



Epping Forest District Council

STANDARDS COMMITTEE

Tuesday, 28th June, 2005

Place: Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.30 pm
Committee Secretary: G Lunnun (Direct Line: 01992 564244)
Email: glunnun@eppingforestdc.gov.uk

Members:

Dr D Hawes (Chairman), Mrs D Borton, Ms M Marshall, J Salter, Mrs P Smith and G Weltch

Parish/Town Council Deputy Representative:

K Percy

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 10)

To approve as a correct record the minutes of the meeting held on 14 April 2005 (attached).

3. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

4. STANDARDS COMMITTEE - ANNUAL REPORT 2004/05 (Pages 11 - 24)

Recommendation:

To consider the attached draft annual report for submission to the District Council.

(Monitoring Officer) A draft of the annual report for 2004/05 is attached.

5. PROTOCOL FOR MEMBERS AND OFFICERS ENGAGED IN THE DETERMINATION OF PLANNING APPLICATIONS (Pages 25 - 42)

Recommendations:

- (1) To consider the revised draft Planning Protocol;
- (2) To issue the draft for consultation to the District Council, parish and town councils, planning agents and planning officers;
- (3) To authorise the Chairman to determine whether to submit the revised Protocol to the July District Council meeting in the light of comments received; and
- (4) To authorise the Chairman to determine whether the training course on the Planning Protocol should be deferred, when the position is clearer.

(Monitoring Officer) A revised draft of the Protocol is attached. The Protocol has been amended where shown to reflect recent Standards Board for England advice about lobby groups and "dual hatted" councillors.

No consultation has been carried out on these changes either with Planning Services, councillors, local councils or planning agents. The next available Council meeting at which the Protocol could be adopted is on 27 July 2005. If there were no adverse comment from consultees, it would be possible for a report from this Committee to go to that meeting. If representations of a significant nature were received, it might be necessary to defer submission of the Protocol until the Council meeting on 27 September 2005.

The September date is after the scheduled date for the Planning Protocol training course. It is recommended that the training course remains as advertised. It would still be possible to run the course and highlight those changes due for adoption. However, a discretion for the Chairman to determine otherwise might be advisable.

6. ADVICE TO MEMBERS SERVING ON OUTSIDE ORGANISATIONS (Pages 43 - 48)

Recommendations:

- (1) To consider the draft revision to the Advice Note; and
- (2) To issue the advice as agreed to District Councillors and Town and Parish Councils.

(Monitoring Officer) The Standards Board for England advice referred to in the preceding item also affects the previous advice issued by the Committee on declaration of interests by councillors in relation to their links with outside organisations of which they are also members.

The attached draft reflects the changes which flow from the Standards Board advice on "dual hatted" members and lobby groups.

If the Committee agrees these revisions, the advice will be issued direct to district councillors and town and parish councils.

7. POLICY ON USE OF COUNCIL FACILITIES BY MEMBERS

(Monitoring Officer) Officers are still working on a draft policy on the use of Council facilities by members including the use of IT. The document will be submitted to the next meeting.

8. REGISTRATION BY MEMBERS OF FINANCIAL AND OTHER INTERESTS

(Monitoring Officer) Following publication of members' interests on the Council's website, a member has suggested that there appears to be an inconsistent approach. The member will be attending the meeting to seek the views of the Committee.

9. ALLEGATIONS RECEIVED (Pages 49 - 50)

(Monitoring Officer) To note the current position on allegations about District and Parish/Town Councillors as set out on the attached schedule.

10. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2005/06 provides for meetings of the Committee on 26 July 2005, 18 October 2005, 21 February 2006 and 11 April 2006.

Additional meetings can be arranged as and when required by the Committee.

11. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
12	Allegations Received – Appointment of Sub-Committee	16

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

Agenda Item No	Subject
Nil	Nil

12. **ALLEGATIONS RECEIVED - APPOINTMENT OF SUB-COMMITTEE (Pages 51 - 52)**

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards

Date: 14 April 2005

Place: Committee Room 1, Civic Offices,
Epping

Time: 7.30 – 9.10 pm

Members Present: **Independent Members:**
Dr D Hawes (Chairman), Ms M Marshall

District Council Representatives:
Councillors Mrs D Borton, Mrs P Smith

Parish/Town Council Representatives:
Councillors J Salter, K Percy (Deputy)

Other Councillors: -

Apologies: **Independent Member** – G Weltch

Officers Present: C O'Boyle (Head of Legal, Administration and Estates)(Monitoring Officer),
I Willett (Head of Research and Democratic Services)(Deputy Monitoring Officer),
G Lunnun (Research and Democratic Services)

32. MINUTES

RESOLVED:

That the minutes of the Committee meeting held on 24 February 2005 be taken as read and signed by the Chairman as a correct record.

33. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

34. COMMITTEE ON STANDARDS IN PUBLIC LIFE – TENTH REPORT (Minute 22 – 24.2.05)

The Committee considered the consultation paper issued by the Standards Board for England in relation to a review of the Code of Conduct.

Members noted that a review of the Code had been requested by the Government and the Minister of State for Local Government and Regional Government had made it clear that he did not wish to see the underlying principles of the Code diluted. The key areas of the review were:

- (a) public interest defence in relation to disclosure of confidential information;

- (b) the duty for members to report misconduct by colleagues;
- (c) the line between public and private conduct;
- (d) personal and prejudicial interests; and
- (e) registering interests.

The Panel determined that it would respond to the consultation exercise by answering the questions set out in the consultation paper.

RESOLVED:

- (1) That the following responses be sent to the Standards Board for England:

The General Principles

- 1. Should the 10 general principles be incorporated as a preamble to the Code of Conduct? – Yes.
- 2. Are there any other principles which should be included in the Code of Conduct? – No.

Disrespect and Freedom of Speech

- 3. Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement? – No – as it is difficult to specify an acceptable more defined statement, the current broad test should remain.
- 4. Should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition of bullying quoted in the full consultation paper appropriate for this? – No there should be no specific provision on bullying – issues should be dealt with as questions of judgement within investigation of individual cases.

Confidential Information

- 5. Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information? – No.
- 6. Do you think the Code of Conduct should cover only information which is in law “exempt” or “confidential”, to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully? – Feel unable to respond without being in receipt of firm draft proposals.

Disrepute and Private Conduct

- 7. Should the provision relating to disrepute be limited to activities undertaken in a member’s official capacity or should it continue to apply to certain activities in a member’s private life? – No - the provision should continue to apply to certain activities in a member’s private life.

8. If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged? – Yes - it should not just be confined to criminal convictions, for example, anti social behaviour orders should be included which are not in themselves convictions; a number of professional bodies have appropriate wording in their professional codes and a similar wording to those would be appropriate.

Misuse of Resources

9. We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols, and misuse of resources for inappropriate political purposes. Do you agree? – Yes but political is only one element and the reference should be to inappropriate or political purposes.

10. If so, how could we define “inappropriate political purposes”? – As in (9) above.

11. Is the Code of Conduct right not to distinguish between physical and electronic resources? – Yes.

Duty to Report Breaches

12. Should the provision of the Code of Conduct that requires members to report breaches of the Code by fellow members be retained in full, removed altogether, or somehow narrowed? – Yes - if a member reasonably feels that a significant breach of the Code has arisen he should be required to report it, but in respect of a breach of less significance he should have discretion to report it.

13. If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member’s private capacity, or only to significant breaches of the Code? – As in (12) above.

14. Should there be a further provision about making false, malicious or politically-motivated allegations? – Yes.

15. Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately? – No - intimidation has not been a problem in this District and it is not considered necessary for the Code of Conduct to provide for effective protection.

Personal Interests

16. Do you think the term “friend” requires further definition in the Code of Conduct? – Yes, the definition could be based on that used by the Local Government Ombudsman.

17. Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an area’s area? – Yes.

18. Should a new category of "Public Service Interests" be created, relating to service on other public bodies and which is subject to different rules of conduct? – No, this would over complicate the position.

19. If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings? – See (18) above.

20. Do you think paragraph 10(2)(a-c), which provides limited exemption from the prejudicial interest rules for some members in certain circumstances, should be removed from the Code of Conduct – No.

21. Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups? – No.

Prejudicial Interests

22. Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing? – No.

23. Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote? – No.

Registration of Interests

24. Should members employed in areas of sensitive employment, such as the Security Services, need to declare their occupation in the public register of interests? – No, there should be an exemption but only with dispensation previously approved by the Standards Committee.

25. Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area? – Not all clubs need to be registered but there is a need to clearly define the position, e.g. registration should be required in respect of any club or organisation having a formal constitution; organisations active within the authority's area should also be included.

Gifts and Hospitality

26. Should the Code of Conduct require that the register of gifts and hospitality be made publicly available? – Yes.

27. Should members also need to declare offers of gifts and hospitality that are declined? – No.

28. Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this? – Yes, a frequency of at most monthly would be appropriate.

29. Is £25 an appropriate threshold for the declaration of gifts and hospitality? – Yes;

(2) That in relation to the review generally, careful consideration be given to using words such as “reasonable” or “significant” since these necessitate judgement and may lead to inconsistencies; and

(3) That the Monitoring Officer draft a letter incorporating the above comments for submission to the Standards Board by the Chairman of the Committee.

35. MEMBER PROTOCOLS (Minutes 23 and 24 – 24.2.05)

The Committee was advised that it had not been possible to complete revised drafts of member protocols for submission to this meeting. As the next scheduled meeting was not due to be held until 26 July 2005, the Committee considered holding an extraordinary meeting in early/mid June 2005 which would enable recommendations to be made to the full Council meeting in July 2005.

RESOLVED:

(1) That an extraordinary meeting of the Committee be held on 15 June 2005 at 7.30 pm to consider:

(a) revised drafts of the Planning Protocol and the advice to members serving on outside organisations; and

(b) a policy on the use of Council facilities by members.

36. GIFTS AND HOSPITALITY – GUIDANCE FOR MEMBERS (Minute 25 – 24.2.05)

The Monitoring Officer reported that guidance for members had been approved at the last meeting of the Committee for consultation with District Council members. No comments had been received as a result of the consultation exercise.

RESOLVED:

That the Council be recommended to adopt the guidance subject to the rewording of Section 1(b) in order to remove references to “gifts” and to the rewording of a question on the proforma in order to refer to advice/guidance from instead of consent of an officer.

37. ETHICAL GOVERNANCE - TOOLKIT

The Committee was advised that an ethical governance toolkit was being developed by the Audit Commission with the Standards Board and the Improvement and Development Agency which would enable councils to work out how well they were performing in maintaining high standards and identify ways to improve performance.

The toolkit would include an audit, a self-assessment survey and a range of workshops. Members and senior officers of the District Council and members of the Standards Committee would be encouraged to take part in the survey and workshops.

The Monitoring Officer reported that it was likely the District Council would wish to participate fully in the process and that it would hope to receive support from the Standards Committee.

RESOLVED:

- (1) That the development of an ethical governance toolkit be noted; and
- (2) That the District Council be informed that in the event of it deciding to take part in the process, members of this Committee would be pleased to take an active role.

38. MEMBER TRAINING – 2005/06 (Minute 28 – 24.2.05)

The Committee considered dates for member training in relation to the Code of Conduct, the revised Planning Protocol and the acceptance of gifts and hospitality.

RESOLVED:

- (1) That a refresher course on the Code of Conduct together with a training session on the acceptance of gifts and hospitality be held on 7 June 2005 commencing at 7.30 pm and that Councillor J Salter be appointed to represent the Committee at this training session;
- (2) That a refresher course on the revised Planning Protocol be held on 19 September 2005 commencing at 7.30 pm and that Mary Marshall be appointed to represent the Committee at this training session; and
- (3) That other members of the Committee be encouraged to attend the training courses.

39. TRAINING COURSE – LOCAL INVESTIGATION OF COMPLAINTS

Members reviewed the training course held on 21 March 2005 and agreed that it had been a useful exercise.

40. ALLEGATIONS RECEIVED

The Monitoring Officer reported on the current position in relation to allegations against Parish/Town Councillors and District Councillors.

RESOLVED:

That the current position on allegations about District and Parish/Town Councillors be noted.

CHAIRMAN

DRAFT

**EPPING FOREST DISTRICT
STANDARDS COMMITTEE**

**THIRD ANNUAL
REPORT**

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1. INTRODUCTION

- 1.1 This is the third Annual Report of the Epping Forest District Council's Standards Committee. The aim of this report is to describe some of the issues which have arisen since our last report and likely future developments.
- 1.2 The Standards Committee was established under the Local Government Act 2000 as part of the Government's democratic renewal programme and the introduction of a new ethical framework for public service. The Standards Committee was appointed by the Council in November 2001 and reappointed in 2004.
- 1.3 Current membership comprises:
- (a) three independent members – Dr Derek Hawes, Mary Marshall and Grenville Weltch;
 - (b) one parish representative (Jason Salter)(plus a deputy – Mr K Percy) nominated by the Epping Forest Association of Local Councils;
 - (c) two District Councillors; during 2004/5 these were Councillors Mrs E Borton and Mrs P Smith.
- 1.4 The Standards Committee is supported by Colleen O'Boyle (Solicitor to the Council and Monitoring Officer) together with administrative support from officers of the Research and Democratic Services Unit.
- 1.5 Dr Derek Hawes was re-elected as the Chairman of the Standards Committee in 2004 and serves until June 2006.

2. TERMS OF REFERENCE

- 2.1 The Terms of Reference of the Committee are defined by the Local Government Act 2000 and various Government regulations. These are also set out in the Council's Constitutions. A number of Council Protocols and continuing advice by the Standards Board for England also shapes the work of the Standards Committee.

2.2 The Standards Committee's duties cover the following statutory elements:

- (a) Proposing a Code of Conduct;
- (b) Monitoring or revising the Code in the light of experience;
- (c) Promoting the Code and its values;
- (d) Providing training;
- (e) Investigating complaints against elected members as referred by the Standards Board for England;
- (f) Adjudicating on complaints against elected members as referred by the Standards Board for England;
- (g) Giving advice on ethical issues as they arise; and
- (h) Granting dispensations in accordance with the statutory provisions from the effect of prejudicial interests.

2.3 The Standards Committee exercises these statutory functions in relation to Epping Forest District Council and the 24 Parish and Town Councils in the District. In addition to these statutory roles, the Committee has also been asked by the District Council to advise on various protocols set out in the Council's Constitution.

3. THE YEAR IN REVIEW

3.1 This Section of the Report outlines the main activities of the Committee over the last year. Each Section reflects its main terms of reference.

Proposing/Monitoring or Revising Codes of Conduct

3.2 The Committee has not been advised during the year of any changes sought either by the District Council or Town and Parish Councils in the operation of their Codes of Conduct as originally adopted at the commencement of 2002/3.

Promoting the Code and its Values/Training

- 3.3 As in 2003/4, the Committee is sponsoring training courses for District and Parish Council members. Two courses were held in 2004/5. The first related to the Code of Conduct itself and the second to the Planning Protocol which we promoted in 2002/3. This year there were no Parish/Town Council or District Council elections and the number of new Councillors to be trained in the Code of Conduct was less than would otherwise be the case. The training course on the Code of Conduct was held on 7 June 2005 and was attended by five Parish Councillors and five District Councillors and one District Council Officer.
- 3.4 In relation to the Planning Protocol, we have arranged a seminar for September 2005. This date has been delayed as we are currently undertaking work on the Planning Protocol and would prefer to give training to members on the basis of the revised Protocol rather than the current one.
- 3.5 We have commented in previous annual reports about the importance of training and the ethical framework and we would like the District Council and Parish and Town Councils to do whatever is necessary to ensure that members involved in Council work are fully trained and aware of the Code of Conduct requirements and that their knowledge is constantly updated. We remain unclear as to whether every member of every authority has been trained in the manner which we think is necessary and would ask that all those involved should take this matter seriously.

Adjudicating/Investigating Complaints Against Elected Members

- 3.6 The necessary Government Regulations regarding the adjudication and investigation of complaints against elected members are now in place. We commented previously about the delays which have been experienced at Government level regarding these regulations and are pleased to see that these are now in place.
- 3.7 It bears repeating that the Regulations allow local adjudication or investigation only where the Standards Board for England conclude that this would be appropriate. In the case where an adjudication only is to be given locally, the results of an investigation carried out by the Standards Board for England's Ethical Standards

Officer will be available to the Committee and there is a detail statutory procedure in determining the complaint.

- 3.8 On the question of investigating complaints, the Regulations allow the Monitoring Officer or her nominated deputy to conduct investigations in much the same way as are conducted by the Standards Board for England. We foresee that there may well be difficulties in terms of past involvement by the Monitoring Officer or her staff in dealing with members who subsequently become subject to complaints. This is a matter which we have discussed in detail with the Monitoring Officer and it is clear that there may be circumstances when external persons will need to be brought in to investigate and report on complaints so as to maintain transparency and impartiality in the process. There has already been one case where Standards Board for England sought to transfer the investigation of a complaint to the Monitoring Officer but unfortunately due to past involvement in the case, this could not be agreed.
- 3.9 The Committee have agreed arrangements for hearing complaints which involve three members of the Committee (normally two independent members and one Councillor) and these are in position to be implemented very quickly to comply with the very demanding timescales set in the Regulations for adjudicating on complaints. It is also worth bearing in mind that any complaint which is investigated or adjudicated upon by the Standards Committee involving Parish or Town Councillors must involve the Parish representative on the Committee.
- 3.10 To date we have not received any reference for either investigation or adjudication on complaints. However, the Committee is well prepared to deal with these when they are required. Two training courses have been held; one on adjudication and one on investigation and these were attended by Standards Committee members and officers as well as interested members of District Council and Parish Councils.

Giving Advice on Ethical Issues

- 3.11 Previous annual reports have dealt with specific incidences where advice has been sought from the Standards Committee on ethical issues.

Loughton Residents' Association – The Role of Loughton Residents' Association (LRA) Councillors in the Planning Process

3.12 Our annual report last year referred to advice which had been sought by the Loughton Residents' Association on the role of Loughton Residents' Association Councillors in the planning process. This focused particularly on LRA Councillors serving on Area Plans Sub-Committee 'A' in connection with planning applications where the LRA proper may have made representations. The Councillors referred to our previous annual report for more details of this case but suffice it to say that we have had further contact with the LRA during 2004/5 and are satisfied that the necessary constitutional changes to the Association have now been achieved as indicated previously.

The Position of Councillors on Outside Organisations

3.13 Last year we issued advice to Councils regarding declaration of interests where members were either "dual-hatted" (ie serving on other local authorities) or were involved in other outside organisations and public authorities. We are now reviewing this advice in the light of further comments by the Standards Board for England about these circumstances.

Grange Farm Managing Trustee

3.14 We held discussions with two Trustees of the Grange Farm Trust regarding conflicts of interest in relation to planning matters which had been queried by external agencies. Our Chairman met with the two members concerned and gave detailed advice on the potential pitfalls for the two members concerned. As a result of those discussions one managing Trustee resigned from the Trust so as not to fetter his position in relation to planning matters which might arise in the future. The other Trustee had been involved in an Area Plans Sub Committee meeting on one occasion but was not a member and he took a different view about his involvement in the Trust. These discussions were conducted on a very amicable basis and we are pleased that we were able to assist the members concerned in clarifying what seemed to us to be a very difficult situation.

Granting Dispensation from the Effect of Prejudicial Interests

3.15 We have received no requests for dispensations during 2004/5.

4. INTERESTS

- 4.1 As Councils will know, another important aspect of the ethical framework is the process whereby members of the District Council and Town and Parish Councils must register their interests once they are elected and keep those registrations up to date. We are satisfied that all Parish and District Councillors in the District have issued registrations of interest and that these are now on behalf public deposit both at the District and Parish Council Offices concerned. We do continue to have concerns that members are diligent enough to update those registrations within the 28-day period required by Government Regulations. We suggest that members of the Council must be vigilant in ensuring that these changes are properly recorded.
- 4.2 The Monitoring Officer routinely issues a request on an annual basis to all members of the Council to formally review their registration of interests. This requires them to indicate that they have no changes to make or that they require a revised registration form in which to record the differences. This has been broadly accepted within the District but it is worth emphasising that this is only done annually and changes can well occur between the annual reminders which need to be recorded within 28 days.

5. GIFTS AND HOSPITALITY

- 5.1 Statistics are given in Appendix 1 to this report of registrations of gifts and hospitality received during 2004/5. The number of registrations received is low. We urge all Parish, Town and District Councillors to be vigilant about recording any gifts and hospitality which they are prepared to accept and which can be valued at more than £25.
- 5.2 During 2004/5, we have reached the view that although there is a clear statement in the Code of Conduct which requires members to register gifts and hospitality, this is not properly supported by advice as to the circumstances in which gifts and hospitality may be accepted and when not. Likewise we feel that there is a need for more definition of gifts and hospitality so that there is no misunderstanding about the action which members should take. We have formulated a protocol giving advice on this subject and this is submitted to the District Council for adoption at this meeting.

6. COMPLAINTS AGAINST COUNCILLORS

- 6.1 Appendix 2 to this report summarises complaints for the Epping Forest District during the year. As can be seen, at the time of writing, no complaints are outstanding at Parish and Town Council level but there are a number currently being investigated by the Standards Board for England in relation to District Councillors.

7. FUTURE WORK

- 7.1 We await our first reference from the Standards Board for England to investigate and/or adjudicate on complaints.
- 7.2 We will continue to work on revisions to the Planning Protocol and on the question of interests where members serve on outside organisations. We will be consulting widely on these two revisions and hope to bring a report forward for Councils in the early Autumn.
- 7.3 A new piece of work which we now plan to undertake relates to use of member facilities. The Code of Conduct places members under a duty to use members' facilities only in accordance with Council policy. It has become apparent to us that member facilities are provided by many Councils but these have not been drawn together in a consolidated policy. What we plan to do therefore is to present a protocol which sets out the kind of facilities that are being provided and how members can comply with the Code in their proper use. We would like to pay particular attention to the question of the Internet and e-mail on which there have been several well-publicised cases recently involving local authorities. However, IT is only part of the picture and we hope to give a comprehensive guidance note on this subject. We will consult Councils widely on this and hope to be able to recommend a document in the autumn of this year.

8. CONCLUSIONS

- 8.1 Our work to date has focused on providing a framework of training and advice and general support on the ethical framework. We are conscious that there are reservations about the operation of the Code of Conduct nationally and that the Government is currently reviewing some elements of the Code and the ethical

framework generally. We hope to be in a position to respond to these concerns and advise all Parish Councils and the District Council about the correct line to take on any proposed changes. We will continue to maintain training courses and look forward to the prospect of receiving our first adjudications/investigations from the Standards Board for England.

- 8.2 We would emphasise to all Councils that the Monitoring Officer and her staff and the Committee itself are always available to assist members with advice on ethical standards issues. It is far better in our view that such advice is sought at an early stage to avoid difficulties which may arise if the conduct of any member is challenged by a member of the public subsequently.

Dr Derek Hawes (Chairman)
Mary Marshall
Grenville Weltch
Councillor Mrs Daphne Borton
Councillor Mrs Penny Smith
Councillor Jason Salter
Councillor Ken Percy

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GIFTS AND HOSPITALITY – NUMBER OF INDIVIDUAL REGISTRATIONS 2004/5

District Council	34	(43)
Parish and Town Councils	0	(0)

Figures in brackets relate to 2003/4

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COMPLAINTS RECEIVED – EPPING FOREST DISTRICT (AS AT 30.4.05)

PARISH AND TOWN COUNCILS

(a)	Received by Standards Board 2004/5	3
	Not investigated	3
(b)	Pending from 2003/4	0

DISTRICT

(c)	Received by Standards Board 2004/5	14
	Not investigated	4
	Being investigated	10
(d)	Pending from 2003/4	0

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REVISED

**PROTOCOL FOR
COUNCILLORS AND OFFICERS
ENGAGED IN THE DETERMINATION OF
PLANNING APPLICATIONS AND OTHER
PLANNING DECISIONS**

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1. Purpose of Protocol

- 1.1 This protocol has been prepared to guide members and officers on the manner in which the Area Plans Sub-Committees, the District Development Control Committee (and where appropriate the full Council) will consider planning applications and related planning matters. It applies whether a Councillor is serving as a member of these bodies, as a substitute or as a non-member in attendance.
- 1.2 The protocol also deals with the involvement of members and officers of the Council in the operation of the planning system outside the formal decision-making process.
- 1.3 This protocol is not part of the Council's Code of Conduct. It is designed to demonstrate how members' duties and responsibilities should be met in the field of planning.
- 1.4 Planning decisions may be interpreted as any decision under planning legislation including planning permission, enforcement and related matters whether delegated to officers or reserved to Planning Committees.

2. Summary of Provisions

- 2.1 As soon as possible after they are elected, all members must receive appropriate training in planning requirements if they are members or substitutes on Area Plans Sub-Committees as well as the District Development Control Committee.
- 2.2 All planning decisions should be based only on relevant planning considerations.
- 2.3 Planning officers may give professional advice about any proposal to an applicant or objector subject to the general advice in 2.2 above but must explain that the advice cannot bind the Council in any way.
- 2.4 Members and officers should avoid giving a firm indication of the decision on any application during contact with applicants and objectors, especially at site meetings, public meetings and pre-consideration discussions in advance of formal decision.
- 2.5 Members should refer at a Planning Committee to significant contact with applicants or objectors (meetings, correspondence or telephone calls which are over and above the normal level of Ward Member contacts) about any planning matter under consideration by a planning body and unless this constitutes a prejudicial interest, shall be disclosed during consideration of that matter.
- 2.6 Prejudicial and personal interests in any matter due to be considered at a planning body shall be declared by members under the standing agenda item for that purpose.
- 2.7 All applications considered by the Planning Committees shall be the subject of full written reports from officers incorporating clear and reasoned recommendations.
- 2.8 The conditions for granting of consent or grounds for refusal by Planning Committees shall be approved by a show of hands for voting purposes set out in the minutes.
- 2.9 Chairmen of Planning Committees shall exercise the casting or second vote in accordance with the Council's constitution.
- 2.10 Councillors who are also members of Parish and Town Councils should declare a personal interest if the Parish or Town Council concerned has submitted representations but are not precluded from consideration of that application at District Council level unless they have another interest which is prejudicial under the Code of Conduct and they have reserved their position on any application at Parish.

- 2.11 Councillors must take special care with interests created as a result of being members of lobby or campaign groups.
- 2.12 Planning applications by the Council must be treated in the same way as any other decision.
- 2.13 Special care should be exercised by members and officers of the Council in relation to their own planning applications (or where they are objectors).
- ... 2.14 A summary guide to the operation of this protocol is attached at Appendix 1.

3. Status of Protocol

- 3.1 This protocol is purely advisory and designed to help both members and officers. However, it is based on guidance issued by the Local Government Association which itself is based on the provisions of the Code of Conduct for Members (as set out in Part 5 of the Constitution), the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commissioners for Local Administration in England (the Ombudsman) and the National Planning Forum. Failure to follow the protocol without good reason could be taken into account in investigations into possible maladministration. Likewise, the conduct of any Member would be measured (for consistency) by the Standards Board for England against the requirements of the Code of Conduct.
- 3.2 The Council has decided that the operation of all codes of practice and protocols (such as this one) should be monitored by the Council's Standards Committee and that, if necessary, the Committee should be able to issue advice or adjudicate on disputes relating to their operation.

4. Training Requirements

- 4.1 It is fundamental that members (including Parish and Town Councillors) involved in planning should receive appropriate training, before being involved in making planning decisions. Such training should be regarded as obligatory for all members.
- 4.2 No member should be involved in the planning process (whether at Area Plans Sub-Committees, the District Development Control Committee or the full Council) without having undertaken training in planning procedures; the provisions of this protocol; and attended sessions designed to keep members abreast of new developments, as specified by the Authority. This training will also be required for substitutes at Area Plans Sub-Committee 'A' and the District Development Control Committee meetings.
- 4.3 Even if a Member does not serve as a member of an Area Plans Sub-Committee or the District Development Control Committee, this training need should be regarded as a high priority, as it may sometimes be necessary for a planning decision to be taken by the full Council. Likewise, members who are not serving on one of the Planning Committees may wish to attend on occasions as non-members to speak on a particular case.
- 4.4 All relevant planning officers should be trained in the provisions of this protocol as part of their professional training.

5. "Dual Hatted" Councillors

- 5.1 The Code of Conduct does not automatically prevent you from considering the same money matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 10(2)(a) of the Code to members of "another relevant authority" reinforces this point.

- 5.2 If an issue comes up for discussion at both the parish and district level, and you sit on both authorities, you should:
- (a) at the parish level make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and
 - (b) at the district level, declare personal (but not prejudicial) interest arising from your membership of the parish council which has already expressed a view on the matter and make it clear that the parish council's view does not bind you and that you are considering the matter afresh.
- 5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to you speaking and voting on issues in the District Council's development plan that particularly affect your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 10(2).
- 5.4 In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b), a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.

6. Fettering the Members' Discretion

- 6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).
- 6.2 However, if members in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, members comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.
- 6.3 Any member who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.
- 6.4 Any member who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.

7. Cabinet Members

- 7.1 Under the Council's executive constitution there is a clear distinction as required in law between the role of the Cabinet, which deals with planning policy and the determination of planning applications, etc which are not the responsibility of the Cabinet. The principle is that the Cabinet is responsible for formulating and recommending planning policy to the Council, whilst decision-making on individual planning matters must be separate and dealt with by separate bodies.
- 7.2 Any member of the Cabinet who is responsible for bringing forward planning applications or other proposals which are subsequently considered by an Area Plans Sub-Committee, or the District Development Control Committee needs to be aware of the conflict of interest which exists. They should declare a prejudicial interest and not speak or vote on the planning matters.
- 7.3 The Housing and Finance and Performance Management Portfolio Holders will often be closely involved in planning proposals. The Planning and Economic Development Portfolio Holder has a less close involvement in planning applications and the conflict of interest is thus less onerous. Furthermore, constituency work could easily blur the policy and decision-making roles. A Cabinet member would therefore need to be careful about approaches from constituents. They should for instance, consider arranging for these:
- (a) to be dealt with by other electoral ward councillors; or
 - (b) to be dealt with by another member of this political group if they serve in a single member Ward; or
 - (c) to be referred to planning officers.

8. Property Interests

- 8.1 Members who have substantial property interests or involvement with the property market or similar interests need to be very careful about their involvement in planning matters and should make their interests known at every meeting which they attend when planning issues are discussed. In cases of doubt, members should seek the advice of the Council's Monitoring Officer before the meeting.
- 8.2 Similarly the property interests of other public authorities can impinge on the planning process and conflicts of interests for "dual-hatted" members may arise requiring prejudiced interests to be declared.

9. Gifts and Hospitality

- 9.1 Councillors should also be very cautious about accepting gifts and hospitality and bear in mind the requirement to register acceptance of gifts under the Code of Conduct.
- 9.2 Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimum level and declare this as soon as possible in the register kept by the relevant Head of Service.
- 9.3 When members and officers involved in planning matters receive approaches from any quarter, it is useful to clarify at the outset whether the person concerned has had, or will have, any dealings with the Council.

9.4 On occasions, third parties may offer gifts or hospitality to the Council or to the Chairman of the Council, sometimes in the context of a charitable appeal. The potential donor should always be asked whether they know of any current or intended dealings with the Council on a planning or property issue. If such matters are under consideration, such offers should be declined.

9.5 Separate advice on this area is available from the Standards Committee.

10. Pre-Application and Post Submission Discussions - Role of Officers and Members

10.1 Ward Councillors (particularly if they are members of a planning body) should preserve their impartiality as decision-makers at pre-application or post-submission discussions with developers or other interested parties (including objectors) regarding development proposals.

10.2 Their involvement should be limited to listening to the discussion, asking questions and indicating points of concern. Ward Councillors should not debate the merits of the case or indicate views. Members should avoid the possibility that comments made at such meetings might prejudice their ability to bring an open mind to the formal decision on the proposal.

10.3 Post-submission meetings should be arranged so that, wherever possible, representatives of both the applicants and objectors can present their views. This could be either at a single meeting or at separate meetings. Members should be accompanied by an officer and a note taken of the meeting for the purpose of reporting to the full Committee. It is recognised that Members will be subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and Members' integrity so as to protect the credibility of the planning process.

10.4 Members of the Council should always bear in mind the provisions of Section 5 of this protocol at such meetings.

10.5 Professional planning officers are approached from time to time by applicants, objectors and Ward Councillors in order to discuss a particular case. Often, those officers will be asked to indicate a view on the case. Where this occurs, planning officers must balance the following considerations:

(a) the duty to advise on legitimate concerns regarding proposals and to be helpful to those who come forward explaining the likely recommendations which will go forward;

(b) the need to avoid anticipating the outcome of Planning Committee decisions.

10.6 All advice given and comments made must be designed to provide information to interested parties which is helpful. This must, however, stop short of committing the Council to a decision.

11. Attendance of the Public at Planning Meetings

11.1 All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.

11.2 With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is under the spotlight. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning

considerations will colour the public perception positively or negatively. All participants need to keep this in mind.

11.3 The Council has a policy of allowing public speaking by applicants, objectors and Parish/Town Councils. The rules are set out in the Council's Constitution (Operational Standing Order 5(2)) and summarised in the public leaflet "Your Voice, Your Choice". This procedure must be respected at all times and the exercise of legitimate discretion by Chairmen accepted in the light of the circumstances which prevail.

11.4 Members of Planning Committees are strongly advised to attach equal weight to all representations made on planning grounds.

12. Substitute Members and Attendance of Non-Members at Meetings

12.1 The Council's policy on these issues is set out in the Council's Constitution (Operational Standing Order 2).

12.2 The rules governing substitute Members apply to the District Development Control Committee and Area Plans Sub-Committee 'A' providing that Committee members shall, if they wish another member of the political group to which they belong to attend a meeting of that Committee in their place, give notice not later than 10.00 a.m. on the day of the meeting that they are unable to attend and that the substitute Member named will attend in his/her place. Substitutes should only undertake this role if they have received the obligatory training.

12.3 The effect of a substitution is that the substitute Member shall be a full Member of the Committee for the same period.

12.4 A substitution may be revoked at any time before the meeting starts. If both Members are at the meeting, the Member appointed to the Committee or Sub-Committee will take precedence.

13. Officer Reports to Committees

13.1 All applications considered by the Council's Planning Committees and Sub-Committees shall be the subject of full written reports from officers incorporating clear recommendations. These reports will consider national and development plan policies and guidance and representations made by statutory consultees, local residents and other interested parties. Reports will contain all the relevant material known at the time the report is despatched to Members and updating information will be provided to Members only if there have been any significant developments or changes to the report.

13.2 Once the Committee papers for a meeting have been published, any subsequent information received on material planning considerations will be reported orally at the meeting by the Head of Planning Services or his or her representative. With the consent of the Chairman of the District Development Control Committee or Area Plans Sub-Committee concerned this may one occasion involve tabled written material.

13.3 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers therefore, Members should avoid placing inappropriate pressure on planning staff to achieve a desired outcome, including attempting to change decisions made under delegated authority by the Head of Planning Services.

14. Determination of Planning Applications

- 14.1 Whilst Members should bring to planning decisions a sense of the community's needs and interests, they must balance this with their obligation to remain within the constraints of planning law. They must only take account of relevant matters, e.g. sound land use planning considerations and must have regard to the Development and Local Plans and Government policy. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report must deal specifically with these matters so that Members reach an informed decision.
- 14.2 Section 54A of the Town and Country Planning Act 1990 requires that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise. In cases where an Area Plans Sub-Committee wishes to depart from planning policy following consideration of an application, planning officers will advise that such a decision must be referred to the District Development Control Committee. In some cases the Leader of the Council may determine that a final decision by the full Council is desirable.
- 14.3 The Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. Reports of the Head of Planning Services will be based on planning policy but members may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that they should formally move a motion to take the place of the officer's recommendation giving reasons.
- 14.4 Voting on decisions shall be by a show of hands.
- 14.5 When dealing with planning applications Councillors should be careful to avoid even the appearance that they may have been influenced improperly or by considerations which should not be taken into account under the planning legislation and regulations. Similar circumstances must give rise to similar decisions.
- 14.6 Improper decision taking can have financial penalties not only for the Council. The circumstances set out below can lead to expenditure:
- (a) an Ombudsman finding maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
 - (b) costs of litigation and award of costs following application for judicial review in the High Court;
 - (c) costs of local Public Inquiries, including possible award of an applicant's costs following use of Secretary of State's call-in powers;
 - (d) costs of local Public Inquiries, together with landowners' costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

15. Decisions Contrary to Officer Recommendations

- 15.1 Where a Planning Committee is minded to determine an application contrary to the officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material planning considerations. The final decision on the application can therefore either:

(a) normally be dealt with at the meeting with a formal proposal summarised by officers and voted on at that time;

(b) in the event of exceptional circumstances, be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval or refusal of the application.

15.2 There will be a careful record kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise the main reasons for the proposed decision so that these are clearly understood before it is put to the vote.

15.3 Under no circumstances is it acceptable for grounds for refusal or granting of consent to be left to planning officers to draft after the meeting. All such grounds shall be discussed at the meeting at which the application is dealt with and adopted following professional advice from planning staff. Chairmen of Planning Committees can assist this process by seeking from movers of proposals the reasons for their proposal based on District Plan requirements.

16. Voting at Planning Committees

16.1 In dealing with planning applications, a Committee or Sub-Committee is acting quasi-judicially (i.e. similar to a Court). In doing so, the Committee is balancing the requirements of planning law and planning policy against the needs of the community or individuals.

16.2 Votes must be cast according to an honest appraisal of the merits of an application, the planning grounds which apply and the need to act promptly on planning applications. Although there are circumstances where further debate in another forum might be helpful, such deferrals should be avoided except in the most exceptional cases.

17. Voting by Chairmen

17.1 Chairmen must state whether they intend to vote on any item for consideration before votes are cast.

18. Second or Casting Vote of Chairman

18.1 The Council's Constitution provides for the Chairman of the District Development Control Committee and the four Area Plans Sub-Committees to exercise a second or casting vote in the event of an equality of votes. The use of the second or casting vote should only be based on an honest appraisal of the planning matter convened.

19. Site Visits

19.1 Formal site visits may be requested by any Planning Committee. However, these consume resources and could delay determination of an application. It is good practice to:

(a) consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious;

(b) encourage members of the Committee, plus the Chairman or Vice-Chairman, to attend the site visit, together with a senior planning officer, if they have not already done so;

- (c) ensure that the visit is managed by the Chairman, Vice-Chairman or senior officer and that it is made clear to other parties at the outset that the purpose is to gather factual information first hand – **not** to hear arguments for and against, or to enter into a debate about the merits of the case;
 - (d) ensure that the application will not be determined at that site visit;
 - (e) in the interests of fairness to all parties, consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- 19.2 Any response to questions or statements by interested parties at site visits should follow the good practice summarised above. Members should refrain from making comments on the merits or otherwise of the application to any interested party.
- 19.3 All formal site visits should be conducted in a single group.

20. Lobbying

- 20.1 It is vital to distinguish the "quasi-judicial" role as a Councillor on a decision-taking Committee from that of a Ward Councillor approached by a constituent with a particular viewpoint about a planning matter.
- 20.2 The Council's duty when determining planning applications or planning enforcement matters is to attach weight to development plans, proper planning considerations and the advice of professional officers presented at Committee. Reasonable and fair decisions are expected.

Lobbying of Councillors

- 20.3 Lobbying of Members is a normal and proper part of the political process. However, unless care and common sense are exercised, the impartiality and integrity of members can be called into question. So far as lobbying is concerned, it is good practice to:
- (a) explain to the lobbyist the quasi-judicial nature of the planning process;
 - (b) listen and ask relevant questions but avoid expressing any opinion which may indicate that the issue is prejudged before debate in Committee; in particular Members should never indicate in advance how they intend to vote;
 - (c) give procedural information or advice as appropriate, including how to speak or write to the relevant officer;
 - (d) stress that any comments made are personal and provisional, pending the rehearsal of all the relevant evidence and arguments at Committee;
 - (e) avoid acceptance of any hospitality at a site visit, (apart from routine courtesies), which could be misinterpreted by third parties;
 - (f) when a relevant item is considered declare cases where contacts with third parties through correspondence, telephone calls or meetings with applicants or objectors are significantly greater than normal Ward Councillor contacts; and
 - (g) Consider whether the nature of the contacts referred to in (f) are so significant as to render them in the Councillor's view a personal or prejudicial interest and declare accordingly.

- 20.4 Members should carefully consider whether it is wise to accept an invitation from an applicant or objector to make an informal site visit prior to the relevant Committee meeting. In controversial cases only one side of an argument will be heard. It is, of course, perfectly proper for a Member to view a site from a public place.

Lobbying by Councillors

- 20.5 Members should avoid organising support for, or opposition to, planning applications and should not lobby other Members as such actions can easily be misunderstood. Members may have concerns about a planning matter before it comes to Committee. They are entitled to raise these concerns and to ask that they be addressed in any report that may go to Committee but Members should not put pressure on officers for a particular recommendation. The Code of Conduct requires Members to respect this impartiality.
- 20.6 Councillors should not lobby their colleague Members if they have a prejudicial interest as this precluded by the Council's Code of Conduct. Political Groups should also not seek to instruct their Members to vote in a particular way on a planning application.
- 20.7 For the purposes of this protocol, approaches from a Member of Parliament should be treated as lobbying if this is the nature of the approach.

Lobbying and Campaign Groups

- 20.8 Membership of lobby and campaign groups should be included in the register of interests, as these are bodies "whose principle purposes include the influence of public opinion or policy." The Code of Conduct requires members to declare personal interests in any matters that relate to an interest included in the register of interests. Members are required to declare a personal interest if they are members of a group that lobbies or campaigns about an issue that comes up for discussion or decision at the Council.
- 20.9 The existence and nature of such an interest should be declared at the meeting so that members of the public are informed about interests that may relate decisions. The member can continue to participate unless the interest is also prejudicial.
- 20.10 Even if the lobby group does not keep a formal membership list the Code of Conduct still applies in the same way. A Councillor acting as a member – perhaps attending meetings or participating in group activities – should still register membership of the group and declare interests.

Prejudicial interests arising from membership of lobby groups

- 20.11 Under the Code of Conduct it is only necessary to withdraw from a meeting where there is a personal interest, if that interest is also prejudicial. The points outlined below should be taken into account in each case, to help decide whether or not a personal interest is also prejudicial:

- (a) Direct impact on lobby and campaign groups

If the matter to be discussed will have a direct impact on a lobby or campaign group of which you are a member, you are likely to have a prejudicial interest. This includes anything that directly affects the rights and obligations of a group to which you belong.

(b) Indirect impact on lobby and campaign groups

Matters that relate to the campaign on or to matters on which the group has expressed public opinions but which do not affect the operation of the group directly, have an indirect impact on that group. If the matter to be discussed relates indirectly to a lobby or campaign group a member may have a personal or prejudicial interest in it.

(c) To determine whether a prejudicial interest in a matter of indirect impact, consider the following factors:

- the nature of the matter to be discussed;
- the nature of your involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what you have said or done in relation to the particular issue.

(d) The Standards Board for England has published detailed advice on the situation set out in (c) above and if any Councillor is in doubt about their position, they should contact the Monitoring Officer. A flow chart showing the process recommended by the Standards Board for England is attached as Appendix 2.

21. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors

21.1 Applications to their own Authority by serving and former Councillors and officers and their close friends, partners, employers or business associates (including those of relatives) and relatives themselves can easily give rise to suspicions of impropriety.

21.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving Councillors, Chief Officers and staff of Planning Services together with other Council staff who act as agents for applicants should play no part in the decision-making process in respect of those proposals. The Council's Monitoring Officer should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. Any such applications, whether by Members or officers, cannot be dealt with by the Head of Planning Services under delegated powers. All such cases will stand referred to the Area Plans Sub-Committee concerned.

21.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered.

21.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.

21.5 An officer submitting an application has a clear interest in that application. He or she must also declare that interest if present at the meeting at which the application is discussed. Applications submitted by Councillors or officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Head of Planning Services under delegated powers.

- 21.6 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.
- 21.7 Members of the Council and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.

22. Application for Planning Consent by the District Council

- 22.1 Planning applications for the Council's own development proposals will be treated in the same way as applications by any other person or body. Such applications will always be referred to a Planning Sub-Committee and will not be dealt with under delegated authority. This requirement extends to applications from other parties in respect of Council-owned land or property, where a land sale is being negotiated.
- 22.2 The Council's role as landowner is completely separate from its role as Planning Authority. The landowner role is a matter reserved to the Cabinet as an executive function. Considerations relating to the landowner role are not relevant planning considerations in respect of the determination of planning applications. Members of planning Sub-Committees should at all times keep this in mind.
- 22.3 Section 7 above deals with conflicts of interest which can arise if Cabinet Members are involved in determining applications for which they are responsible.

23. Review of Decisions

- 23.1 Planning and enforcement decisions and Local Plans are subject to review in a number of ways:
- (a) as a result of investigations by the Local Government Ombudsman;
 - (b) at Planning Inquiries;
 - (c) through the Courts;
 - (d) as part of Comprehensive Performance Assessments and Best Value service reviews;
 - (e) through the Council's Compliments and Complaints Procedure; and
 - (f) by means of a six-monthly review of appeal decisions.
- 23.2 By these reviews, the quality of planning decisions will be constantly monitored to ensure that the public can continue to have faith in the appropriateness and probity of the system.

24. Complaints

- 24.1 The Council's compliments and complaints procedure allows any member of the public to complain about any aspect of how the planning system operates.
- 24.2 Opportunities exist to take complaints forward to the Local Government Commissioner for Administration (the Ombudsman) usually if a complainant is not satisfied after the Council's complaints procedure has been completed.

- 24.3 The Standards Board for England will consider complaints by any member of the public (including officers and other Members) about the conduct of any Councillor if it is considered that he or she has breached the requirements of the Council's Code of Conduct.
- 24.4 The Standards Committee has a role in monitoring this protocol and if necessary offering advice on its operation.

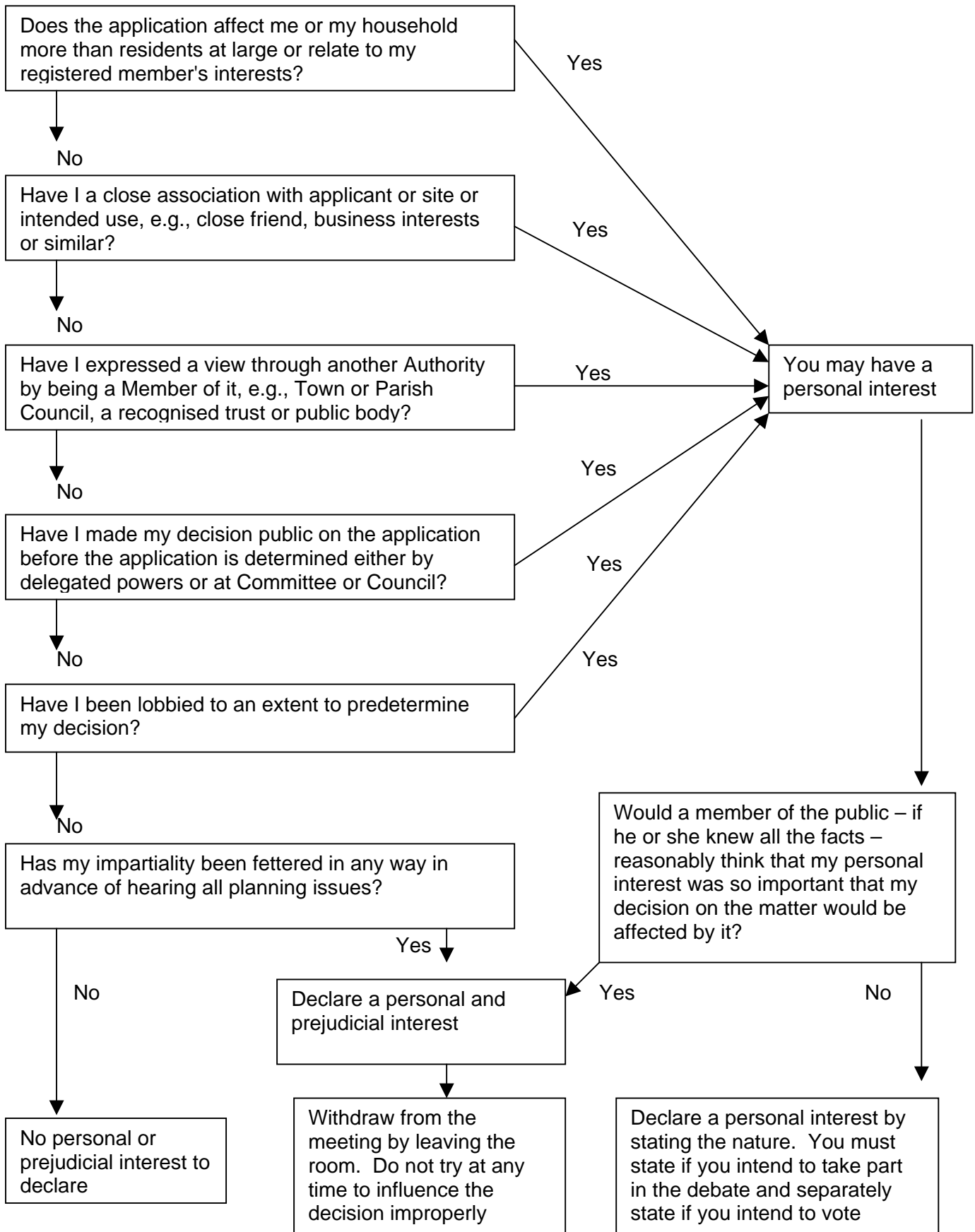
25. Human Rights Act 1998

- 25.1 The provisions of this protocol acknowledge throughout the rights of citizens in the planning process and the duty of the Council to reflect those rights in its procedures.

26. Planning Inquiries, Court Proceedings and Public Hearings

- 26.1 Often planning decisions of the Council lead to further proceedings by way of appeals heard at Public Inquiries or hearings or in Court. The question often arises about involvement by Councillors in such circumstances.
- 26.2 Members who wish to be involved in such hearings should, as a matter of courtesy, advise the Council in advance that they intend to participate. At the hearing, they should make it clear that the views they express are personal and should not seek to criticise Council officers or members on a personal basis.

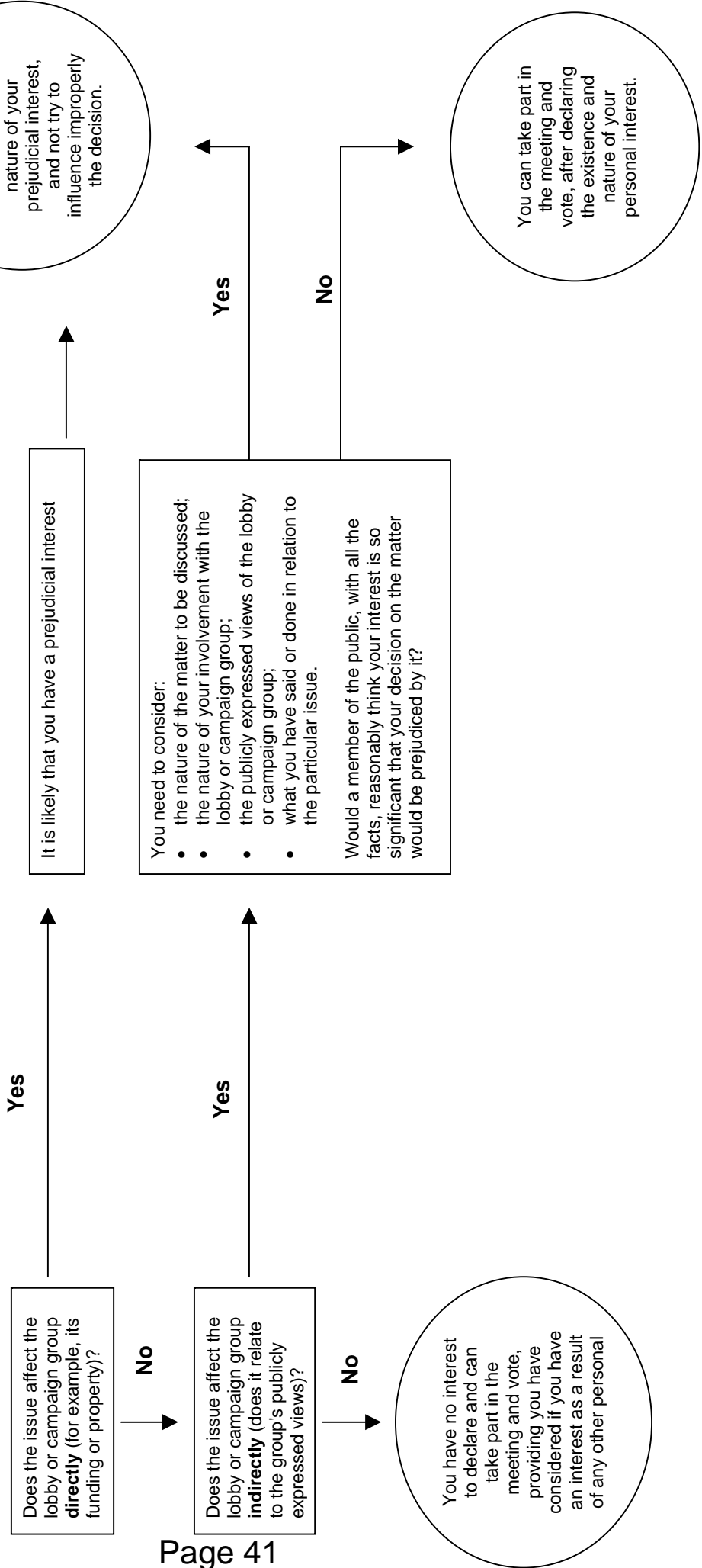
FLOW CHART PLANNING PROTOCOL – MEMBERS'/OFFICERS' INTEREST GUIDANCE



LOBBY GROUPS, DUAL-HATTED MEMBERS AND THE CODE OF CONDUCT

GUIDANCE FOR MEMBERS

Declaring interests relating to lobby groups – questions to ask yourself



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EPPING FOREST DISTRICT STANDARDS COMMITTEE

REVISED ADVICE NOTE – DECLARATIONS OF INTEREST FOR MEMBERS SERVING ON OUTSIDE ORGANISATIONS AND OTHER PUBLIC AUTHORITIES

1. PURPOSE OF REVISION

1.1 To clarify the position regarding Councillors who serve on outside organisations as follows:

(a) declaration of interests where members have been appointed by the Council to outside organisations including situations where membership involves executive or managerial responsibility for that organisation;

(b) the position of Councillors who serve on such organisations but are not appointed by the Council;

(c) the position of Councillors who serve on other public authorities (i.e. established by statute law) whether appointed by the Council or not; and

(d) the position concerning membership of lobby or campaign groups.

2. STATUS OF ADVICE

2.1 It is for members of the Council individually to determine whether they have a personal interest and whether the interest is prejudicial. Any complaint to the Standards Board for England regarding failure to declare interests, would take into account the advice set out in this note.

3. CODE OF CONDUCT

3.1 The Code of Conduct for the Council (paragraph 10(2)) (Page Q6 of the Constitution Binder) sets out the circumstances where a personal interest may not be regarded as a prejudicial interest. These include:

(a) where a member holds a position of general control or management in another public authority; or

(b) where the member has been appointed or nominated by the Authority as its representative on an outside organisation.

3.2 Recent advice received from the Standards Board for England indicates that these exemptions, which remove the need to declare a prejudicial interest, may not always apply.

4. ADVICE FROM STANDARDS BOARD FOR ENGLAND – BACKGROUND

4.1 The Monitoring Officer asked the Standards Board for advice on members appointed by the Council to outside organisations (e.g. Citizens' Advice Bureaux or similar charitable trusts) where they become trustees (or equivalent). The Board was asked whether such a member would have a prejudicial interest in relation to issues coming before the Council, notwithstanding that it was the Council which appointed them. The particular case cited was grant aid applications.

4.2 The Standards Board stated that the position was not entirely clear. The Board said that where a member is appointed to an outside organisation by the Council, paragraph 10(2) of the Code is relevant. However the Board also suggested that paragraph 10(2) should not be regarded as an exemption in every case. A grant aid application (where the organisation is effectively competing for funds) is the kind of situation where it may not be appropriate to rely on paragraph 10(2). The Board stated that this would be the case whether a member becomes a trustee or does not hold such a position.

4.3 The Board advised that if a Councillor is a trustee of an organisation and has not been appointed by the Council then the exemption in paragraph 10(2) does not apply. The normal test for a prejudicial interest in paragraph 10(1) would therefore be relevant, namely that a member must determine whether the interest is one "which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest".

4.4 In September 2004, the Standards Board for England issued new advice in respect of "dual-hatted" Councillors and this advice note has been revised to take account of that advice.

5. EPPING FOREST STANDARDS COMMITTEE - VIEWS

- 5.1 The comments of the Standards Board for England must, in the Standards Committee's view, be taken into account in any advice. The Board's comments have cast doubt over whether paragraph 10(2) can be used to avoid the declaration of a prejudicial interest where outside organisations are concerned.

Trusts and Similar Bodies

- 5.2 The Committee has been told that there are cases where a Council representative is obliged to become a trustee, a board member or some other "official" position, as a result of having been appointed by the Council as its representative. The Committee feels that the advice must reflect those cases as well as Councillors who do not hold such positions. Furthermore, the Committee feels that advice is required for those who represent the Council and those who occupy such positions independently.

- 5.3 The Standards Committee also took account of the Standards Board for England's advice regarding lobbying groups as set out in its September 2004 advice. This advice stated:

(a) membership of the lobby or campaign group must be registered with the Monitoring Officer;

(b) consequent to (a), a personal interest must be declared;

(c) a prejudicial interest will be created where a matter under discussion will have a direct bearing on the lobby or campaign group (viz finance, estates, licensing, planning consent, and the rights and obligations of the group).

Public Authorities

- 5.4 The Committee also looked at references in the Code of Conduct to "public authorities". In the Committee's view, "public authorities" are bodies which

are established under statutory powers and is giving separate advice to members who serve on such authorities. The Committee also took note of new advice regarding Councillors who serve on more than one public authority.

- 5.5 The Committee does not regard Citizens' Advice Bureaux (or similar organisations) as public authorities.

6. SUMMARY OF ADVICE

- 6.1 Referring to the three situations on which we were asked to advise as set out in Paragraph 1.2 of this note, the Committee advises that:

(a) Where members are appointed to an outside organisation by the Council including those appointments which involve, individually or collectively, responsibility for its activities, they must declare a personal interest in all matters relating to that body. Where issues regarding funding or grant aid are discussed by the Council a prejudicial interest should apply;

(b) Where Councillors are involved in campaign or lobby groups it is likely that they will have a personal interest and, if the matter before the Council bears directly on the campaign group, a prejudicial one.

(c) Where a member of the Council is a member of an outside organisation (including positions of control and management) but has not been appointed by the District Council, under paragraph 10 of the Code of Conduct, a personal interest should be declared in all matters relating to that organisation and the member concerned should take part in consideration unless there is a prejudicial interest which requires the member to leave the meeting; and

(d) Where a member serves on another public authority (including positions of general control or management) the Committee considers that a member must declare a personal interest in any matter relating to that authority and give very careful consideration as to whether a prejudicial interest exists on any financial and estates issues which arise. This advice

should apply irrespective of whether the Council has appointed the member or the appointment has been made separately.

... 6.2 A matrix summarising this advice is provided in the Appendix to this note.

7. HOW THE ADVICE SHOULD BE APPLIED

7.1 Councillors need to be aware that this advice applies not only to meetings of the Council and its Cabinet/Committees etc., but also to more informal settings, particularly where issues about lobbying arise.

7.2 Separate advice for “dual hated” members involved in planning as set out in the District Council’s planning protocol.

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Agenda Item 9

Standards Committee – 28 June 2005

ALLEGATIONS RECEIVED

Reference	Current Position
SBE 5412.03	Revised draft report received – likely finding: no further action
SBE 10144.05	Referred to an Ethical Standards Officer for investigation
SBE 9279.04	Draft report issued by Ethical Standards Officer
SBE 10226.05	Referred to an Ethical Standards Officer for investigation
SBE 10228.05	Referred to an Ethical Standards Officer for investigation
SBE 10229-10231.05	Referred to an Ethical Standards Officer for investigation
SBE 11205.05	Referred to an Ethical Standards Officer for investigation

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By virtue of paragraph(s) 15 of Part 1 of Schedule 12A of the Local Government Act 1972.

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