



Epping Forest District Council

STANDARDS COMMITTEE **Tuesday, 17th July, 2007**

Place: Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.30 pm
Committee Secretary: Graham Lunnun - Research and Democratic Services
Email: glunnun@eppingforestdc.gov.uk Tel 01992 564243

Members:

Ms M Marshall, G Weltch, M Wright, Councillor Mrs P Smith and Mrs J H Whitehouse

Parish/Town Council Deputy Representative(s):

Mrs D Borton, B Surtees (Deputy)

1. CHAIRMAN OF THE COMMITTEE

Recommendation:

To elect a Chairman of the Committee for the municipal year 2007/08.

(Monitoring Officer) The Committee is asked to elect a Chairman for the current year.

2. APOLOGIES FOR ABSENCE

3. MINUTES (Pages 7 - 10)

To approve as a correct record the minutes of the meeting held on 25 April 2007 (attached).

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. PARISH/TOWN COUNCIL REPRESENTATIVE

Recommendation:

To note that Parish Councillor Mrs D Borton has been appointed as the

Parish/Town Council representative on the Committee in succession to Parish Councillor J Salter.

1. (Monitoring Officer) The Epping Forest District Association of the Essex Association of Local Councils has advised that they have appointed Parish Councillor Mrs Daphne Borton as the Parish/Town Council representative on the Committee in succession to Parish Councillor Jason Salter.

2. Councillor Salter had been a member of the Committee since it was established in 2001. He decided to stand down as the Parish/Town Council representative on the Committee due to other commitments.

6. NEW CODE OF CONDUCT (Pages 11 - 22)

Recommendations:

(1) To note that Epping Forest District Council adopted the new Code of Conduct (without alteration) on 28 June 2007 as recommended by this Committee; and

(2) To receive an oral progress report on adoption by the 24 Parish and Town Councils in the District;

(3) To request a progress report at the next meeting on completion of registrations of interests by district and Parish councillors.

1. (Monitoring Officer) To report that a revised Code of Conduct was adopted by the District Council as indicated above. A copy is attached.

2. Parish and Town Councils are engaged in the same process and a report will be made at the meeting on their decisions in this regard.

3. A further report will be made at the next meeting on completion of registration of interests at the next meeting.

7. CODE OF CONDUCT - APPLICATIONS FOR DISPENSATION (Pages 23 - 24)

(Monitoring Officer) To consider the attached report.

8. LOCAL GOVERNMENT AND PUBLIC PARTICIPATION IN HEALTH BILL (Pages 25 - 28)

(Monitoring Officer) To consider the attached report

9. ALLEGATIONS ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS - CURRENT POSITION (Pages 29 - 30)

(Monitoring Officer) To consider the attached schedule.

10. GUIDANCE ON GIFTS & HOSPITALITY (Pages 31 - 36)

Recommendations:

(1) To consider suggested changes to the guidance on gifts and hospitality; and

(2) To consider whether the district and Town/Parish councils should be consulted about the suggested changes before these are formally adopted.

1. (Monitoring Officer) Attached is a copy of the Guidance previously issued by the Committee regarding gifts and hospitality. Track changes are shown on the document to reflect amendments felt necessary to align with changes made in the new code of conduct.

11. PLANNING PROTOCOL (Pages 37 - 56)

Recommendations:

(1) To consider suggested changes to the Planning Protocol to:

(a) accord with the new Code of Conduct;

(b) to give new advice on planning applications from Councillors and political parties; and

(2) To consider whether to consult the Head of Planning and Economic Development, Planning Agents, District Council and Parish/Town Councils on the changes before seeking formal adoption by the Council.

1. (Monitoring Officer) Attached is a copy of the Council's Planning Protocol in a document which shows track changes showing suggested amendments to accord with the new Code of Conduct. Section 23 is a new section designed to give further advice on declarations of prejudicial interests in relation to planning matters originating from colleague Councillors or political parties. Before recommending adoption by the Council, the committee may wish to consider prior consultation with those bodies and individuals which have been consulted before.

12. PROTOCOL ON USE OF FACILITIES FOR COUNCILLORS (Pages 57 - 62)

Recommendations:

(1) To consider suggested amendments to the previous protocol; and

(2) To consider whether there should be prior consultation with the District Council and Parish/Town Councils regarding the suggested changes.

1. (Monitoring Officer) The attached document shows, by means of track changes, suggested changes to the previous guidance on use of Council facilities by

members.

2. The Committee should consider prior consultation prior to adoption.

**13. ADVICE NOTE ON COUNCILLORS INVOLVED IN OUTSIDE ORGANISATIONS
(Pages 63 - 68)**

Recommendations:

(1) To consider suggested changes to the guidance on outside organisations; and

(2) To consider whether the District Council and Town/Parish Councils should be consulted about the suggested changes before adoption.

1. (Monitoring Officer) Attached is a copy of the previous guidance issued by the Committee regarding conflicts of interest involving Councillors who serve on outside bodies. The document shows track changes which indicate amendments thought necessary to accord with the new Code of Conduct.

14. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2007/08 provides for further meetings of the Committee on 16 October 2007, 26 February 2008 and 8 April 2008.

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

15. 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
Nil	Nil	Nil

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

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her

discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.

- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards Committee

Date: 25 April 2007

Place: Civic Offices, High Street, Epping

Time: 7.30 - 7.50 pm

Members Present: Dr D Hawes (Independent Member) (Chairman), Ms M Marshall (Independent Member), G Weltch (Independent Member), Mrs D Borton (Epping Forest Council Appointee), Mrs P Smith (Epping Forest Council Appointee), Councillor J Salter (Parish or Town Council Representative) and Councillor B Surtees (Parish or Town Council Deputy)

Other Councillors:

Apologies:

Officers Present: C O'Boyle (Monitoring Officer), I Willett (Deputy Monitoring Officer) and G Lunnun (Allegations Determination Manager)

36. MINUTES

RESOLVED:

That the minutes of the meeting of the Committee held on 27 February 2007 be taken as read and signed by the Chairman as a correct record.

37. MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING

(a) Planning Protocol - Revision (Minute 33)

The Chairman reported that the Council had adopted the revised Planning Protocol as recommended by the Committee at its last meeting.

38. DECLARATIONS OF INTEREST

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

39. REVISED CODE OF CONDUCT FOR MEMBERS

The Monitoring Officer reported that the Government had issued a revised model Code of Conduct for members. Councils had until 1 October 2007 to adopt the revised Code after which time members of local authorities that had not adopted a revised Code would be automatically covered by it. The existing Code would continue in force until such time as the local authority adopted the revised Code, or until 1 October 2007, whichever was the sooner.

The Committee considered the new model Code and noted that it could be adopted as it stood or could include additional provisions which were consistent with the Model Code. Attention was drawn to advice from the Standards Board for England encouraging local authorities to adopt the revised Code as it stood in order to ensure that all members were subject to the same standards across the country.

The Committee noted that a training course had been arranged on the Code of Conduct for District and Parish and Town Councillors at the Civic Offices on 9 May 2007 commencing at 7.30 p.m. Members of the Committee were encouraged to attend.

RESOLVED:

- (1) That the District Council be recommended to adopt the revised model Code un-amended;
- (2) That Parish and Town Councils in the District be recommended to adopt the revised model Code un-amended unless they can identify a strong reason for not doing so; and
- (3) That following adoption of the revised model Code the Monitoring Officer be authorised to take the following steps:
 - (a) ensure that copies are available for inspection by the public at all reasonable hours;
 - (b) publish a notice in one or more local newspapers stating that a new Code has been adopted and advising where copies can be inspected; and
 - (c) send a copy to the Standards Board for England.

40. ALLEGATIONS ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS - CURRENT POSITION

The Committee noted the current position of allegations made to the Standards Board for England regarding District and Parish/Town Councillors.

41. INDEPENDENT MEMBER - VACANCY

The Monitoring Officer reported that the Council had appointed a Selection Panel of District Councillors to secure the recruitment of an Independent Member as a successor to Dr D Hawes on this Committee. Publicity regarding the vacancy had resulted in the issue of 10 recruitment packs to interested parties and out of those 10 requests, 4 applications had been received. All four applicants had met the selection criteria and had been invited for interview by the Panel. One applicant had subsequently withdrawn and the remaining three applicants had attended for interview.

The Selection Panel had included Councillors Mrs D Borton and Mrs P Smith. Dr D Hawes had attended the interviews and had provided an input into the assessment process but had not voted on an appointment. The Panel had also been assisted by the Monitoring Officer and the Deputy Monitoring Officer although, like Dr Hawes, they had taken no part in the final decision and voting on an appointment.

The Committee was advised that the Council at its meeting the previous evening had adopted a recommendation of the Panel that Mr M Wright be appointed to the Committee with effect from the date of resignation of Dr D Hawes, namely 17 May 2007.

Dr D Hawes welcomed Mr Wright attending the meeting as an observer.

42. DATES OF FUTURE MEETINGS

The Committee noted that the calendar for 2007/08 provided for meetings of the Committee on 17 July 2007, 16 October 2007, 26 February 2008 and 8 April 2008.

43. DR D HAWES - CHAIRMAN OF THE COMMITTEE

Ms M Marshall on behalf of the Committee and officers supporting the Committee made a presentation to Dr D Hawes in appreciation of his work during the last six years. She stated that his experience had been invaluable to other Members of the Committee during his terms of office. Dr D Hawes responded thanking members and officers for their support during this period. The Monitoring Officer expressed thanks to Dr Hawes on behalf of the officers.

CHAIRMAN

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MEMBERS' CODE OF CONDUCT

EPPING FOREST DISTRICT COUNCIL
THE MODEL CODE OF CONDUCT

Part 1

General provisions

1. Introduction and interpretation

- (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code -
"meeting" means any meeting of:
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;"member" includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority's Monitoring Officer and an authority's Standards Committee shall be read, respectively, as references to the Monitoring Officer and the Standards Committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under Section 55(12) of the Local Government Act 2000.

2. Scope

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority:

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's Code of Conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

(1) You must treat others with respect.

(2) You must not:

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be:

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's Code of Conduct; or

(d) do anything which comprises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

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

- (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
- (a) your authority's Chief Finance Officer; or
 - (b) your authority's Monitoring Officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2
Interests

8. Personal interests

- (1) You have a personal interest in any business of your authority where either:
- (a) it relates to or is likely to affect:
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body:
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);of which you are member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;

- (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is:
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9. Disclosure of personal interests

(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.

10. Prejudicial interest generally

(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business:

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of:
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;

- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Prejudicial interests arising in relation to Overview and Scrutiny Committees

You also have a prejudicial interest in any business before an Overview and Scrutiny Committee of your authority (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12. Effect of prejudicial interests on participation

(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's Standards Committee;

- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

13. Registration of members' interests

(1) Subject to paragraph 14, you must, within 28 days of:

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under Section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's Monitoring Officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's Monitoring Officer.

14. Sensitive information

(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

ADOPTED BY EPPING FOREST DISTRICT COUNCIL
ON 28 JUNE 2007 (MINUTE 29)

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General Principles of Conduct in Public Service

Selflessness:

1. Members should only serve the Public Interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity:

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity:

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability:

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness:

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement:

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others:

7. Members should promote equality by not discriminating unlawfully against any person, by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law:

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship:

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership:

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Committee: Standards

Date: 17 July 2007

Report of: Monitoring Officer

CODE OF CONDUCT – APPLICATIONS FOR DISPENSATION

Recommendation:

To consider applications, if any, from members of the Council's Cabinet for dispensation to enable them to take part in making a decision on the establishments to be used by the Council to provide bed and breakfast accommodation for homeless persons.

Prejudicial Interests

1. (Monitoring Officer) The Council recently invited tenders for the provision of bed and breakfast accommodation to house homeless persons, when necessary. Three tenders were received and the officers are proposing that all three establishments be used with approaches being made initially to the one which submitted the lowest rates for rooms. However, as there will be occasions when that establishment does not have vacancies it will be necessary to use the others.
2. The decision to use the establishments would normally be taken by the Housing Portfolio Holder but he has advised that he has a prejudicial interest by virtue of his acquaintance with the proprietor of one of the establishments, who is a fellow district councillor. In such circumstances the matter would normally be submitted to the Cabinet for decision. However, it is anticipated that the majority of the Cabinet will have similar prejudicial interests.
3. A letter has been sent to all members of the Cabinet seeking clarification of their position and asking, if necessary, if they wish to seek a dispensation. At the time of publication of this agenda their responses are awaited and will be reported at the meeting.

Applications for Dispensation

4. Councillors with a prejudicial interest can apply in writing to the Standards Committee for a dispensation to allow them to take part in a matter.

Applications can be made on one of the following grounds:

(a) over 50% of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests: or

(b) the political balance at that meeting would be upset.

5. Only the Standards Committee can grant the dispensation and it does so at its discretion. It needs to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority.

6. The Standards Board for England advise that if failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may constitute grounds for granting a dispensation.

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REPORT TO STANDARDS COMMITTEE - 17 JULY 2007

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

Recommendations:

- (1) That the main provisions of this Bill be noted as set out in this report;
- (2) That, once the Bill has become law, further reports be submitted on the impact of this legislation on the procedures adopted by the Standards Committee for handling complaints;
- (3) Amendments to the terms of reference of the Standards Committee in the District Council's Constitution; and
- (4) A review of officer roles by the Monitoring Officer in the light of the likely new provisions in the Act.

1. (Monitoring Officer) The Local Government and Public Involvement in Health Bill contains many new provisions and revisions to governance arrangements for local authorities. Part 10 of the Act deals with ethical standards and in particular the role of Standards Committee and the Monitoring Officer in dealing with complaints against members. A summary of the major provisions in Part 10 of the Bill is set out below. It must be remembered that this is a Bill at the present time and is not planned to become law until at least the autumn of 2007.

(a) Written Allegations - Right to Make and Initial Assessment

2. This sets out the entitlement of any person to complain that a Councillor may have breached the Code. The Bill directs complainants to the relevant Standards Committee in the first instance. The Committee may then:

- (i) refer the complaint to the Monitoring Officer;
- (ii) refer the complaint to the Standards Board;
- (iii) decide to take no action.

3. Provision is also made for the Committee to refer on a complaint to another Monitoring Officer, if the Councillor is no longer a member but serves in another District.

4. There is a right for the complainant to request (within 30 days) a review of the decision not to act. This request is made to the Standards Committee. The latter has three months to respond.

5. The Bill makes provision for the Councillor to be notified of the allegation, any decision not to take any action and any request for a review. Government regulations will set out more details on this.

(b) Power to Suspend Standards Committee Functions

6. The Bill gives the Standards Board power to direct that the procedures outlined under (a) above, shall not apply to a specific allegation/request and to direct that the matter is referred to another Standards Committee (if they consent) or to the Standards Board itself.

(c) Allegations referred to the Standards Board

7. The Bill states that in cases where Standards Committees refer a case to the Board, the latter must:

- (i) refer the matter to an Ethical Standards Officer for investigation; or
- (ii) take no action; or
- (iii) refer the matter back to the Standards Committee concerned.

Notice is to be given to the various parties involved.

(d) Information to be Provided to the Standards Board

8. The Bill provides for relevant authorities to send various returns to the Board as follows:

- (i) allegations received;
- (ii) requests for reviews received;
- (iii) other action taken by the Committee under its statutory powers;
- (iv) functions exercised under the Act by the Monitoring Officer.

9. The information required and timescale for submission will be specified by direction of the Standards Board.

(e) Sub Committees of Standards Committees

10. The Bill states that sub committees dealing with parish councillors (or any other parish council related matter) must comprise:

- at least one independent member;
- parish representative in the District.

11. The parish member must be present at any such meeting.

(f) Joint Committees

12. The Bill makes provision for Joint Standards Committees for two or more authorities to be established. Regulations will be made in order to specify which functions can be covered.

(g) Ethical Standards Officer Reports

13. The Bill sets out the powers of the Standards Board to disclose these reports to Monitoring Officers. Similar provisions relate to disclosure of such reports to:

- Councillors;

- Officers;
- Members of the Executive.

14. These are conditional on disclosure assisting in the promotion of high standards of behaviour.

(h) Adjudication Panels

15. Various changes are made to the operation of case tribunals on complaints.

(i) Data Protection Act (DPA)

16. Personal data processed for any statutory function by the Monitoring Officer or an Ethical Standards Officer are exempt from subject information provisions of the DPA, to the extent that the carrying out of those functions might be prejudiced.

(j) Political Restrictions - Local Authority Staff

17. Granting and supervision of exemptions from political restrictions under the Local Government and Housing Act 1989 are to become the responsibility of the Standards Committee. Exemptions were previously dealt with by central government and relate to staff who are 'restricted' from taking part in political activity (usually senior staff or those advising the press or councillors) seeking leave to disapply the restriction.

18. The Bill allows Standards Committees to direct the Council not to include certain posts on the list of restricted posts. Standards Committee are to give priority to applications for exemptions prior to elections. Regulations are planned to provide further details.

19. Once the Bill has become law, it will be possible to assess fully the effect on the terms of reference of this Committee, the procedures that the Committee already have in place for dealing with complaints against councillors, and officer roles. It is planned therefore to submit further reports on these aspects once the final shape of the Act is known.

20. The Bill has attracted a considerable degree of debate in the Commons already and is currently before the House of Lords and there is a further schedule of amendments being proposed.

G:\C\STANDARDS COMMITTEE\0 2007\ITEM 17 JULY 07

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Agenda Item 9

(Monitoring Officer) To note the current position on allegations made to the Standards Board for England regarding District and Parish/Town Councillors.

Standards Board Reference	Current Position
SBE 18117.07, 18118.07 and 18119.07	Standards Board decided that the allegations should not be referred to an ethical standards officer for investigation. Having taken account of the available information they did not believe that a potential breach of the Code of Conduct is disclosed. They made no finding of fact.
SBE 18661.07 and 18662.07	Standards Board decided that the allegations should not be referred to an ethical standards officer for investigation. Having taken account of the available information they did not believe that a potential breach of the Code of Conduct is disclosed. They made no finding of fact.

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GUIDANCE ON GIFTS AND HOSPITALITY

1. INTRODUCTION

- 1.1 The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the Authority as acting in the public interest or as acting for the personal advantage of friends and for what personal benefit Councillors can get out of their position.
- 1.2 This guidance sets out:
- (a) the principles which should be applied whenever a Councillor has to decide whether it would be proper to accept any gift or hospitality;
 - (b) a procedure for obtaining consent to accept a gift or hospitality when a Councillor considers that it would be proper to accept it;
 - (c) a procedure for declaring any gift or hospitality received and for accounting for any gift to the Authority; and
 - (d) circumstances where acceptance of gifts and hospitality is appropriate.
- 1.3 This Code does not apply to the acceptance of any facilities or hospitality which may be provided to you by Epping Forest District Council.

2. GENERAL PRINCIPLES

- 2.1 In deciding whether it is proper to accept any gift or hospitality, Councillors should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, such an offer should not be accepted if to do so would be in breach of one or more of these principles:
- Principle 1 - Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor**
- 2.2 Councillors must act in the public interest and must not be swayed in the discharge of their duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.
- 2.3 The Public Bodies (Corrupt Offences) Act 1889 provides for a criminal offence carrying a maximum term of imprisonment of 7 years, if a Councillor acts in this manner.
- 2.4 The Council's Code of Conduct for Members provides that Councillors must act in the public interest, serving the Authority and the whole community, rather than acting in the interests of any particular individual or section of the community, and that it is a breach of the Code improperly to confer any advantage or disadvantage on any person.
- Principle 2 - Hospitality should only be accepted if there is a commensurate benefit to the Authority.**
- 2.5 The only proper reason for accepting any hospitality is that there is a commensurate benefit for the Authority which would not have been otherwise available. Acceptance can confer an advantage on the Authority, such as an opportunity to progress the business of the Authority expeditiously through a working lunch, or to canvass the

interests of the Authority and its area at a meeting. However, acceptance of hospitality for a member's own benefit or advantage, rather than for the benefit to the Council, would be a breach of the Code of Conduct.

Principle 3 – You should only accept gifts in very limited circumstances

- 2.6 Acceptance of a gift is much less likely to confer such an advantage to the Council, the presumption being that the gift is purely for the member's personal benefit. Acceptance by a Councillor of a gift for their own benefit or advantage, rather than for the benefit to the Authority, would be a breach of the Code of Conduct.
- 2.7 The only gifts which may be accepted are listed in Section 3(a) below.

Principle 4 - Never accept a gift or hospitality if acceptance might be open to misinterpretation

- 2.8 Members must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that they or the Authority favours any particular person, company or section of the community or is placing them under any improper obligation to any person or organisation. The gift or hospitality must be refused unless appropriate steps can be taken to ensure that such a misunderstanding does not arise.
- 2.9 Members must be careful in any of the following circumstances:

- (a) where the Authority is going through a competitive procurement process, so as to avoid any indication of favour for a particular tenderer;
- (b) determination of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination; and
- (c) funding decisions including cases where the Authority is determining a grant application.

Principle 5 - Never accept a gift or hospitality which puts you under an improper obligation

- 2.10 Recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If a gift or hospitality is accepted improperly, it is possible that they may seek to use this fact to persuade to determine an issue in their favour. Equally, if others note that a Councillor has been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the Authority.

Principle 6 - Never solicit a gift or hospitality

- 26.11 Councillors must never solicit or invite an offer of a gift or hospitality in connection with their position as a Councillor unless the acceptance of that gift or hospitality would be permitted under this Guidance. They should also take care to avoid giving any indication that they might be open to such any improper offer.

3. GENERAL CONSENT TO ACCEPT GIFTS AND HOSPITALITY

(a) Cases where there is a general consent to accept

3.1 The Council has agreed that members may accept gifts and hospitality in the following circumstances:

- (a) civic hospitality provided by another public authority;
- (b) modest refreshments in connection with any meeting, such as tea, coffee, soft drinks and biscuits;
- (c) tickets for sporting, cultural and entertainment events which are sponsored by the Authority;
- (d) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. (Note: a Councillor should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise);
- (e) a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom a Councillor has done business on behalf of the Authority who is met accidentally in a public house, cafe or bar. (Note: a Councillor should make reasonable efforts to return the offer where this is practicable);
- (f) a modest working lunch not exceeding £10 a head in the course of a meeting in the offices with any organisation or individual with whom the Authority has an existing business connection in order to facilitate the conduct of business. (Note: Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction, when arranging any such meeting, to make it clear to the other party that such a lunch must not exceed a value of £10 per person);
- (g) modest souvenir gifts with a value below £25 from another Council or similar public body during a visit;
- (h) hospitality received in the course of an external visit or meeting which has been duly authorised by the Authority. (Note: Councillors should request officers to settle the detailed arrangements, with officers under an instruction to make it clear that any such hospitality is to be commensurate with the occasion);
- (i) other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the procedure set out in (b) below.

(b) Procedure for gifts under Paragraph 3(a)(i) above

3.2 A Councillor must, as soon as practicable after the receipt of a gift meeting the description under (a)(1) above, pass it to the Head of Research and Democratic Services/Chairman of the Council together with a written statement identifying the information set out in Paragraphs 3(c) below. A letter will then be sent to the person or organisation making the gift thanking them for the gift and informing them that it has been donated to the Chairman's Charity with the proceeds being donated to a charitable cause chosen by the Chairman.

(c) Cases where special consent to accept can be obtained

- 3.3 If a member wishes to accept any gift or hospitality which is in accordance with the General Principles set out in Section 2, but is not within any of the general consents set out in Section 3, they may only do so if they have previously obtained specific consent in accordance with the following procedure.
- 3.4 The Councillor must make an application in writing to the Monitoring Officer, setting out full details of the offer and must not accept the gift or hospitality until you have received the appropriate consent.
- 3.5 The Monitoring Officer will enter details of any approval in a register which will be available for public inspection on the occasion of the public inspection of the Authority's accounts for the relevant year. This does not however relieve the Councillor of the obligation to register the receipt of gifts and hospitality in accordance with Section 4, below.

4. REPORTING

- 4.1 Where a Councillor accepts any gift or hospitality which is estimated to have a market value or cost of provision of £25 or greater, they must, within 28 days of as soon as possible after receivingpt of the gift or hospitality register the source of the gift/hospitality.; ~~make a declaration in writing to the Monitoring Officer, setting out the information in Paragraphs 2(b) above. A form for this purpose is available, but this can be sent by any convenient means. The Monitoring Officer will retain a copy of any such declaration in a register.~~ ANY GIFT OR HOSPITALITY MUST BE REGISTERED BY AMENDING YOUR REGISTRATION OF INTEREST. ONLY GIFTS AND HOSPITALITY IN CONNECTION WITH OFFICIAL DUTIES OF COUNCILLORS SHOULD BE REGISTERED.
- 4.2 Any gifts/hospitality registered under 4.1 are automatically a personal interest in any matter considered by the Council which is likely to affect the person who gave the gift/hospitality. The personal interest must be declared at all meetings and consideration given to whether the interest is a prejudicial one. After a period of 23 years from the date of receipt the duty to disclose ceases.
- 4.32 Even if the value of the gift or hospitality is less than £25, and the member is concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, a Councillor may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

5. GIFTS TO THE COUNCIL RATHER THAN A COUNCILLOR

- 5.1 Councillors should not solicit any gift on behalf of the Authority except where the Authority has formally identified the opportunity for participation by an external party for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements.
- 5.2 If Councillors receive such offers on behalf of the Authority, they must first consider whether it is appropriate for the Authority to accept and report the offer to the Monitoring Officer together with their recommendation. The Monitoring Officer will then write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the Authority. If a Councillor

has any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the Authority to accept the gift, they should consult the Monitoring Officer directly.

Adopted by Epping Forest District Council on [28 July 2005](#)

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

Revised Version: **April 2007** |

CONTENTS

Section	Subject
1	Purpose of Protocol
2	Summary of Provisions
3	Status of Protocol
4	Training Requirements
5	Dual Hatted Councillors
6	Fettering A Councillor's Discretion
7	Cabinet Members - Conflicts of Interest on Planning Matters
8	Property Interests
9	Gifts and Hospitality
10	Pre-Application and Post-Application Discussion
11	Presentations Regarding Development Proposals
12	Attendance of the Public at Planning Meetings
13	Substitute Councillors and Attendance of Non-Members at Meetings
14	Officer Reports to Committees
15	Determination of Planning Applications
16	Decisions Contrary to Officer Recommendations
17	Voting at Planning Committees
18	Voting by Chairmen
19	Second or Casting Vote by Chairmen
20	Site Visits
21	Lobbying
22	Planning Applications Submitted by Councillors and Council Officers
<u>23</u>	<u>Prejudicial Interests & Councillors' Representative Role</u>
<u>234</u>	Applications for Planning Consent by the District Council
<u>245</u>	Review of Decisions
<u>256</u>	Complaints
<u>267</u>	Human Rights Act 1998
<u>278</u>	Planning Inquiries, Court Proceedings and Public Hearings
Appendix 1	Councillors' Interests - Quick Guide
Appendix 2	Lobby Groups – Quick Guide

1. Purpose of Protocol

- 1.1 This protocol has been prepared to guide Councillors 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 Councillors 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 Councillors' 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 Councillors 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 Councillors 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 Councillors 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 or they have not reserved their position on any application at Parish level.

- 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 Members with a prejudicial interest in a planning application must be careful to ensure that if they intend to exercise their right under the Code of Conduct to make representations on that matter, they should do so in accordance with the advice contained in this protocol.

... 2.1⁵⁴ 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 Councillors 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 Councillors (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 Councillors (including Parish and Town Council members) involved in planning should receive appropriate training, before being involved in making planning decisions. The Standards Committee will facilitate such training which should be regarded as obligatory for all Councillors.
- 4.2 No Councillor 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 Councillor 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, Councillors 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 a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph ~~10(2)(a)~~ 8 of the Code to members of "another relevant authority" reinforces this point. "any body exercising functions of a public nature" includes other local authorities. The Code says that such dual memberships create a personal interest for any Councillor which is to be declared only if the member decides to speak.

5.2 If an issue is for discussion at both the parish and district level, and a Councillor sits 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) interests 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 a Councillor 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)~~ 8 of the Code.

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. This reinforced by the code of Conduct which requires declarations of prejudicial interests to be made on financial issues and on matters relating to the granting of consents by the Council (including planning matters). Even though these situations fall within the scope of sub-paragraphs ~~10(2)(a) and (b)~~, 8, a reasonable member of the public would think that your judgement 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.

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

6. Fettering a Councillor's 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, Councillors 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 Councillor 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.
- 6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

7. Cabinet Members – Conflicts of Interest on Planning Matters

- 7.1 Under the Council's executive constitution there is a clear distinction 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 Councillors 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 prejudicial 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~~ include acceptance of gifts ~~under the Code of Conduct in their registration of interests under the Code of Conduct. Such acceptances create an automatic personal interest for 3 years thereafter and may lead members to conclude that any planning matter affecting the person giving the gift involves a prejudicial interest.~~
- 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 Councillors

- 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. Councillors 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. Councillors 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 Councillors will be subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its 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. Presentations Regarding Development Proposals**
- 11.1 The District Council is approached from time to time about development proposals for sites within the District. Such requests involve:
- (a) presentations on schemes which may eventually result in planning applications;
 - (b) supply of development brief and other written material on the proposals;
 - (c) indications of a wish to hear views and answer questions on the scheme.
- 11.2 Such requests need to be treated with caution. Invariably the sponsors of such schemes will be anxious to receive any indications, whether positive or negative, about their proposals and whether planning approval will be forthcoming. Councillors should carefully consider whether it is advisable to agree such requests or whether it is preferable to rely on normal planning processes.
- 11.3 If such a presentation is to be entertained, they should be regarded as the exception rather than the rule. The reasons for and against need to be carefully weighed, both from the point of view of members making themselves better informed and from the public perception particularly among those who may oppose the scheme. Councillors also need to avoid fettering their discretion in relation to any subsequent planning application. They should -

- (a) restrict themselves to listening to the presentation and reading the material provided;
- (b) restrict themselves to clarifying facts and asking questions and not express opinions without reserving their opinion until all the facts are to hand;
- (c) avoid 'one-to-one' discussions with the developers either at a presentation or separately.

11.4 It is important that a planning officer accompanies Councillors at such presentations.

12. Attendance of the Public at Planning Meetings

12.1 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.

12.2 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.

12.3 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.

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

13. Substitute Councillors and Attendance of Non-Members at Meetings

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

13.2 The rules governing substitute Councillors 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.

13.3 The effect of a substitution is that the substitute Councillor shall be a full member of the Committee for the same period.

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

14. Officer Reports to Committees

- 14.1 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 Councillors and updating information will be provided to Councillors only if there have been any significant developments or changes to the report.
- 14.2 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 on occasion involve tabled written material.
- 14.3 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers therefore, Councillors 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.

15. Determination of Planning Applications

- 15.1 Whilst Councillors 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 Councillors reach an informed decision.
- 15.2 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.
- 15.3 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.
- 15.4 Voting on decisions shall be by a show of hands.
- 15.5 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.

- 15.6 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.

16. Decisions Contrary to Officer Recommendations

- 16.1 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.
- 16.2 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.
- 16.3 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.

17. Voting at Planning Committees

- 17.1 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.
- 17.2 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.

18. Voting by Chairmen

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

19. Second or Casting Vote of Chairman

- 19.1 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 concerned.

20. Site Visits

- 20.1 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.
- 20.2 Any response to questions or statements by interested parties at site visits should follow the good practice summarised above. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party.

- 20.3 All formal site visits should be conducted in a single group.

21. Lobbying

- 21.1 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.
- 21.2 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

- 21.3 Lobbying of Councillors 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.
- 21.4 Councillors 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 Councillors to view a site from a public place.

Lobbying by Councillors

- 21.5 Councillors should avoid organising support for, or opposition to, planning applications and should not lobby other Councillors 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 Councillors should not put pressure on officers for a particular recommendation. The Code of Conduct requires Councillors to respect this impartiality.
- 21.6 Councillors should not lobby their colleagues on the Council 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 Councillors to vote in a particular way on a planning application.
- 21.7 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

- 21.8 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. Councillors 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.

- 21.9 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.
- 21.10 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

- 21.11 Sometimes, organisations within the District may have memberships which include Councillors. Where such organisations make representations about planning applications, any Councillor who will be involved in determining such applications must be careful to avoid any conflict of interest. They should be careful to ensure that they take no part in helping the organisation to formulate its representations as they may, in doing so, have fettered their discretion and created a prejudicial interest. Within the organisation they may be best advised not to participate. This is advice which could equally well relate to other functions of the Council such as licensing.
- 21.12 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 a Councillor who is a member of that group is 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 Councillor may have a personal or prejudicial interest in it.

- (c) Councillors should determine whether a prejudicial interest in a matter of indirect impact exists by considering 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.

Note: 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.

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

(a) Prejudicial Interest - Councillors

- 22.1 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.
- 22.2 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 and the Head of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Head of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of Service respectively. Both postholders shall also advise the appropriate Joint Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. 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.
- 22.3 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 unless they decide to exercise their right to make representations (see Section 23 below).
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should also 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.

(b) Applications by Officers

- 22.5 An officer submitting an application has a clear interest in that application. He or she must also declare that interest and leave if present at the meeting at which the application is discussed. They must then leave the meeting. 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.
- 22.6 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.

(c) Objectors

22.7 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.

(d) Membership of Political Groups and Political Parties

22.8 On occasions, planning applications etc from fellow Councillors and political parties can give rise to concerns about conflicts of interest for Councillors who have close associations with the applicant or are members of the same those within the political grouping. This often creates a situation where all members of a Committee who have that relationship feel that they must take no part in the decision. The consequence of this can be that applications have to be referred on to another body or delayed. Clearly where members of the public attend to make their views known, they will form a negative impression of the planning process unless the position is clearly thought through beforehand.

22.9 Although wholesale declarations may sometimes be unavoidable, declarations of prejudicial interests must not be made on a collective basis or following a political instruction. The Code of Conduct clearly requires the individual Councillor to think through their own position and act accordingly. If individual decisions can be made on this basis, there should be more opportunity for Area Plans Sub Committees to maintain a quorum and make decisions, albeit that some members will have to leave the meeting.

22.10 Planning officers will also review such applications and make a judgement that there are clear policy arguments for referring a case direct to the District Development Control Committee.

23. PREJUDICIAL INTERESTS AND A COUNCILLOR'S REPRESENTATIVE ROLE

23.1 The preceding section deals with the prejudicial interests which exist where Councillors etc are applicants or objectors on planning matters.

23.2 The revised Code of Conduct provides that a personal interest will also be a prejudicial interest if the matters affects Councillors' financial interests or relates to a licensing or regulatory matter and a member of the public, who knows the relevant facts, would reasonably think that the personal interest is so significant that it is likely to prejudice their judgement of the public interest. Regulatory matters include planning decisions. Equally prejudicial interest can arise as a result of "fettered discretions" as a consequence of advice in this protocol.

23.3 All such interests must be declared and the nature of that interest described. Councillors must then leave the room. Area Plans Sub Committees, the District Development Control Committee and (where necessary) the Council make provision for applicants and objectors to make representations for a maximum of three minutes.

23.4 The Code of Conduct allows Councillors who have a prejudicial interest in a planning matter to exercise the same rights as a member of the public. Thus he or she can attend a planning meeting for the purpose of:

(a) making representations; or

(b) giving evidence; or

(c) answering questions.

In these circumstances, the Councillor will be subject to the Council's policy for public speaking at planning meetings.

23.5 Once the member has spoken, the Code of Conduct requires that he or she leaves the meeting room and takes no part in the decision. Councillors might wish to exercise this right –

(a) to submit representations on behalf of constituents;

(b) to make representations as applicant or objector or as Parish Councillor representative.

Councillors should not sit with other members when they make these representations. They should present them in the same way as would be expected of a member of the public, ie in accordance with the Council's policy as referred to earlier.

23.6 It is very important that the procedure for Councillors who have a prejudicial interest is perceived as quite distinct from their normal ~~role~~ particularly if they are a member of that Committee ~~any way~~. Members must be scrupulous in making this distinction clear.

243. Application for Planning Consent by the District Council

243.1 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.

243.2 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.

243.3 Section 7 above deals with conflicts of interest which can arise if Cabinet members are involved in determining applications for which they are responsible.

254. Review of Decisions

254.1 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.

254.2 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.

265. Complaints

265.1 The Council's compliments and complaints procedure allows any member of the public to complain about any aspect of how the planning system operates.

265.2 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.

265.3 The Standards Board for England will consider complaints by any member of the public (including officers and other Councillors) 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.

265.4 The Standards Committee has a role in reviewing and monitoring this protocol and if necessary offering advice on its operation.

276. Human Rights Act 1998

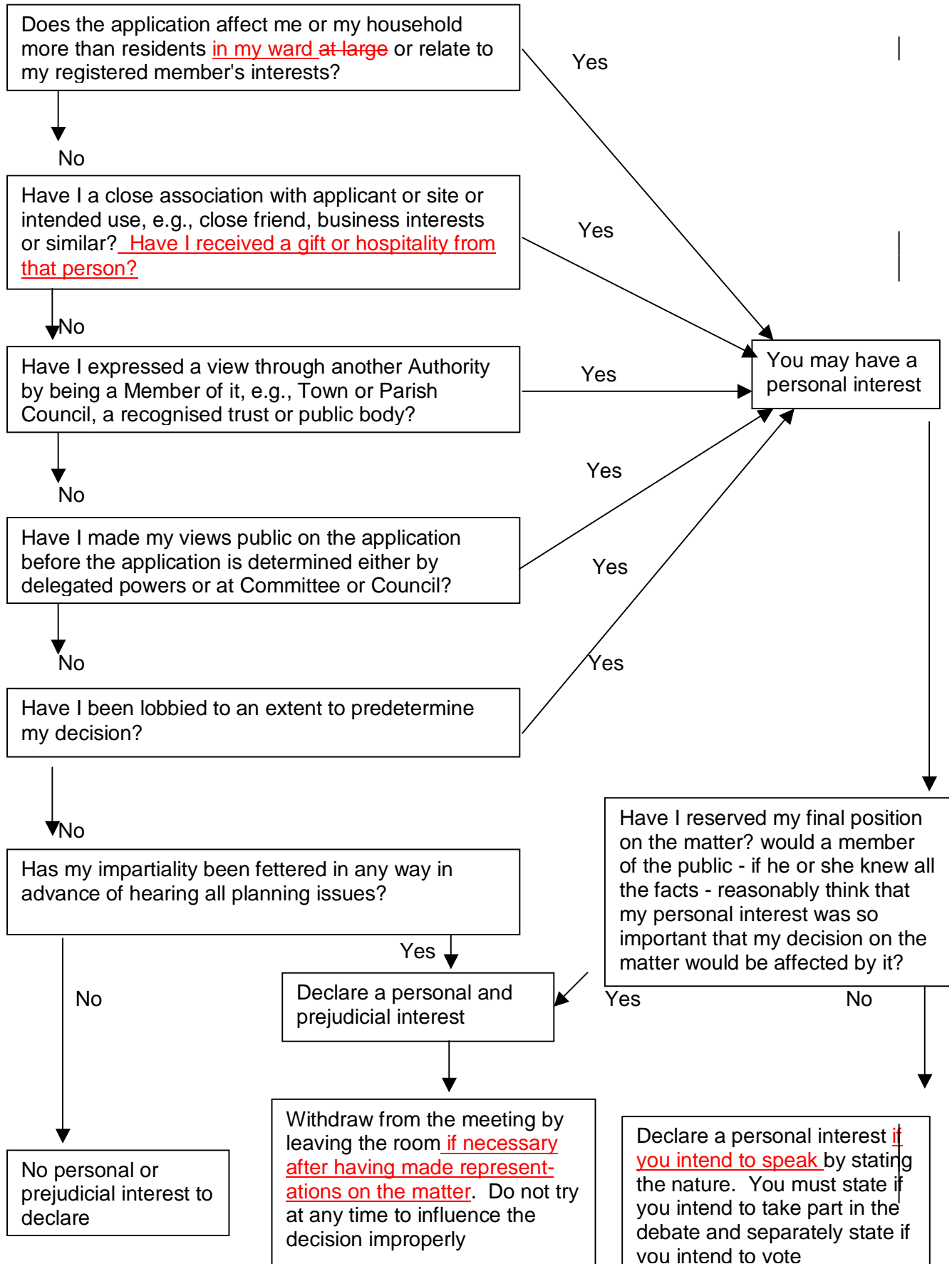
276.1 The provisions of this protocol acknowledge throughout the rights of citizens in the planning process and the duty of the Council to reflect those rights in its procedures.

287. Planning Inquiries, Court Proceedings and Public Hearings

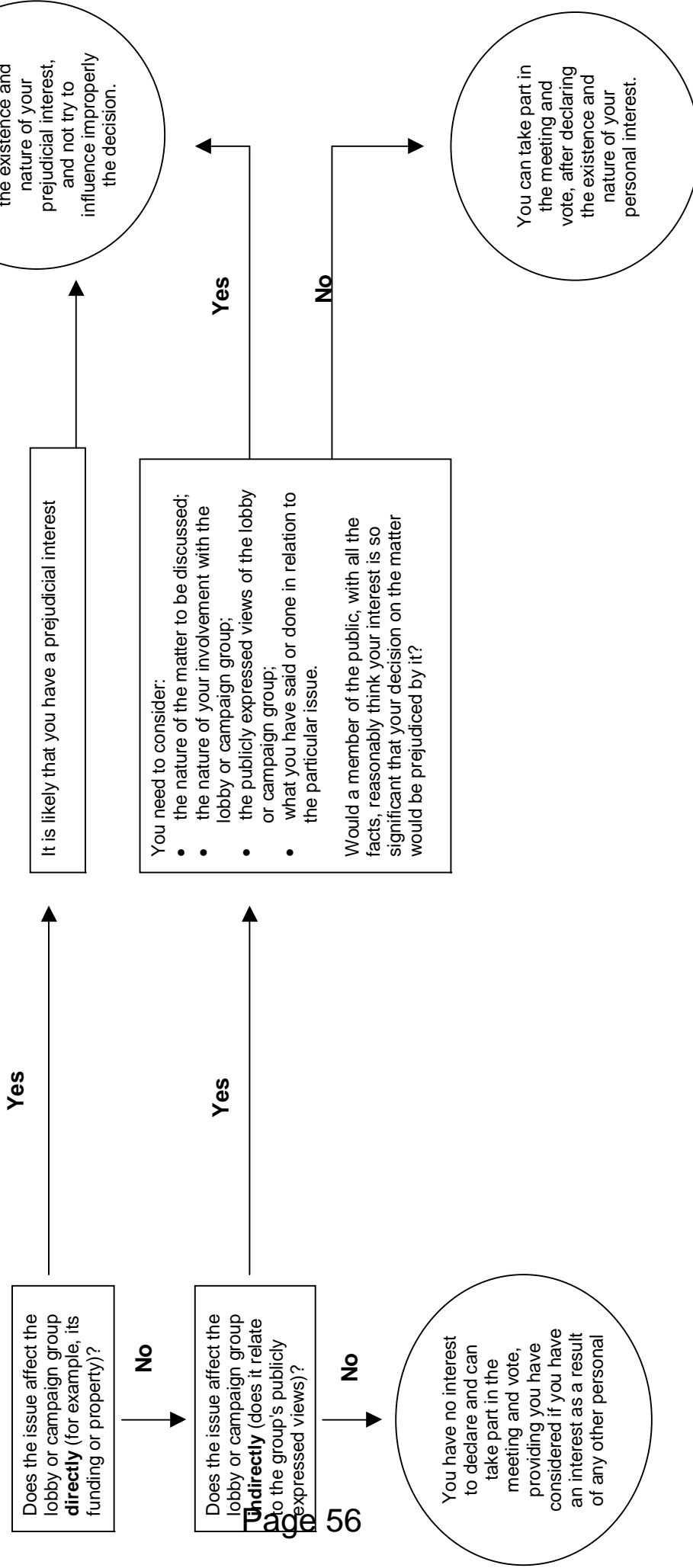
287.1 Often planning decisions of the Council lead to further proceedings by way of appeals heard at Public Inquiries or hearings or in Court. The question often arises about involvement by Councillors in such circumstances.

287.2 Councillors 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 Councillors on a personal basis.

FLOW CHART PLANNING PROTOCOL – MEMBERS/OFFICERS' INTEREST GUIDANCE



DECLARING INTERESTS - LOBBY GROUPS



PROTOCOL ON THE USE OF FACILITIES FOR COUNCILLORS (REVISED VERSION.....)

1. PURPOSE OF PROTOCOL

1.1 This protocol is designed to support the provisions of the Code of Conduct in respect of the proper use of facilities provided for elected members.

1.2 The protocol is not intended to be a statement of policy on behalf of the Council.

2. CODE OF CONDUCT REQUIREMENTS

2.1 The Code of Conduct for Councillors includes a requirement that they must, when using or authorising the use by others of the resources of the authority -

(a) act in accordance with the authority's requirements; and

(b) ensure that such resources are not used for political purposes (including party political purposes); unless that use could be reasonably regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

(c) have regard to any Local Authority Code of Publicity (if applicable) when using the Council's resources in accordance with (a) above.

2.3 Councillors are also under a general obligation not to do anything which compromises the impartiality of officers of the Council or disclose ~~confidential or exempt~~ information, which you consider to be confidential unless :

(a) consent is obtained from the person authorised to give it;

(b) disclosure is required by law;

(c) disclosure is to a third party for the purpose of professional advice and that person agrees not to disclose the information;

(d) disclosure is in the public interest in accordance with all the Code of Conduct's requirements.

3. ADVICE ON FACILITIES FOR COUNCILLORS

Information Technology

... 3.1 Appendix 1 to this protocol sets out specific requirements as to the proper use of IT facilities.

Correspondence

3.2 Members of the Council can engage in correspondence in a number of different ways. These are discussed below:

(a) Correspondence as a Ward Councillor or as an Individual Councillor

... Councillors will from time to time be responding to correspondence generated from constituents in their ward. A special letter heading should be provided to members in order that they may conduct such correspondence. This letterhead should include a disclaimer indicating that any correspondence does not necessarily bind the authority to any views

expressed by the author. Where decisions have yet to be made by a Council, members should be careful to indicate the possible timescale for that decision and some of the considerations which may be taken into account. This same letterhead should also be used for Councillors who wish to express views to external agencies. An electronic template can also be made available.

Correspondence conducted through e-mails or using Councillors' own notepaper should also include the disclaimer shown in Appendix 1.

(b) Correspondence As a Member of a Political Group or Party

Council stationery should not be used for correspondence conducted by an individual Councillor or by a political group, if it concerns the operations of a party or political group. At all times, Councillors should use the appropriate party or group letter headings. This will avoid misunderstandings with correspondents about the role of political organisations and the Council's official position. Typing or e-mailing of such correspondence should be the sole responsibility of the political group or political party concerned and members should not seek to use Council facilities for that purpose.

3.3 In conducting correspondence of this nature, Councillors should always follow their obligations under the Code of Conduct of treating others with respect, not bringing their Council into disrepute and supporting the Council in promoting equalities.

(c) Correspondence as Portfolio Holder or Leader of the Council

The Cabinet has sole responsibility for executive decision-making. Cabinet members can usually leave official correspondence on Cabinet decisions to a Joint Chief Executive or the appropriate Head of Service. Where Cabinet members do conduct such correspondence they should be careful to refer to the Cabinet's decisions or policy and not give personal opinions without making this clear. Cabinet members should always send copies of their correspondence to the relevant Joint Chief Executive or Head of Service.

(d) Correspondence as a Chairman of a Committee or the Council

3.4 Chairmen of Committees may engage in correspondence. A Chairman of a Committee has, however, no formal status in terms of decision-making by the Committee concerned. For reasons of courtesy or protocol a Chairman may need to deal with correspondence. It is however preferable for correspondence to be conducted by the Head of Service concerned, but if Chairmen do prepare correspondence, they should send copies to the relevant Joint Chief Executive or Head of Service.

3.5 The office of Chairman of the Council is assisted by a dedicated support officer. The postholder conducts correspondence on behalf of the Chairman and Vice-Chairman of the Council.

3.6 Care should be taken to restrict correspondence to matters relating to the civic and Council aspects of the Chairman's role together with any matters concerning the annual charity appeal.

4. USE OF ACCOMMODATION

4.1 Accommodation is used by Councillors for a number of purposes. Advice is given below:

Civic Accommodation

4.2 Accommodation is provided by the Council for civic purposes. This includes the Members' Room, the writing room and the group room. This is provided for Councillors' use who have full rights of access. Members of the public should only be invited after advising the Portfolio Holder for Corporate Support Services or the appropriate Head of Service before issuing invitations. The Chairman of the Council has first call on this accommodation in order to undertake the Council's civic responsibilities which all members need to bear in mind.

4.3 Use of other Council venues for political group or party political purposes must be restricted to venues available to the public generally and paid for at the full hire costs. Councillors should not seek to hire accommodation which is provided for specific purposes or where public use is in any way restricted by the Council's policy.

4.4 Officers of the Council should be aware that civic accommodation is provided for members of the Council. Approval should be obtained from the Chairman of the Council or the Leader of the Council if officers wish to use the members' suite.

Political Party and Political Group Meetings

4.5 The Code of Conduct states that facilities for Councillors may be provided for political purposes if these are conducive to the proper despatch of Council business. Political group meetings comprising councillors and one or two external advisers can be seen as a useful means of progressing Council business in that they allow co-ordination of political group views which can assist in achieving a consensus about future Council decisions. Such meetings would be appropriate to be held in the Council Offices.

4.6 Meetings of political parties are held to further the political aims and objectives of the party concerned and for this reason Council accommodation should only be used if a public commercial booking is available under the Council's policy.

Councillors' Surgeries

4.7 Council accommodation provided for surgeries should be available to all members of the Council, in accordance with Council policy and subject to any stipulations which restricts that use.

5. WORD PROCESSING AND PHOTOCOPYING

5.1 Facilities are often provided by local authorities for word processing/photocopying of documents by Councillors. These are discussed in turn below:

(a) Supply of Photocopied Documents

5.2 Councillors have certain statutory rights to documents and they may ask for copies. It may be necessary in some cases for members to demonstrate why they need to have this information particularly if personal, exempt or confidential information is involved.

5.3 Any photocopiers provided for use by Councillors should not be used for personal or political items.

(b) Typing

5.4 Typing resources are provided by the Authority for Councillors to assist them with their official work. These should not be used for party political or political group matters. Typing facilities are also available to the Chairman of the Council, as the civic head of the Authority, and special letter headings, etc. should be provided for that purpose.

5.5 Councillors should not make unreasonable demands as to provision of typing services if this conflicts with other work required by the Authority.

5.6 Councillors who type their own correspondence should ensure that they use the correct letterhead and envelopes provided by the Authority. These should always include a disclaimer of the kind discussed earlier in this protocol.

(c) Political Groups and Political Parties

5.7 Political groups or political parties may wish to engage the Council's reprographics service to undertake printing work. If this service is available, the cost should always be charged at the agreed Council rates. The Council will however reserve the right to refuse material which breaches the Code of Conduct, local government statute law or would otherwise bring the Council into disrepute. Councillors are advised to be particularly mindful of the requirement for them to make their own arrangements for printing of election material. This must show the name of the printer and it is clearly inappropriate for this to be the Council.

6. TRAINING

6.1 The Council provides training designed to equip members for their various roles. Members should regard attendance at those courses as essential, and strongly recommended, particularly where the training specifically relates to tasks they must undertake as a Committee or Cabinet member.

7. REVIEW OF PROTOCOL

7.1 This protocol was adopted by the Epping Forest District Standards Committee on 14 February 2006 and will be reviewed when required.

Guidance on the Use of IT by Councillors

1. Purpose of Guidance

- 1.1 The Council provides Councillors with an allowance towards the costs of providing and maintaining equipment, software or other consumables necessary to allow them to access the Committee Management System and selected other systems. This protocol gives advice on use of computer equipment in order to minimise risks to both the Council and to individual Councillors.

2. Security

- 2.1 Under the terms of the Connectivity Scheme, Councillors are responsible for:

- (i) ensuring that their password and secondary authentication equipment remain accessible only by themselves;
- (ii) abiding by the Council's published ICT policies and standards relating to security of systems and data and remote working;
- (iii) meeting the requirements of the Local Government Act 1972 and any subsequent Act in relation to exempt and confidential information; and
- (iv) adhering to specific user policies for systems they are given access to.

3. Use of Equipment

- 3.1 Councillors should be mindful of the onus placed upon them under 2 above. They should ensure that any material down-loaded via the Intranet is kept securely at any remote location. Councillors should ensure that if the computer is shared, proper arrangements are made to limit access to materials stored by the member, that fall into exempt and confidential categories. Such material will be routinely endorsed "Restricted".

- 3.2 Councillors should not store or download any material which:

- (i) causes the Council to be brought in to disrepute;
- (ii) contravenes the Access to Information or Data Protection Acts or similar legislation;
- (iii) is illegal or inconsistent with the high standards expected of those in public office;
- (iv) is defamatory; or
- (v) breaches the Council's Code of Conduct (including confidentiality).

- 3.3 If a Councillor uses their computer for the preparation of any material of a personal or political nature, he/she must make it clear that such material is published in a private capacity and not by or on behalf of the Council, and that no costs have been incurred by the Council as a consequence of its publication. Similarly, a Councillor should not express views on any matter relating to the Council without expressly indicating that the views are personal and not those of the Authority.
- 3.4 Councillors should be aware that the internet is a completely unregulated medium and they are not protected in any way from viruses etc.
- 3.5 The Council accepts no responsibility for Councillors' use of IT equipment.

For more information see the Member Connectivity Scheme and related ICT Policies.

EPPING FOREST DISTRICT STANDARDS COMMITTEE

ADVICE NOTE – DECLARATIONS OF INTEREST FOR MEMBERS SERVING ON OUTSIDE ORGANISATIONS AND OTHER PUBLIC AUTHORITIES (REVISION ~~JULY 2005~~ 2007)

1. PURPOSE OF ADVICE

- 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)-13~~)(Page ~~Q6-*~~ of the Constitution Binder) ~~sets out the circumstances where a personal interest may not be regarded as a prejudicial interest. These include:~~ requires that personal interests must be registered at any meeting where:
- (a) ~~where~~ a member holds a position of general control or management in another public authority; or is a member of or in a position of control or management of any other body where nominated or appointed by the Authority;
 - (b) ~~where~~ the member has been appointed or nominated by the Authority as its representative on an outside organisation; is a member or in position of control or management in any other body exercising functions of a public nature.
- 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. In either of cases under (a) or (b) above, the Code of Conduct does not require the member to declare that interest if unless he or she wishes to speak or if the personal interest is also a prejudicial one.~~

4. EXPLANATION OF OTHER PUBLIC BODIES

- 4.1 Bodies to Which Councillors are Appointed or Nominated by the Council

There are bodies where Councillors are appointed by specific resolution of the Council (usually at the Annual Council meeting). "Appointed" means the Council has an automatic right to send in representatives whereas "nominated" refers to organisations which retain the power to accept or reject a Council representative.

4.2 Any Other Bodies Exercising Functions of a Public Nature

Tests as to whether an organisation meets this definition are:

(a) does the body carry out a public service?

(b) is the body carrying out a public function on behalf of a Public Authority (including "outsourced" activities);

(c) is the body exercising its functions under legislation or ~~some other~~ statutory power;

(d) can the body be judicially reviewed?

If the answer is No to all these questions, it is unlikely that the body is one which exercises functions of a public nature.

Examples of bodies which can meet this definition are:

- Regional and Local Development Agencies
- Other Government Agencies
- Other Councils
- Public Health Bodies
- Council-owned companies (exercising public functions)
- "Arms Length" management organisation for housing on behalf of the Council
- School Governing Bodies

~~4.5. ADVICE FROM STANDARDS BOARD FOR ENGLAND – BACKGROUND~~

~~4.4.1 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. Specific issues have also arisen in relation to Trusts and Similar bodies, Campaign and Lobby Groups~~

~~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 note has been revised to take account of that advice. Further advice was also given on campaign and lobby groups.~~

~~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.~~

~~5. TRUSTS AND SIMILAR BODIES~~

~~5.25.1 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.~~

~~Campaign and Lobby Groups~~

~~5.32 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~~

~~5.43 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.~~

~~5.54 The Committee does not regard Citizens’ Advice Bureaux (or similar organisations) as public authorities.~~

~~6. SUMMARY OF ADVICE~~

~~6.1 Referring to the [fourthree](#) situations on which we were asked to advise as set out in Paragraph 1.21 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 ~~need only must~~ declare a personal interest in ~~all~~ matters relating to that body ~~if they intend to speak~~. 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 ~~if they intend to speak~~ 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 ~~give~~ ~~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 ~~where they are acting in an official capacity~~, particularly where issues about lobbying arise.

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

OUTSIDE ORGANISATIONS - SUMMARY OF ADVICE		
Status of Councillor Serving on Outside Body	Recommended Declaration of Interest - Non Financial Issues	Recommended Declaration of Interest - Financial Issues (inc grant aid <u>and estates matters</u>)
Rank and File Member or Officer Holder in a position of control and management <u>on an outside organisation</u> (viz Chairman, Vice-Chairman, Treasurer, Secretary, Board Member, Trustee etc) appointed by the Council <u>as its representative</u> .	Personal Interest - declare <u>only if and taking</u> part in consideration.	Personal and Prejudicial Interest - declare interest and leave meeting.
Rank and File Member or Officer Holder in <u>another body exercising functions of a public nature organisation (or holder of i.e. in a position of control and management) not appointed by the Council</u> .	Personal - declare <u>only if and taking</u> part in consideration <u>unless there is a prejudicial interest which requires the member to leave the meeting</u> .	Personal and Prejudicial Interest - declare interest and leave meeting.
Member of another public authority including positions of control or management (<u>e.g. Health Authority, Police Authority, Fire Authority, Lea Valley Park Authority</u>) - either appointed by EFDC or appointed separately.	Personal Interest - declare <u>only if and taking</u> part in consideration.	Personal <u>and Prejudicial</u> Interest - declare <u>interest and take part of consideration UNLESS discussion of financial matters involves a prejudicial interest which requires the member to and leave the meeting</u> .
Formal Member of a Campaign or Lobby Group.	Personal interest	Prejudicial interest if the matter before the Council bears directly on the financial status or similar matter.
Non Member of a Campaign or Lobby Group (including attendance at any such meeting) as a member of the public.	None	None

APPENDIX

<p>Formal member of a Campaign Group.</p>	<p>Personal interest if matter relates to the aims and objectives of the Group only.</p>	<p>None</p>
<p><u>Any body directed to Charitable Purposes - not appointed by the Council</u></p>	<p><u>Personal Interest - declare only if taking part in consideration.</u></p>	<p><u>Personal and Prejudicial Interest.</u></p>

N.B. The advice set out in the above table is intended to apply to informal situations as well as formal meetings.
July 2005