Council must play no part in its processing;
- members and officers must inform the Director of Housing and Safer Communities and the Head of Legal Services of such proposals. The proposals must be reported to the committee as main items and not dealt with by officers under delegated powers.

19 Members would of course have a prejudicial interest in their own proposals and would be required to withdraw from any consideration of the matter. The Member Code of Conduct provides that the member should "not seek improperly to influence a decision about the matter". This means that a member should have the same right as a member of the public to seek to explain and justify their proposals to an officer, before a committee considers it.

Lobbying of members

20 Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected ward member or to a member of the licensing committee.

21 Unless all the parties involved exercise care and common sense, lobbying can lead to the impartiality and integrity of a member being called into question. When being lobbied, members of a licensing committee should take care about expressing an opinion. If they give the impression that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments, they would not be able to vote. This mirrors the approach in paragraph 15.
22 In such situations, members of a licensing committee who are lobbied should restrict themselves to giving procedural advice, including suggesting that those who are lobbying should speak or write to the relevant officer, in order that their opinions can be included in the officer’s report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

23 Members of a licensing committee need to take account of the public’s (and the Ombudsman’s) expectation that a licensing application will be processed and determined in an open and fair manner, and that members will take account of all the evidence presented before arriving at a decision. To commit themselves one way or another before hearing all the arguments makes members vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. An aggrieved party may appeal against the decision or seek judicial review of the way in which a decision has been arrived at. They may also complain to the Local Government Ombudsman that there has been maladministration, or to the Chief Executive that a member has breached the Member Code of Conduct.

24 In reality, members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. However, members of a licensing committee should not openly declare which way they intend to vote in advance of the planning meeting, and of hearing evidence and arguments on both sides.

**Ward members**

25 Political reality suggests that it is often important to distinguish between the role of a licensing committee member who is, and who is not, a ward member for the area affected by a licensing application. A licensing committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application, and to wait until the committee meeting before declaring one way or another.

26 A licensing committee member who does represent the ward affected by an application is in a difficult position if it is a controversial matter around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - it will be very difficult for them to argue that they have carefully
weighed the arguments presented - perhaps in some respects for the first time - when the committee comes to take a decision on the application. The proper course of action for such a member would be to declare they have already taken a view and not vote. However they would have the right to speak on the matter at the meeting.

27 A ward member who is not a member of the licensing committee should be permitted by the Chair to speak on the matter at the meeting, unless they have a prejudicial interest.

Party groups

28 A decision on a licensing application cannot be made before the committee meeting, when all available information is to hand and has been considered. Any political group meeting should not therefore be used to decide how members of a licensing committee should vote.

Lobbying by members

29 Members are entitled to express their views on a licensing application, and this may include lobbying other members. But if they are members of licensing committees, they should not lobby other members unless they accept they will not take part in or vote at any meeting which considers the application.

30 Members should not put pressure on officers for a particular recommendation, and should not do anything which compromises, or is likely to compromise, their impartiality.

Pre-application discussions

31 Discussions between a potential applicant and the Council before the submission of an application can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or to be seen, as part of a lobbying process by the applicant.

32 In order to avoid such perceptions, pre-application discussions should take place within the following guidelines. Although the term "pre-application" has been used, the same considerations should apply to any discussions which take place before a decision is taken:

- It should always be made clear at the outset that discussions will not bind the Council to making a particular decision, and that any views
expressed are personal and provisional. By the very nature of pre-application discussions, not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;

- Advice should be consistent and based upon the Council’s statement of licensing policy. There should be no significant difference of interpretation of the statement amongst licensing officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision-maker;

- A note should be made of all potentially contentious meetings. At least one licensing officer should attend such meetings and a follow-up letter is advisable, at least when documentary material has been left with the Council. A note should also be made of potentially contentious telephone discussions;

- Care must be taken to ensure that advice is not partial, nor seen to be, otherwise a subsequent report could appear to be advocacy;

- Members and officers must register any gifts and hospitality received over the value of £100.

**Decisions contrary to the statement of licensing policy (Licensing Act 2003 or Gambling Act 2005) and/or officer recommendations**

33 The law requires that regard should be had to the statement of licensing policy in making decisions.

34 If a licensing committee intends to make a decision contrary to the statement of licensing policy or to an officer’s recommendation (whether for approval or refusal), the officer should first be given an opportunity to explain the implications of the contrary decision. *The Chair should ensure that the committee’s reasons are made clear at the meeting. A full record of the reasons should be made in the minutes and a copy placed on the application file. The courts have expressed the view that such reasons should be clear and convincing.*

**Site visits**

35 The Member Code of Conduct applies whenever members are conducting official business, which will include site visits. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial. They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently
adhered to throughout the visit.

36 Comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

Site visits consisting simply of an inspection by a viewing sub-committee, with officer assistance, are in most cases the most fair and equitable approach as between applicant and objectors. Such an inspection could either be unaccompanied (i.e. without the applicant and objectors) or accompanied and run on the strict lines of a planning inspector's site inspection, so that no discussion takes place.
APPENDIX

Procedure for Considering Licensing Applications
under the Licensing Act 2003

Note: All persons who have written to the Authority in connection with any of the applications on the agenda will have been invited to attend the meeting.

At the start of the meeting the Chair will summarise the procedure to be followed, read out the names of all those who have indicated their wish to speak. The Chair will also announce that anyone wishing to address the Sub-Committee should give the Committee Officer his or her names. If they are not included on the list before the proceedings they will not be permitted to speak.

According to the number of applications for consideration and the number of intended speakers, the Chair will strictly control the time that people will be allowed to speak either in support of, or against, the granting of a licence. Each speaker will be allowed an equal period of time.

1. The Chair will ascertain whether the applicant is present. In the case of failed attendance, the Chair will establish whether he/she has informed the authority that they did not intend to attend or be represented at the hearing.

2. In the absence of an applicant, or his/her representative, the Sub-Committee will decide whether the case should be heard or adjourned.

3. Where the applicant is present the Chair will ascertain that he/she knows that they may be assisted or represented, legally or otherwise.

4. It will be made clear that any person or persons who, in the Sub-Committee’s opinion, behaves in a disruptive manner will be asked to leave the hearing and may only be permitted to return on condition that he/she assures no further interruptions.

Any such person may, before the end of the hearing, submit to the hearing in writing any information which they would have been entitled to give orally had they not been required to leave.
5. The Sub-Committee Members will be able to ask questions at any time, but will generally restrict most questions to the end of the statement made by the objector, applicant or witness, as appropriate.

6. The Lead Officer will give details of each application in each case and of the number and type of objections/representations received.

7. The applicant/representative and applicant’s witnesses will then be invited to address the Sub-Committee. The applicant/representative will be entitled to produce further information, if relevant, at the hearing.

8. Members of the Sub-Committee may ask questions of the applicant or their witnesses.

9. The objectors, or their representatives, will then be called to speak. They should cover the points raised in their original objection and may, at the Chair’s discretion, deal with new points that relate to something that the applicant may have raised during their address that was previously unknown to the objector. (The applicant should be advised to note specific points during the objectors’ presentation.) Any new evidence will be considered with the consent of the applicant or their representative.

10. The applicant/representative will be permitted to put questions to each objector immediately after they have addressed the Sub-Committee and to answer any new points raised by the objector.

11. The Committee will then discuss the application and the objections, and give their decision, giving clear reasons for the decision reached.

12. Should Members wish to discuss certain issues such as whether an applicant is a “fit and proper person” to hold a licence, the Committee will move into closed session and the public will be excluded for the duration of the discussion prior to a decision on the application being announced.

13. A few days after the meeting the written Decision Notice will be issued to the applicant, which will include details of the applicant’s right of appeal if appropriate. Notification of the decision will be sent to the objectors.
Procedure for Considering Licensing Applications under the Gambling Act 2005

Note: All persons who have written to the Authority in connection with any of the applications on the agenda will have been invited to attend the hearing. Only those parties who have made written representations in advance will be invited to and allowed to address the hearing.

At the start of the meeting the Chair will, confirm that all parties present have a copy of the procedure to be followed and, give an outline.

Any party will be permitted to question any other party or person representing a party on any matter that is relevant to the application or any representations made on the application, where the sub-committee considers that in all the circumstances it is appropriate to do so. Cross-examination will not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

The Chair has strict control of the time. Each side, parties speaking in support of, or against, granting of the licence will have a total of 15 minutes to address the meeting. The Chair will remind all present that any documentary or other information they wish to produce in support of their application or representations, must have been disclosed to all parties prior to the hearing taking place. No additional material may be produced at the hearing except with the consent of all the parties.

The Sub-Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the hearing and may:

(a) refuse to permit that person to return, or

(b) permit them to return only on the conditions that they give an assurance of no further interruptions, or

(c) permit them to submit in writing, before the end of the hearing, any information which they would have been entitled to give orally had they not be required to leave; and (b) shall take into account that information in reaching a determination of the application.

Members of the Sub-committee shall have the opportunity to ask questions at any time of a party, a person representing a party or a witness on any matter which appears to it to be relevant to the proceedings before it.
Procedure

1. The Chair will ascertain whether the parties and their witnesses, if any, are present. If any party has indicated that they will not attend or failed to indicate whether or not they will attend, the Sub-Committee may hold the hearing in that party's absence or decide to adjourn.

2. Where the applicant is present the Chair will ascertain that they understand that they may be assisted or represented, legally or otherwise.

3. The Lead Officer will give details of the application in each case and of the number and type of representations received as set out in the report.

4. Parties (or their representatives) making representations against the application will be invited to address the Sub-Committee confirming why they consider the issues they have raised to be relevant to the licensing objectives and sufficient to object to the application or notice as applicable. Any new evidence will only be considered with the consent of all the parties.

5. The applicant, or applicant’s representative, will be permitted (in accordance with the regulations) to put questions to each person making representations against, immediately after they have addressed the Committee.

6. The applicant or their representative and their witnesses will then be invited to address the Sub-Committee confirming why they consider the issues that have been raised are irrelevant with regard to the licensing objectives and why they consider the Sub-Committee should grant the application, or notice, as applicable. Any new evidence will only be considered with the consent of all the parties.

7. The persons making representations or their representative, will be permitted (in accordance with the regulations) to put questions only (no statements) to the applicant, or applicant’s representative, after they have addressed the Committee.

8. Either party will be given the opportunity to provide further information on, or explanation of, any matter on where the sub-committee has indicated that it requires further clarification under regulation.

9. A discussion involving all parties will ensue. Permission for cross-examination, if considered to be necessary, will be given.
10. The Sub-Committee will retire in the company of the Legal Adviser and Committee Officer to discuss the application and the objections.

11. The Chair will advise the parties of the decision they have reached and that any person aggrieved by the decision of the Licensing Sub-Committee can appeal to the Magistrates’ Court.

12. After the meeting written Decision Notices will be issued, in accordance with the timings set down in the regulations, to the applicant. This will include reasons for the decisions and details of the applicant’s right of appeal if appropriate. Notification of the decision will be sent to the persons who made representations against the application. In any case notification will take place no later than five working days after the meeting.

Procedure for considering licensing issues other than those that fall under the Licensing Act 2003 or the Gambling Act 2005

The procedure will be as follows:

1. The Chair will ascertain that the applicant knows that he/she may be represented.

2. The Lead Officer will give details of each application in each case and of the number and type of objections received.

3. The applicant, or the applicant’s representative, and applicant’s witnesses will then be invited to address the Committee.

4. The objectors, or their representatives, will then be allowed to speak. They should cover the points raised in their original objection and may, at the Chair’s discretion, deal with new points that relate to something that the applicant may have raised during their address that was previously unknown to the objector. (The applicant should be advised to note specific points during the objectors’ presentation.)

5. The applicant, or applicant’s representative, will be permitted to put questions to each objector immediately after they have addressed the Committee and to answer any new points raised by the objector.

6. The Committee Members will be able to ask questions at any time, but will generally restrict most questions to the end of the statement made by the objector, applicant or witness, as appropriate.
7. The Committee will then discuss the application and the objections, and give their decision, giving clear reasons for the decision reached.

8. Should Members wish to discuss certain issues such as whether an applicant is a “fit and proper person” to hold a licence, the Committee will move into closed session and the public will be excluded for the duration of the discussion prior to a decision on the application being announced.

9. A few days after the meeting the written Decision Notice will be issued to the applicant, which will include details of the applicant’s right of appeal if appropriate. Notification of the decision will be sent to the objectors.