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# Constitution Part 4 – Codes and Protocols

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9 April 2025



**Elmbridge**  
Borough Council

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# A - Councillor Code of Conduct

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## Introduction

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

## 1. Definitions

For the purposes of this Code of Conduct, a “**councillor**” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as

*“a person who is not a member of the authority but who*

*a) is a member of any committee or sub-committee of the authority, or;*

*b) is a member of, and represents the authority on, any joint committee or joint subcommittee of the authority;*

*and who is entitled to vote on any question that falls to be decided at any meeting of that*

*committee or sub-committee”.*

For the purposes of this Code of Conduct, “**local authority**” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity

boards, combined authorities and National Park authorities.

## **2. Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government.

It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## **3. General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- a) I act with integrity and honesty
- b) I act lawfully
- c) I treat all persons fairly and with respect; and
- d) I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- a) I impartially exercise my responsibilities in the interests of the local community
- b) I do not improperly seek to confer an advantage, or disadvantage, on any person
- c) I avoid conflicts of interest
- d) I exercise reasonable care and diligence; and
- e) I ensure that public resources are used prudently in accordance with my local

authority's requirements and in the public interest.

#### **4. Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- a) you misuse your position as a councillor
- b) Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- a) at face-to-face meetings
- b) at online or telephone meetings
- c) in written communication
- d) in verbal communication
- e) in non-verbal communication
- f) in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

#### **5. Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

## 6. General Conduct

### 6.1 Respect

As a councillor:

- a) I treat other councillors and members of the public with respect.
- b) I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word.

Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider, or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor officer protocol.

### 6.2 Bullying, harassment and discrimination

As a councillor:

- a) I do not bully any person.
- b) I do not harass any person.
- c) I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying

might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **6.3 Impartiality of officers of the council**

As a councillor:

I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **6.4 Confidentiality and access to information**

As a councillor:

I do not disclose information:

- a) given to me in confidence by anyone
- b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless
  - i. I have received the consent of a person authorised to give it;
  - ii. I am required by law to do so;
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
  - iv. the disclosure is:
    - 1. reasonable and in the public interest; and
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and
    - 3. I have consulted the Monitoring Officer prior to its release.

I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **6.5 Disrepute**

As a councillor:

I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

### **6.6 Use of position**

As a councillor:

I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others.

However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

### **6.7 Use of local authority resources and facilities**

As a councillor:

I do not misuse council resources.

I will, when using the resources of the local authority or authorising their use by others:

- a) act in accordance with the local authority's requirements; and
- b) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- a) office support
- b) stationery
- c) equipment such as phones, and computers
- d) transport

- e) access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **6.8 Complying with the Code of Conduct**

As a Councillor:

I undertake Code of Conduct training provided by my local authority.

I cooperate with any Code of Conduct investigation and/or determination.

I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## **7. Protecting your reputation and the reputation of the local authority**

### **7.1 Interests**

As a councillor:

I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow Councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate

openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011. Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **7.2 Gifts and hospitality**

As a councillor:

I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case, you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

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## B - Councillor and Officer Protocol

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### Introduction

The purpose of this protocol is to guide Councillors and officers of the Council in their relationship with one another.

This protocol seeks to provide guidance on some of the issues that most commonly arise.

It seeks to reflect the principles underlying the respective rules of conduct that apply to Councillors and officers. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of the Council by demanding very high standards of personal conduct.

Councillors and officers are servants of the public and they depend on each other in carrying out the work of the Council. Councillors are responsible to the electorate and serve only so long as their term of office lasts, while officers are responsible to the Council. Their job is to give advice to the Council, as well as to individual Councillors, and to carry out the Council's work under the direction and control of the Council and its various bodies.

Mutual respect between Councillors and officers is essential to good local government. However, close personal familiarity between individual Councillors and officers can damage this relationship and prove embarrassing to other Councillors and officers.

The relationship has to function without compromising the ultimate responsibilities of officers to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that officers legitimately provide to Councillors. The Protocol seeks to set a framework that assists the working relationships between Councillors and officers.

The Protocol also sets out what should happen on the rare occasions when things go wrong. All Councillors and officers should abide by this protocol. Political group leaders in respect of Councillors, and the Chief Executive and Monitoring Officer in respect of officers, are responsible for ensuring the protocol is upheld. If any questions arise from this protocol, advice should be sought from the Chief Executive or Monitoring Officer.

## 1. Role of Councillors

Councillors undertake many different roles in that they:

- a) provide political leadership, expressing political values and supporting the policies of the political party to which they belong (if any);
- b) represent their ward and are advocates for the residents who live in the area;
- c) represent the Council externally, including being involved in active partnerships with other organisations, as community leaders;
- d) contribute to the decisions taken in Full Council and in various bodies on which they serve, as well as committees, outside bodies and organisations to which they are nominated by the Council;
- e) determine and review policy and strategy; and
- f) are involved in quasi-judicial work through their membership of regulatory committees.

Councillors are not authorised to give assurances or promises to people or businesses save to the extent that they are informing such people or businesses of formally agreed Council decisions.

It is not the responsibility of Councillors to involve themselves in the day-to-day management of the Council, its officers or its services. They should not seek to give instructions outside their areas of responsibility or terms of reference of their respective Committee.

Members of the Cabinet and all Chairs and Vice-Chairs have additional responsibilities, entailing different relationships and more regular contact with officers. They still must respect the impartiality of officers and must not ask them to undertake work of a party political nature or that could prejudice their impartiality.

In order for the Cabinet and Portfolio Holders to discharge their responsibilities they will be briefed by the Strategic Directors on service issues, proposals and policy development. Other officers may be nominated to attend such briefings. Committee chairs may also be briefed on matters within the remit of their committee. These briefings may be a one off or on a regular basis in accordance with the requirement of the Councillor.

## 2. Role of Officers

Officers have the following main roles:

- a) managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services;
- b) providing advice to the Council and its various bodies and to individual Councillors in respect of the services provided;
- c) initiating policy proposals; and
- d) implementing agreed policy, whilst ensuring that the Council always acts in a lawful manner.

Some officers are authorised to initiate, certify or negotiate financial transactions or commercial arrangements, subject in certain cases to the need to obtain formal member approval.

Certain officers have responsibilities in law over and above their obligations to the authority and members. These are known as statutory officers and include the Chief Executive/Head of Paid Service, Monitoring Officer and Chief Finance Officer (s151 officer). Councillors must respect these responsibilities and not obstruct or victimise officers in the discharge of them.

### **3. Respect and Courtesy**

For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Councillors and officers. This plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Councillors and officers remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Councillors or other officers, in public places.

A Councillor who is unhappy about the actions taken by, or conduct of, an officer should:

- a) avoid personal attacks on, or abuse of, the officer at all times;
- b) ensure that any criticism is well founded and constructive;
- c) never make a criticism in public, and
- d) take up the concern with the relevant Head of Service or Strategic Director to whom the officer ultimately reports or with the Chief Executive where it involves a Strategic Director or other Statutory Officer.

## **4. Undue Pressure**

It is important in any dealings between Councillors and officers that neither should seek to take unfair advantage of their position.

Councillors should not apply undue pressure on an officer either to do anything that they are not empowered to do or to undertake work outside normal duties or outside normal hours. Neither should a Councillor lobby an officer. Particular care needs to be taken in connection with the use of Council property and services.

Similarly, an officer must neither seek to use undue influence on an individual Councillor to make a decision in their favour or in favour of the service within which they work, nor raise personal matters to do with their job, nor make claims or allegations about other officers.

## **5. Familiarity**

Close personal familiarity between individual Councillors and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.

Such familiarity could also cause embarrassment to other Councillors and/or other officers and even give rise to suspicions of favouritism.

For these reasons close personal familiarity must be avoided.

## **6. Breach of protocol**

### **6.1 Procedure for Councillors**

- a) If a Councillor considers that they have not been treated with proper respect or courtesy, they may raise the issue with the officer's line manager. If direct discussion with the manager does not resolve the complaint it should be referred to the relevant Strategic Director/Chief Executive responsible for the officer concerned. Breach of the Protocol may give rise to disciplinary proceedings against an officer if the circumstances warrant it.
- b) Where the officer concerned is a Strategic Director or other Statutory Officer the matter should be raised with the Chief Executive. Where the employee concerned is the Chief Executive the matter should be raised

with the Monitoring Officer. If a Councillor is unsure how to proceed or would wish to discuss the conduct of another Councillor toward officers, they should discuss this with their group leader.

## **6.2 Procedure for officers**

- a) If an officer considers that a Councillor has contravened the protocol they should consult their line manager who will if necessary involve the relevant Strategic Director. If conciliation via a senior manager is not possible, officers can have recourse to the Chief Executive, as appropriate to the circumstances. Officers also have recourse to the Council's Whistleblowing Procedure.
- b) In certain circumstances breach of the Protocol may also constitute a breach of the Councillor Code of Conduct and the matter can be referred to the Monitoring Officer.

## **7. Provision of advice and information**

Councillors are free to approach any Head of Service to provide them with such information, explanation and advice (about the relevant service area's functions) as they may reasonably need in order to assist them in discharging their role as Councillors. This can range from a request for general information about some aspect of a service's activities to a request for specific information on behalf of a resident/business. Such approaches should normally be directed to the Head of Service, Team Manager or Strategic Director concerned.

Information requested will be provided, subject to any legal constraints (e.g. confidentiality relating to individuals) or unless a Strategic Director believes it would involve excessive resources to provide it, in which case they will seek guidance from the relevant Group Leader.

Councillors have legal rights to inspect Council documents containing material relating to business to be transacted at Council, Cabinet and Committee or sub-committee meetings. This right applies irrespective of whether the Councillor is a member of the Cabinet, Committee or Sub-Committee concerned and includes any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear in Part II (exempt) of the Agenda for meetings but in the spirit of openness, such documents are made available to all Councillors.

Further details are contained in the Access to Information Rules at Part 3 of the

Constitution.

Councillors also have common law rights to inspect documents. This right is much broader and is based on the principle that any Councillor has a prima facie right to inspect Council documents so far as their access to the documents is reasonably necessary to enable the Councillor to properly conduct their duties as a Councillor. This principle is commonly referred to as the “need to know” principle. The exercise of this right depends on the Councillors ability to demonstrate that they have the necessary “need to know”. In this respect a Councillor has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must be determined by the particular Head of Service, Team Manager or Strategic Director who has the document in question (with advice from the Monitoring Officer).

Council information provided to Councillors should only be used for the purpose it is given, i.e. to help the Councillors to discharge their duties as a Councillor.

The Code of Conduct restricts the disclosure of confidential information provided to Councillors.

Any Councillor encountering difficulty or uncertainty about access to documents should contact the Monitoring Officer.

For completeness, Councillors do, of course, have the same right as any other member of the public to make requests for information under the Freedom of Information Act 2000.

## **8. Political Activity**

Officers are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive and their relevant Strategic Director and not to individual Councillors whatever office they might hold. It is important that the political neutrality of officers is preserved.

The importance of political neutrality is particularly the case with regard to officers who occupy posts that are designated as “politically restricted” under the terms of the Local Government and Housing Act 1989.

There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of

such matters being considered by the relevant Council decision making body. Officers may properly be called upon to provide information to party groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.

The support provided by officers can take many forms, ranging from a briefing meeting with the Leader or Chair/Vice-Chair prior to a Cabinet or Committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

Certain points must, however, be clearly understood by all those participating in this type of process, Councillors and officers alike. In particular:

- a) Officer support must not extend beyond providing information and advice in relation to matters of Council business.
- b) Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;
- c) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not, therefore, rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
- d) Similarly, where officers provide information and advice to a party group in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Cabinet, relevant Committee or Sub-Committee when the matter in question is considered.
- e) Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the Councillor Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons officers may not attend and give information and advice as they would to a Councillor only meeting.
- f) Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relate the

content of any such discussion to another party group.

## **9. Correspondence**

Correspondence between an individual Councillor and an officer, particularly when it has been initiated by the Councillor, should not normally be copied (by the officer) to any other Councillor. However, it is acknowledged that if the Councillor who originated the correspondence included other Councillors in that correspondence, the reply will be sent to all included. Where exceptionally it is necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor. In other words, a system of "silent copies" should not be employed.

Official letters on behalf of the Council should normally be sent in the name of the appropriate officer, rather than in the name of a Councillor. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of a Councillor, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor.

## **10. Use of Council resources**

The Council provides a number of resources for Councillors within the Members' Room, for example, IT facilities, telephone, and photocopying. The only basis on which the Council can provide these services is to assist Councillors in discharging their role as Members of the Council.

## **11. Publicity and Media**

Contact with the media on issues related to the Council, or to Council business is handled through the Communications Manager.

Any Councillor who approaches the media purporting to speak on behalf of the Council on any item involving or affecting the Council should only do so having first consulted the Communications Manager.

Councillors and Officers should note that particular restrictions apply about publicity issued during election periods and should contact the Communications Manager or Monitoring Officer if in doubt.

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## C - Individual Cabinet Member Decision Making Protocol

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### Introduction

Individual Cabinet Members may make decisions if the nature of the decision falls within the requirements set out in the table below, if not the Cabinet must make the decision.

In order to ensure transparency and accountability in the individual decision making process the same procedures must be followed in terms of preparing a report and the level of information within it as would be for a decision of Cabinet.

The administration of the individual decision-making process will be undertaken by Democratic Services in the same way as Cabinet decisions.

### 1. The Process

If a decision is to be taken by an individual Cabinet Member, the following process must be followed:

- a) Draft reports must be prepared, either by the Officers using the current Council template. Reports must contain the same level of information as would be contained in reports to the Cabinet and must also consider alternative options and the reasons for selecting the preferred option;
- b) The Chief Executive, Strategic Directors, Statutory Officers and other relevant Officers must see all draft reports and be given the opportunity to comment on them;
- c) Final Reports will be prepared and must be available for publication to allow a minimum of five clear working days before the decision is to be taken in line with the Access to Information Procedure Rules;
- d) Reports will be made publicly available in the same way as Cabinet agenda;
- e) Individual Cabinet Members will take decisions at the Civic Centre on the appointed day and in accordance with a published Schedule of

Dates. Decisions cannot be taken over the telephone, by letter or by e-mail;

- f) When decisions are taken the relevant Strategic Director and/or senior Officers will be present together with a Legal Officer, Democratic Services Officer and where appropriate, a Finance Officer;
- g) Meetings will be open to the press and public, unless the report contains exempt/confidential information as defined in the Local Government Act 1972 (as amended);
- h) Decisions will be recorded in the same way as Cabinet minutes and will record the reasons for the decision and any alternative options considered and rejected by the decision-maker;
- i) Decisions will be published within 4 working days of being made in the same way as Cabinet minutes;
- j) Decisions will be subject to call-in and therefore will not be capable of implementation until the expiry of 9 working days on the basis that they are not called in; and
- k) Decisions which are called-in will be dealt with as if they were Cabinet decisions which had been called-in and will be referred to the Overview and Scrutiny Committee in accordance with established procedure.

## **2. Responsibilities for Cabinet functions which can be exercised by individual cabinet members**

Who is responsible	Function
Any Cabinet member for areas within their portfolio	<ul style="list-style-type: none"> <li>• Agreeing annual reports</li> <li>• Monitoring performance of the service</li> <li>• Approving bids from external bodies</li> <li>• Agreeing concordats or statements of intent with other parties</li> <li>• Agreeing annual service plans</li> <li>• Agreeing responses to consultation</li> </ul>

Who is responsible	Function
	<p>documents (if not delegated to officers)</p> <ul style="list-style-type: none"> <li>• Approving proposals for public consultation</li> <li>• Acknowledging/being aware of the implications of new/proposed legislation</li> <li>• The approval of minutes of advisory groups, working groups and other similar bodies</li> <li>• References up from Overview and Scrutiny Committee concerning performance management and related issues</li> <li>• The review of plans, policies and strategies not forming part of the Council's Budget and Policy Framework</li> <li>• Consideration of reports from officers and issuing of directions in matters of routine service management not involving key decisions</li> <li>• Approval of grants over £20,000 up-to and including £100,000.</li> </ul>
Cabinet Member whose portfolio includes asset management	<ul style="list-style-type: none"> <li>• the power to acquire or dispose of any land or property with a capital value below £500,000 except by use of compulsory powers or in advance of identified requirements.</li> <li>• the power to take or grant a lease or licence or any wayleave or easement of or over any land or property for any period of a value of £250,000 (excluding VAT and costs) or above.</li> <li>• the power to settle compensation for the loss of interests in land up to a maximum of £500,000 per interest where in the approved capital programme.</li> </ul>
Cabinet Member whose portfolio includes	<ul style="list-style-type: none"> <li>• The write-off of irrecoverable debts (excepting debts in respect of Council Tax, Non-Domestic Rates, Housing Benefit or up to 4 months' rent</li> </ul>

Who is responsible	Function
finances	from a tenanted property which are delegated to an officer) between £2,000 and £10,000 and which are covered by the Council's provision for bad debts
Cabinet Member whose portfolio includes car parking	<ul style="list-style-type: none"> <li>• Approval of suspensions of parking charges, or variations to periods of maximum stay in Council car parks, in the following circumstances:-               <ul style="list-style-type: none"> <li>○ In response to ad hoc requests from local groups to support community events</li> <li>○ To encourage and support business trading during the Christmas period up to a maximum of 3 concessionary days</li> <li>○ In response to changes in local parking needs</li> </ul> </li> <li>• Approval of limited minor adjustments to parking charges for the better utility of a car park</li> <li>• Extension of car park charging period by one or more hours at beginning or end of day where typical occupancy use is 30% or higher</li> <li>• Reduction of car park time-limits by one hour before introduction of parking charge increase following capacity review</li> </ul>

Any decisions delegated to individual Cabinet Member decision making is subject to the following limitations:

- a) In all cases the decision must be consistent with the Budget and Policy Framework and corporate strategies
- b) The following are not included in the delegation:
  - i. Matters reserved to Council as part of the Budget and Policy Framework;
  - ii. Matters delegated to officers under the scheme of delegations to

- officer;
- iii. Matters delegated under a joint arrangement;
- iv. Matters which the Leader and/or Cabinet have reserved to the Cabinet or are subject to any guidance they have given;
- c) Provisions in the constitution including Financial Procedure Rules and Contract Standing Orders
- d) Consultation with other Cabinet Members where appropriate
- e) The right for the individual Cabinet Member to refer to matter to cabinet if they wish
- f) The matter being referred to the Cabinet where there is a dispute between the Cabinet Member authorised to take the decision and another Cabinet Member.

Where an individual Cabinet Member is unable to act due to conflict of interest, illness or absence, another member of the cabinet may exercise the function on their behalf.

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## D - Officer Code of Conduct

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### Introduction

The public is entitled to expect the highest standards of conduct from all employees who work for local government. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist Elmbridge Borough Council and its employees in their day-to-day work. The Code is produced in the light of the challenges that employees face in the new and more commercially orientated environment.

#### 1. Who the Code is aimed at

This Code applies to all employees of Elmbridge Borough Council.

Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than it will others. Activities carried out by employees acting as members of companies or voluntary organisations should be subject to the minimum standards within this Code.

#### 2. Standards

Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality. Employees will be expected, through the agreed Whistleblowing Procedure and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedure. The Whistleblowing Procedure can be obtained through personnel, internal audit or the Head of Legal & Governance and is available on the Council's Intranet.

#### 3. Disclosure of Information

It is generally accepted that open government is best. The law requires that certain types of information must be available to Councillors, Auditors, government departments, service users and the public. The council itself may decide to be open

about other types of information. Employees must be aware of which information Elmbridge is and is not open about, and act accordingly.

Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the council should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

#### **4. Political neutrality**

Employees serve the authority as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.

Employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

Employees, whether or not politically restricted, must follow every lawful expressed policy of the council and must not allow their own personal or political opinions to interfere with their work.

### **5. Relationships**

#### **5.1 Councillors**

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the council's work. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided. Elmbridge has adopted a Protocol on Councillor and Officer relations contained within the Constitution which employees are expected to take into account in their dealings with Councillors.

#### **5.2 The Local Community and Service Users**

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient, and impartial service delivery to all ground and individuals within that community as defined by the policies of the authority.

### **5.3 Contractors**

All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and in accordance with the Council's Contract Standing Orders and Financial Procedure Rules, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

Employees who engage or supervise contractors or have an other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to the appropriate manager.

## **6. Appointment and Other Employment Matters**

Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him / her.

Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

## **7. Outside Commitments**

Employees are required to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the authority's interests.

Employees should follow the Council's rules on the ownership of intellectual property or copyright created during their employment.

## **8. Personal Interests**

Employees must declare to an appropriate manager any financial or non-financial interest that they consider could bring about conflict with the authority's interest, and complete the necessary declaration form which will be kept by the Head of Legal &

Governance.

Employees should declare to an appropriate manager membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

## **9. Equality Issues**

All employees should ensure that policies relating to equality issues as agreed by the council are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

## **10. Separation of Roles During Tendering**

Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

Employees must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **11. Corruption**

Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

## **12. Use of Financial Resources**

Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the council.

## **13. Gifts and Hospitality**

Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. They should be properly authorised and recorded.

When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the council.

Employees should not accept significant personal gifts from contractors and outside suppliers, although the authority may wish to allow employees to keep insignificant items of token value such as pens, diaries, etc. Employees should not in any circumstances accept gifts from suppliers if the provision of the gift may reasonably be perceived as an incentive to purchase.

When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality.

Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the council gives consent in advance and where the authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees should ensure that the council meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

Employees accepting gifts or hospitality will be expected to complete the Gifts and Hospitality Register and provide a copy of the Head of Legal & Governance, setting out the nature of the hospitality or gift received, who it was received from and its approximate value.

Further guidance is provided to officers annually and guidance can always be sort

from the Monitoring Officer.

#### **14. Bribery Act 2010**

The Bribery Act 2010 is intended to combat bribery and corruption in both the public and private sectors. The Council is required to have “adequate procedures” in place to prevent bribery. Employees are at risk of prosecution if they conduct themselves in a way that may be seen as condoning bribery. Employees should be aware that “passive” bribery is a specific offence and includes requesting, agreeing to receive or accepting an advantage. There are serious penalties for offences committed under the Act, including a maximum jail sentence of 10 years for individuals engaged in bribery.

Accordingly, employees should refrain from any conduct that may appear to engage the Act. Employees should not, for example, accept any payment, gift or hospitality that is, or could be perceived to be, “facilitative” of an action that an employee would normally carry out, such as granting a licence or approving a planning application.

#### **15. Sponsorship – Giving and Receiving**

Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

Where the council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

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## F - Councillors Planning Code of Good Practice

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### Introduction

The purpose of this Code is to give clear guidance to all Councillors about how they should carry out their duties in relation to planning and development proposals to ensure openness, impartiality, transparency and consistency in planning decisions.

This Planning Code should be read in conjunction with the Councillor Code of Conduct and the Planning in Probity Guidance issued by the Local Government Association in December 2019, <https://www.local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

### 1. General Role of Councillors

Councillors have a special duty to their ward constituents, including those who did not vote for them, but their overriding duty is to the whole community.

Whilst representing their constituents on planning issues and taking account of their views, Councillors must make their decision within the statutory planning framework and base these on material planning considerations and what they believe is best for the Borough as a whole. A Councillor is not under any obligation to represent a resident on a specific planning application if, in the opinion of the Councillor, there are no issues which have wider significance for the neighbourhood, ward or Borough as a whole.

Planning decisions cannot be made on a party-political basis in response to any lobbying.

### 2. General role of officers

Officers are responsible to the Council as a whole. They must always act openly and impartially and provide consistent professional advice based on the statutory planning framework, planning policies and procedures, ensuring Councillors are aware of all relevant material planning considerations before decisions are made.

### 3. Codes of conduct

Both Councillors and officers are required to observe the Code of Conduct and any other statutory provisions, the aim of which is to ensure the integrity of the Council and individual Councillors. These codes and procedures require the open disclosure

of any pecuniary, non-pecuniary and conflict of interests in matters being considered by the Council or any of its committees when making decisions. Councillors and officers are also advised not to accept any gifts or hospitality, which might reasonably be considered to influence their judgement and to record any they do accept in the registers maintained for the purpose. Planning decisions in particular can affect the daily lives of everyone and it is important to ensure there can be no justifiable grounds for suggesting a decision has been biased or influenced in any way.

Training and guidance on the Councillor Code of Conduct on the declaration of interests, is provided to all Councillors by the Council's Monitoring Officer. Members of the Planning Committee and sub-committees must be particularly careful to ensure that they are familiar with this. It is the personal responsibility of individual Councillor to ensure that they comply with the Code of Conduct and make all appropriate declarations at Planning Committee or an Area Sub-Committee. If in any doubt they should seek advice from the Monitoring Officer or the legal officer attending the Planning Committee or Area Sub-Committee, before the commencement of any meeting, or as soon as possible if it arises during the course of a meeting. Officers with an interest in property in the vicinity of an application or any relationship to an applicant, should disclose this to the Head of Planning & Environmental Health, who will record the interest and make appropriate arrangements for the handling and supervision of the application to avoid any perception of a conflict of interest.

#### **4. Lobbying of and by Councillors**

Lobbying of Councillors for or against proposals is a normal part of the planning process. The rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of relevant information and arguments. It is only at the Planning Committee or Area Sub-Committee meetings that Councillors will have, and be able to consider, all the relevant information and arguments about an application before making a decision.

Councillors should feel free to engage in free and frank discussion about all aspects of planning applications in advance of the Committee. Councillors may have strong views on a proposed decision and may have expressed those views in public. However, it is important to maintain the integrity of individual Councillors and the Council as a whole that Members of the Planning Committee or Area Sub-Committee should:

- a) if lobbied, explain that, whilst they can listen to what is said, they cannot indicate before the relevant committee meeting which way they intend to vote as it would prejudice their impartiality;

- b) preface any discussion on a planning application to make it clear from the outset that discussions are not binding, and they will only be able to make a final decision at the committee after hearing all relevant information and arguments;
- c) declare at the committee meeting, any contact they have had with applicants or objectors;
- d) advise Planning Officers of letters/personal lobbying in relation to applications so the issues raised can be taken into account in the professional advice given to the committee.
- e) abide by the guidance in this Code with relation to site visits;
- f) not organise support or opposition to any planning application, lobby other Councillors or put pressure on staff for a particular recommendation because this might remove them from the decision-making process.

Councillors are encouraged to be responsive to all residents about planning matters. Frequently, applications are daunting for residents who need advice and support about the issues which they raise. All Councillors are able to have discussions with residents about planning applications even if that Councillor is on Planning Committee or an Area Sub-Committee.

## **5. Declarations of interest**

If a Councillor has received advice from the Monitoring Officer with regard to a declaration: a Disclosable pecuniary interest, non-pecuniary or conflict of interest, then they may disclose the fact that such advice has been given at the time when the declaration or interest is disclosed.

## **6. Predetermination and Predisposition**

### **6.1 Predisposition**

Predisposition is lawful. Councillors may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. The key issue is that the Councillor ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the Councillor retains an “open mind”.

Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or predetermination

“just because” a Councillor has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However, if a Councillor has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought from the Monitoring Officer where this may be the case.

## **6.2 Predetermination and bias**

Predetermination and bias are unlawful and can make a decision unlawful. Predetermination means having a “closed mind”. In other words, a Councillor has made their mind up on a decision before considering or hearing all the relevant evidence.

Bias can also arise from a Councillor’s relationships or interests, as well as their state of mind. The Code of Conduct’s requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application. However, Councillors may also consider that a “non-pecuniary interest” or other conflict of interest under the Code of Conduct also gives rise to a risk of apparent bias. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased”. A fair-minded observer takes an objective and balanced view of the situation but Councillors who think that they have a relationship or interest that may raise a possibility of bias, should seek advice from the Monitoring Officer.

Members of the Planning Committee or Area Sub-Committees should bear in mind that it would not be appropriate to call-in an application, for consideration for the whole committee if they have already predetermined the matter themselves.

## **7. Meetings and pre-application discussions**

Planning officers frequently hold meetings or have correspondence with applicants to give pre-application advice on their development ideas. Such advice will cover general planning policy applicable to a site, technical design and other requirements and the likelihood of a development being acceptable. Such preapplication advice, is given on a confidential basis so as to encourage early contact with the Council which can assist in better planning proposals coming forward or ideas which have no prospect of being acceptable being abandoned at an early stage.

These meetings or exchanges of correspondence are part of the normal planning process but are, and must be clearly stated to be, without prejudice to the professional recommendation of Planning officers to the committee and the decision of the committee when all information is before it.

All applicants are encouraged to carry out pre-application consultation with neighbours to try and resolve issues at an early stage. For larger schemes this may be a more formal public consultation. Where Councillors attend such preapplication consultation meetings run by the applicant they should abide by the guidance in this Code. The expectation is that where Councillors are invited to attend that the applicant invites all Ward Councillors.

Planning Committee Members – you must be careful in your dealings with applicants, developers and objectors. Do not attend any meetings or presentations on planning matters or otherwise discuss such matters with any person other than a fellow Committee member or an Officer. For larger schemes developers may hold a more formal public consultation, planning committee members can attend such presentations where they do attend such preapplication consultation meetings run by the applicant they should abide by the guidance in this Code. The expectation is that where Councillors are invited to attend that the applicant invites all Ward Councillors.

It is important that Councillors do not give views to potential applicants either through pre-application consultations or other meetings that could be interpreted by them as giving planning advice and in turn taken as implied support for a proposal if those views are then followed.

At times it may be necessary if a Councillor wishes to arrange a meeting with planning officers for themselves and a small number of constituents about a planning application this will be arranged at the Council Offices.

If attending public meetings arranged by local groups about a planning proposal the principles outlined above should be followed and, Councillors of the Planning Committee or Area Sub-Committee should try to maintain an impartial role, listening to what is said but not expressing any opinion which could be construed as a final or fixed position. Planning Officers will not normally attend public meetings unless their attendance has been agreed by the Head of Planning & Environmental Health and representatives of both the applicant and objector are given the opportunity to be present. Ward Councillors and the Chair of the relevant committee will be advised of any public meeting in relation to a planning issue or which Planning Officers have agreed to attend.

## **8. Presentations on Likely Major Development Proposals**

For large or complex schemes, the Council may arrange appropriate presentations to Councillors by the applicant. This is seen as beneficial to inform Councillors at an early stage and to encourage pre-application discussion and free flow of information

on what are often complex or controversial issues. The Council itself will also organise presentations to keep Councillors informed generally on matters which appear to have or are likely to have strategic importance for the Borough. The Development Management Manager may also organise technical briefings on major developments at which developers may be present. At any such presentations Councillors should abide by the guidance in this Code, listening to presentations, raising concerns and questions, debating the issues but not coming to fixed or final positions in advance of the full debate at committee.

## **9. Site Visits**

Where there is a clear and substantial benefit formal site visits by the committees will take place. This is when an application is under consideration which is of a nature or with such Boroughwide implications that Councillors feel unable to fully assess the scheme without a detailed site inspection accompanied by Planning Officers to point out and explain the application 'on the ground'. Where they do occur, they must be undertaken in accordance with the guidelines set out below. The necessity for such a visit will be agreed between the Chair of the Committee and the Development Management Manager.

Ward Councillors who are not members of the Committee will be advised of any site visit and invited to attend.

Members of the Planning Committee or Area Sub-Committee, as well as Ward Councillors should meet at a pre-arranged date, time and location in order to under the formal site visit. Officers will write to Councillors with the details.

Officers will pre-arrange access to the relevant site(s) with the site owner in order for Councillors to observe the application site from all necessary vantage points.

The site visit will be guided by the Planning Officer who will point out matters of material reference to the application and answer Councillor questions.

The purpose of the site visit is to gather information about the site and visually assess the likely or actual impact of the proposal and not to debate the merits of the application or the officers' recommendation.

During the formal site visit, detailed discussions and/or negotiations should not be conducted with the applicant or third parties by either Councillors or officers. It is appropriate for Councillors to ask questions through the chair for clarification of any technical points raised. These questions may be directed to the applicant or their representative if the chair considers appropriate in order to answer a technical query. Primary discussion and debate should be reserved for the committee meeting when the application is presented for formal consideration. Any arguments applicants or third parties wish to put forward can be heard at that stage through the public speaking arrangements and the debate will be in public.

Where members of the public are present at site visits it will not normally be appropriate for members of the public to be addressing Councillors as this will be reserved for public speaking at the committee.

Members of a planning committee will often wish to make informal visits to an application site prior to a committee to familiarise themselves with the context of the proposal. Councillors need to be careful in these circumstances that they do not convey to others that they alone have authority to make any decisions in relation to the site in question. Councillors have no right of entry to the application site and may therefore only view the site from public vantage points. The Guidance goes on to state that whilst a Councillor might be invited to enter the site by an owner, it is not good practice to do so on their own, as this can lead to the perception that the Councillor is no longer impartial. This advice will also apply to any potential enforcement action.

Provided that no other persons are present, then Councillors do not need to declare such a visit at Planning Committee. If other people are present at the site visit (e.g. applicant or objector) then Councillors should have regard to the advice in paragraph 7 (lobbying) and are advised to declare such a visit at Committee before consideration of the item.

## **10. Planning Officer Reports to Committee**

All matters requiring a decision by the Planning Committee or Area Sub-Committee must be the subject of a written report from Planning Officers which will give an accurate summary of all relevant planning issues. In particular it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the substance of objections. The report will include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is printed will be reported verbally to the committee at its meeting.

## **11. Procedure at Committee Meetings**

Applicants and objectors will be able to address the Planning Committee and Area Sub-Committee in accordance with the protocol for Public Speaking set out below. Further information on how to ask to speak at the committee and the issues that can be covered are set out in the Planning pages of the Council's website.

Where there are major applications which require special consideration because of the large number of people wishing to speak, then the Chair may, in their discretion, make provision for public speaking rights in excess of the usual procedure. The Chairman will be guided by the need to ensure overall fairness in the proceedings within the constraints of the time allowed in the meeting.

Where Councillors who are not members of the Planning Committee or Area Sub-Committee (as applicable) have indicated to the Chair, prior to a committee meeting, their wish to speak on a matter in their ward being considered at that committee, they will be entitled to speak immediately after representatives of the applicant and/or objectors have addressed the committee. Non-members of the committee should comply with the procedure for declaration of interests and contact with the applicant or objectors if they attend and speak at a Committee meeting in the same way as members of the committee.

Ward Councillors may wish to address a committee on:

- a) Applications which have caused interest amongst large numbers of residents of the Ward
- b) Applications which have significance for the character, facilities or environment of the Ward.

Ward Councillors should not usually seek to address the Planning Committee or Area Sub-Committee (as applicable) on:

- a) Matters which are the subject of a dispute between two residents of the Ward
- b) Matters which reflect the concerns of one resident only, unless there is some reason why the resident is not able to speak for himself at the Planning Committee.

## **12. Protocol for Public Speaking**

The Chair will announce at the start of each item being considered, the title of the application and whether public speaking will take place.

On items where there is public speaking, the Planning Officer will be asked to present the plans to the committee.

New documents should not be circulated to the committee members, nor should messages be passed to individual committee members, either from other Councillors or from the public speaker, as this could be seen as seeking improperly influence a Councillor and may create the perception of bias.

The Chair will call upon the person registered to represent all objectors to come forward to speak for a maximum of three minutes. The person will return to the back of the Council chamber.

The Chair will call upon the person registered to represent persons supporting the application to come forward to speak for a maximum of three minutes. The person will return to the back of the Council chamber.

The Chair, in their discretion, may decide to allow points of clarification to be raised on matters raised within public speaking by Planning Committee members. This is intended to resolve factual issues and produce better outcomes in decision making.

Any ward Councillor who is not a member of the Planning Committee may make representations on cases affecting his or her ward. They will be permitted to speak for no longer than 3 minutes. The Chair, in their discretion, may decide to allow points of clarification to be raised on matters stated by the ward councillor by Planning Committee members. This is intended to resolve factual issues and produce better outcomes in decision making.

The Planning Officer will comment on any factual matters raised by any speaker.

Councillors will then debate the application/ask questions of the planning officers in the usual way and reach a decision.

After the debate a decision will be made by the committee, either by a formal vote or by way of consensus and the Chair will then announce the decision which has been made by the committee so that this decision may be formally minuted.

In the event of any dispute over these procedures or protocol the Chair's decision is final.

### **13. Call-in Procedure**

Councillors must take the following into account before 'calling-in' a planning application for consideration by the Planning Committee/Area Sub-Committee:

- a) Subject to the terms of reference of the Planning Committee and the Area Sub-Committees and these rules, a planning application other than those identified in the weekly list can be called in by a Councillor for determination by the Area Sub-Committee or Planning Committee;
- b) A Councillor may only call-in an application which is in his or her ward. If the Councillor considers that there is a matter of public interest arising in an application situated in another ward, then early contact should be made with the relevant ward Councillors;
- c) The guiding principle of 'Call-In' is that there is a material planning concern in the application. The decision to refer an application to the Planning or Area Sub-Committee rests with the Head of Planning & Environmental Health in consultation with the Chair of Planning Committee or relevant Chair of the Area Sub-Committee. If a call-in is refused then the Head of Planning and Environmental Health must give full reasons as to why this has been refused.

In exercising the above delegation there is a presumption in favour of referral in cases that could be considered sensitive or controversial. In processing the decision of whether it is a valid call-in the Head of Planning

and Environmental Health will seek further information from the Councillor submitting the request if the material planning reasons are not clear.

- d) Prior to a Councillor calling in an application, they must inspect the submitted plans and is advised to discuss the application with the relevant planning officer.
- e) The 'call-in' request will be activated by an email to the case officer copied to the Head of Planning & Environmental Health such email must give a material planning reason why it should be determined by the relevant committee;
- f) The email must be received by the case officer and copied to the Head of Planning & Environmental Health within 28 days of validation;
- g) The committee report will identify the Councillor who called in the application along with the reason given;
- h) Councillors who 'call-in' an application are expected to attend and speak at the Planning Committee/Area Sub-Committee setting out their concerns and issues. This will inform the general debate of the committee;
- i) If a Councillor is unable to attend for any reason, they should send a statement to the Chair setting out their issues and concerns so that they can be read out at the committee meeting.
- j) Where the Councillor who 'Called-in' an application is a member of the Planning Committee, that Councillor will be given three-minutes to speak following the public speakers and may then speak again as a member of the committee during its debate on the item.

## **14. Decision Making**

A decision on a planning application cannot occur before the committee meeting when all available information is to hand. All Councillors should bear in mind the need to keep an open mind about all the available evidence on a planning application.

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. If the Planning Officer's report recommends a departure from the development plan the justification for this must be included in the report.

Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application should always be minuted as should any conditions attached to an approval.

Councillors are reminded that the Planning Committee and Area Sub-Committee meetings are held in public and should therefore ensure that the seven principles of public life are observed.

Members of the Planning or Area Sub-Committee who require information which is not contained within the Planning Committee report should submit a request in writing to the case officer at least one working day before the Committee meeting.

The purpose of the Committee meeting is to fully explore all relevant matters and concerns of Councillors pertaining to an application before a decision is made. Councillors should prepare in advance of the meeting.

Where a Councillor decides to vote against a recommendation, this should only arise once:

- a) The concerns have been articulated by the Councillor to allow other members of the Committee to comment on them and officers to advise on them; or
- b) Where another member has spoken in the debate and articulated those concerns and the Councillor concerned has indicated that he or she is of the same mind as that Councillor.

If the committee wishes to make a decision contrary to the Planning Officers' advice, the Planning Officer present at the meeting should be given the opportunity to explain the implications of such a decision. If the committee wish to refuse an application the reasons for doing so must be clear, cogent and comprehensive. They must also be based on planning policies and provide a clear account of members' rationale for not accepting the Officer recommendation. Similarly, any additional planning conditions must be properly justified and expressed. The decision and reasons for it as agreed by the committee must be minuted.

If a member of a committee is concerned about an Officer's recommendation, they should discuss their area of difference and the reasons for that with the Planning Officer, or should seek advice from the Development Management Manager, prior to the application being determined at a Planning Committee. If possible, this should be at least one working day before the Planning Committee meeting.

Any motion contrary to Planning Officer advice should where possible be formulated in writing with material planning reasons. Councillors should be prepared to explain in full their material planning reasons for not agreeing with the Planning Officer's recommendation prior to making any decision. Councillors should not rely on staff to produce the material planning reasons for their motion at the meeting.

## **15. Applications Involving Councillors, Staff or the Council**

Any planning application made by a Councillor or member of staff (or any body or person with a close connection to them) or the Council itself should be determined by the Planning or Area Sub-Committee as set out in the Terms of reference, and not by the Planning Officers under delegated powers, unless they relate to types of 'application' which do not relate to planning merits but are a legal determination as to whether permission is required or are otherwise forms of notification to the Council including that 'permitted development' is proposed under what are called 'prior approval' procedures – in these cases the Head of Planning & Environmental Health will determine the application after discussion with the Chair of the Planning Committee or, if unavailable, the Vice Chair.

Councillors and Planning Officers must inform the Monitoring Officer of any proposals to submit an application, prior to their submission.

Members of the Planning or Area Sub-Committee and officers should not act as agents for another person or body pursuing a planning matter with the Council and, if they do, any planning decision must be made by the Planning Committee and not under delegated powers.

Whenever possible a Councillor making a planning application should appoint an agent to act on their behalf. The Councillor must take no part in making a decision on the application and should leave the room for that item if in attendance.

## **16. Involvement in Appeals**

Where a Councillor wishes to play a part in any appeal, they should seek first the advice of the Development Management Manager and as a courtesy, inform the relevant Ward Councillors.

## **17. Training of Councillors in Planning Issues and Procedures**

No Councillor should be appointed to the Planning Committee or act as a substitute without having agreed to undertake suitable induction training and familiarisation in planning procedures and the Code of Conduct. The Development Management Manager, with the support of the Monitoring Officer, and after consultation with the Chair of the Planning Committee, will arrange suitable ongoing opportunities as required and will supplement this with written guidance. It is expected that such induction should take place within three months of appointment to the Committee. The competency requirements within Part 2 of the Constitution have to be complied with.

It is also envisaged that all members of the Council will engage in induction and familiarisation about planning matters and this Planning Code so that as Ward

Councillors, they can effectively represent residents and promote the interests of the Borough as a whole.

## **18. Substitutions to Planning Committee**

Substitutions to the Planning or Area Sub-Committee will be permitted in accordance with the Council's Constitution.