

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Customer and Democratic Services
(Monitoring Officer)

TO: Standards Committee

13/6/2007

WARDS: None directly affected

ADOPTION OF REVISED CODE OF CONDUCT FOR MEMBERS

1 INTRODUCTION

- 1.1 The Council adopted the present Code of Conduct for Members in 2001. Parliament has approved a revised Code which the Council is obliged to adopt in its place by October 2007. The Standards Committee is being asked to recommend adoption of the Code by the Council when it meets on 5 September.
- 1.2 In practice, the Council has little choice in the matter. The provisions of the Code are mandatory. If the Council fails to adopt the revised Code, it will automatically apply to the Council from October.

2. RECOMMENDATIONS

- 2.1 That the Standards Committee recommends the adoption of the revised Code of Conduct for Members set out in Appendix A in place of the current Code.
- 2.2 That the Council retains its local scheme for the declaration of gifts and hospitality (as set out in Appendix B) as a supplement to the revised Code.
- 2.3 That the Council retains its 'Planning Code of Good Practice' (as set out in Appendix C) as a supplement to the revised Code.
- 2.4 That the Council make it a 'reasonable requirement' for members to consult the Monitoring Officer or Chief Executive before disclosing confidential information pursuant to the exemption in the Code, other

than in circumstances in which such consultation would be against the public interest.

2.5 That the Committee recommend that training in the provisions of the Code should be regarded as mandatory for all councillors.

3. **THE REVISED CODE**

3.1 As explained above, the Council is obliged to adopt the revised Code and has no discretion to amend it. (Hence the inclusion in Appendix A of reference to parish councils.)

3.2 There are a number of major changes to the Code and these are summarised below:

1. The definition of a personal interest has been relaxed. Councillors will not have to declare interests that they share with most people in the ward or electoral division affected by the decision.
2. There are changes affecting the declaration of interests by dual-hatted members (i.e. members of more than one public body) and members appointed or nominated by the Council to outside bodies. Where a matter that affects the other body is being discussed at a meeting of the authority, these members will not be required to declare that they have a personal interest in the matter before they vote, unless they wish to speak on the matter or unless the personal interest is also a prejudicial interest.
3. Prejudicial interests now only arise if a matter affects a member, their family, or their close associates in the following ways:
 - it relates to their finances or it concerns regulatory functions such as licensing or planning which affect them; and
 - a reasonable member of the public with knowledge of the facts would believe their ability to judge the public interest would be impaired.

Where members have a prejudicial interest, the Code gives them the same rights as members of the public to speak to a meeting on the matter. However, once they have done so, the member must immediately leave the meeting room, as currently required, and cannot remain to observe the vote on the matter.

4. Gifts or hospitality over the value of £25 must now be included in the member's register of interests. This means that a personal interest must be declared at any meeting where a matter relating to that interest is discussed.
5. The prohibition in the previous code against unlawful discrimination has been replaced by a duty not to do anything that may cause the authority to breach its statutory duties under equality laws (including anti-discrimination laws).
6. A new provision makes it clear that bullying is prohibited by the Code.
7. Another new provision states that members must not intimidate or attempt to intimidate anyone involved in an investigation, such as a complainant, a witness or an officer involved in the conduct of an investigation.
8. The Code does not incorporate the Ten General Principles of Public Life, which were set out in 2001 in a statutory instrument approved by Parliament. However, members are required to read the Code together with these general principles. Although members are not legally obliged to observe the principles, a failure to follow them may indicate behaviour that could potentially breach the Code. For ease of reference, we have appended the Principles to the Code.
9. Assuming the Local Government and Public Involvement in Health Bill becomes law, the Code will apply where criminal activity has been committed in a private capacity, but not in relation to other conduct which solely concerns a member's private life.
10. The ban on disclosing confidential information has been relaxed to allow disclosure of confidential information where:
 - the disclosure is made to a third party for the purpose of obtaining professional advice (provided that person agrees not to disclose it)
 - the disclosure is reasonable and in the public interest, made in good faith, and does not breach the reasonable requirements of the Council.

- 3.3 Whilst the Council has no discretion to amend the model Code, it can supplement its provisions. For many years, the Council has had made more rigorous arrangements for the declaration of gifts and hospitality. These were last confirmed in December 2005. Although there are some changes to the Code with regard to gifts and hospitality, the Council's scheme remains relevant and the officers recommend that it is retained. The Council's scheme is set out in Appendix B.
- 3.4 The Council has also adopted a 'Planning Code of Good Practice' to supplement the Code. This is set out in Appendix C. The officers recommend its retention.
- 3.5 As mentioned above (paragraph 3.2.10) the ban on disclosing confidential information is relaxed. However, disclosure has to be reasonable and in the public interest and made in good faith. It also should not breach 'the reasonable requirements of the Council'. The officers suggest that the Council make it a 'reasonable requirement' for members to consult the Monitoring Officer or Chief Executive before disclosing confidential information other than in circumstances in which such consultation would be against the public interest.

4. **CONSULTATIONS AND TRAINING**

- 4.1 The Standards Board consulted on the provisions of the Code in draft before the final version was issued.
- 4.2 The Monitoring Officer and the Head of Legal and Democratic Services are proposing to arrange training sessions for all councillors to explain the provisions of the new Code.

5. **IMPLICATIONS**

- 5.1 There are no implications that need explaining in this part of the report.

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Standards Board Bulletin: Issue No. 33

The Local Authorities (Model Code of Conduct) Order 2007

The Relevant Authorities (General Principles) Order 2001

To inspect these documents contact Simon Pugh, Head of Legal & Democratic Services on (01223) 457401 or simon.pugh@cambridge.gov.uk

Appendix A

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1. — (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.

Scope

2. — (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.

General obligations

3. — (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 compromises 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

Personal interests

8. (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 a 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).

Disclosure of personal interests

9. — (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.

Prejudicial interest generally

10. — (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.

Prejudicial interests arising in relation to overview and scrutiny committees

11. 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.

Effect of prejudicial interests on participation

12. — (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

Registration of members' interests

- 13. —** (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.

Sensitive information

- 14. —** (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.

APPENDIX

THE GENERAL PRINCIPLES

NB: These general principles do not form part of the Code, although members should take them into account in performing their duties.

Selflessness

1. Members should serve only 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, and 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.

Appendix B

CAMBRIDGE CITY COUNCIL – LOCAL REGISTER OF GIFTS AND HOSPITALITY (approved 8 December 2005)

1. All members, when they take their declaration of office, undertake to be guided part 5A of the Constitution - Code of Conduct for Councillors.
2. The Code offers guidance in 17 above.
3. The object of the local scheme is to ensure greater transparency about receipt of gifts and hospitality. The local scheme goes further than the Code in that it requires declaration of all gifts and hospitality beyond the trivial.

THE REGISTER

4. If you are offered gifts or hospitality, and you think that the offer has been made because you are a councillor, you should complete the form provided to you by Democratic Services (example below, a pad of forms is given to each councillor). You should complete the form promptly and submit it straight away to the Chief Executive. Forms will be kept in a ring binder. This will be kept by the Head of Committee Services and will be available for public inspection. This will constitute the Register.
5. You do not need to complete a form if you were offered gifts/hospitality but refused the offer. If you wish to, you may.
6. You do not need to declare trivial gifts or hospitality in the Register; e.g. tea and biscuits at a meeting, or the gift of a calendar. Anything more substantial should be declared.
7. Of course, not all gifts and hospitality will be offered to you because you are a councillor. You may be offered gifts or hospitality by a friend, by your college, by business contacts etc. If, in your judgment, the offer of a gift or hospitality is prompted by something other than your status as a councillor, you do not need to declare it in the hospitality register. However, you may well need to declare the relationship and/or such gifts or hospitality at a meeting as a “Code of Conduct” interest if they are relevant to an item under consideration.
8. Gifts and hospitality offered to the Mayor in his/her capacity as Mayor do not have to be declared in the Hospitality Register, although they

may still need to be declared as “Code of Conduct” interests at meetings.

9. Where hospitality is made available to a group of councillors as part of an event or visit in which the Council is participating, the Head of Committee Services may make a block entry in the Register for members affected and will tell the members in question that he has done so.

ACCEPTANCE OF GIFTS AND HOSPITALITY

10. You should be very cautious about accepting gifts and hospitality which you think may have been offered because you are a councillor. Generally, anything other than modest promotional gifts (diaries, calendars etc) or modest hospitality (eg light refreshments at a meeting) should be refused. Especial care should be taken where someone has, or may in the future have, dealings with the Council.
11. If refusal of a gift might cause embarrassment, an appropriate alternative to refusal might be to donate the gift to the Mayor’s Charity Fund for raffle or auction.

FURTHER GUIDANCE

If you need further guidance at any time about the Register or about whether to accept gifts of hospitality, please contact the Head of Legal Services or the Head of Committee Services.

Appendix C

Cambridge City Council Planning Code of Good Practice

1. Introduction
2. Relationship to the Members' Code of Conduct
3. Development Proposals and Interests under the Members' Code
4. Making decisions with a "closed mind" and the issue of bias
5. Contact with Applicants, Developers and Objectors
6. Site Visits
7. Public Speaking at Meetings
8. Officers
9. Decision Making
10. Development Control Forums
11. Training

1. Introduction

- 1.1 This Code offers guidance to councillors about good practice in the planning process. It supplements the Council's Code of Conduct for Members and aims to ensure that the Council is seen to make planning decisions properly, openly, impartially, and for justifiable reasons.
- 1.2 This Code applies to Members at all times when involving themselves in the planning process. It applies to formal decision-making and to less formal occasions, such as meetings with officers or the public and consultative meetings. It applies, for instance, to planning enforcement matters or site-specific policy issues as well as to the consideration of planning applications. It also applies to area committees and to development control forums.
- 1.3 **If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Head of Legal and Democratic Services, preferably well in advance of any meeting.**

2. Relationship to the Members' Code of Conduct

- 2.1 This Code is intended to supplement the Members' Code of Conduct adopted by the City Council. It is unlikely that there will be any

conflict between the two codes but, if there is, the provisions of the general Code will take precedence.

2.2 It is very important that members are careful to apply both the general Code of Conduct and this Code in dealing with planning issues. Failure to do this may place the Council at risk of legal challenge or a finding of maladministration. It may also place you at risk of a complaint to the Standards Board for England.

3. Development Proposals and Interests under the Members' Code

3.1 If you have a Code of Conduct interest in any matter, you must disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. It is best to disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. The Members' Code of Conduct sets out the circumstances which give rise to a personal interest.

3.2 If your interest is personal and prejudicial you may not participate in making the decision, either formally or informally. You should also avoid giving any impression of participation, as it is important to maintain public confidence in the impartiality of councillors in decision-making. (A personal interest is classed as "prejudicial" if it 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.")

3.3 There are other things you should avoid if you have a personal and prejudicial interest. These include the following:

- You should not try to represent ward or local views on a matter in which you have a prejudicial interest. In these circumstances it is appropriate to ask another ward councillor to take on this role;
- You should not get involved in the processing of the application by using your position as a councillor to get access to officers or papers;
- You should not lobby other members of the Council, including the circulation of letters or emails, or by raising the matter in group or similar meetings;
- You should withdraw from meetings (formal or informal) at which the matter is under consideration. You may not sit in at the

meeting, even as a member of the public, and you may not vote. This is the position even if you are not a member of the committee which is making the decision;

- If you are submitting your own planning application, or have a personal and prejudicial interest a planning application, you should be particularly careful to avoid any impression of either seeking or receiving special treatment. You should also make sure that the Head of Development Services is aware of the interest. You may wish to consider employing an agent to act on your behalf in dealing with officers and/or addressing the committee.

4. Making decisions with a “closed mind” and the issue of bias.

4.1 It is important that councillors approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If you make it clear that you have made up your mind to vote for or against an application before the meeting, regardless of the officer’s presentation and evidence and arguments on both sides, this could well leave the eventual decision open to legal challenge and/or a finding of maladministration.

4.2 You should be careful to avoid the following, where you are likely to be a decision-maker:

- Making statements in advance of the meeting of how you are going to vote;
- Taking up a campaigning role for or against an application;
- Acting as an advocate for groups opposed to or supporting the application;
- Taking part in prior consideration of the application, for instance through membership of organisations such as residents’ groups, lobby groups, civic societies etc. which are consulted on the application.

4.3 This does not mean that you have to remain silent about applications before a decision is made. You are entitled to express a legitimate concerns about an application, for instance when approached by constituents. Although care needs to be taken, you will not be approaching a decision with a closed mind if you express concerns about the application but make it clear that you will decide how you

will vote when you have considered all the evidence at the Planning Committee/Area Committee.

- 4.4 If you have made a firm commitment to support or to oppose a planning application, you should not speak as a member of the committee or vote. However, provided that you do not also have a prejudicial interest, you may address the committee as a ward councillor if you have the consent of the chair or of the committee to do so.
- 4.5 You should not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" If you believe that your participation would lead a fair-minded observer to consider that there is a real possibility of bias, you should not participate in making the decision and should withdraw. The crucial point is to avoid the danger of an appearance of bias and not whether, in practice, you would approach the decision in a fair-minded manner.
- 4.6 In practice, there will often be an overlap between the circumstances in which bias is an issue and a member having a prejudicial interest. But the bias rule will apply, even where you do not have a prejudicial interest. It is difficult to advise on all circumstances in which bias may be an issue but they might include the following:
- Where you are associated in the public mind with an organisation which is expressing a view on an application. Mere membership of, say, a campaigning group which is objecting to an application may not be sufficient to give rise to an appearance of bias. But the position may well be different if you are the chair or secretary of the group.
 - Where you are associated in the public mind with promoting a development which leads to a planning application. This could, for instance, arise through a community campaign for facilities, or a strong association with a club or society which is developing its facilities. It could also arise in respect of applications submitted by the Council. Mere membership of a committee which is associated with an application is unlikely to give rise to an appearance of bias but you should avoid considering an application if you are the executive councillor who has approved its submission or have some other strong personal association with the proposal which is the subject of the application.

4.7 Issues around bias are difficult and getting it wrong can lead to legal challenge and/or reference to the Ombudsman. Each case needs to be considered on its facts and if you are in any doubt you should seek advice from the Head of Legal and Democratic Services.

5. Contact with Applicants, Developers and Objectors

5.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process and is important to local democracy; those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or a member of the Planning Committee. However, unless care is taken, lobbying can lead to the impartiality of a member being called into question and to difficulties in the member participating in the decision.

5.2 When being lobbied, members should pay heed to the advice in Section 4 about the dangers of appearing to approach a decision with a “closed mind”. However, unless you have a personal and prejudicial interest, you can:

- Listen to/receive viewpoints from residents or other interested parties
- Make comments to residents, interested parties, other members or appropriate officers, provided this does not indicate that you are approaching the merits of the application with a “closed mind”.
- Give non-technical advice on planning procedures, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officers report to Committee
- Seek information through appropriate channels
- Alert the decision-making committee to issues and concerns that have been drawn to your attention.

5.3 If you are approached by applicants or others seeking planning, procedural or technical advice, they should be referred to officers.

5.4 If you are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors (for instance, residents' associations) or supporters, you should inform the case officer dealing with the application. It is generally better to put formal

meetings on an official basis, with Planning Department representation and a note taken of the meeting. This applies to all stages of the planning process, including the pre-application stage.

- 5.5 If you receive any approaches which raise new issues or bring new information to light, you should let the case officer know what these are as soon as possible. If a developer offers any planning gain, or offers to accept any conditions on development in return for consent, be sure to let the case officer know as soon as possible.
- 5.6 If any approach by a developer or anyone else gives you cause to feel uneasy, please approach the Head of Legal and Democratic Services.
- 5.7 In addition, if you consider any issue or fact to be a relevant consideration, and other members may not be aware of it, be sure to raise it when the application is considered. You should not rely on information which is not in the public arena in reaching a decision.
- 5.8 In personal dealings with applicants, objectors etc, you should be mindful of the need to avoid giving a firm commitment to support/oppose the application if you are to participate in the decision. You should also bear in mind that your overriding duty is to the whole community not just to the people in your ward, that planning decisions need to be taken on planning grounds and that you should avoid the appearance of improperly favouring any person, company, group or locality
- 5.9 You should not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal including pre-application proposals. If acceptance of some hospitality is unavoidable, it should be kept to a minimum and should be declared and recorded in the Council's hospitality register. The Council's policy is that all hospitality beyond the trivial (tea and biscuits or similar) should be entered in the register. This is more stringent than the £25 minimum value referred to in the Code of Conduct. If significant hospitality is offered, you should seek advice from the Head of Legal and Democratic Services before accepting.

6. Site Visits

- 6.1 Individual Planning Committee and Area Committee members may wish to visit a site on which they have been asked to determine an application.

- 6.2 If you decide to visit a site, you should avoid putting yourself in a position where you could be accused of partiality by any interested party to the application. It is best to visit a site unaccompanied by the applicant or by objectors. However, if a site visit is carried out in the presence of the applicant and/or their agent, or of residents/objectors, you should bear in mind the advice given in paragraphs 4.2 and 4.3 of this Code. You should only seek factual information to help familiarise yourself with the site and its surroundings. You should avoid being put under undue pressure from any interested party to visit a site.
- 6.3 You should not enter onto private land or premises without first obtaining the permission of the owner. Where possible, you should seek to familiarise yourself with the site from a public viewpoint. If you go onto a site, you should only do so if satisfied that it is quite safe to do so. You should not, for instance, enter a site where excavations or building works are in progress unless guided by a responsible site manager. If you anticipate a need to ask to enter onto land, you should attempt to make arrangements in advance and should carry (and produce) your Council identity card.
- 6.4 You should ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.
- 6.5 Formal Committee site visits may be arranged at the request of members, but this is likely to be practical only where there is a clear and substantial benefit. When they occur a record will be kept of why the visit is being held and who attended. An officer, who will point out any relevant factors and issues concerning the site and its surroundings, will accompany committee members. A site visit is not a meeting to discuss the planning merits of the scheme or to make decisions.

7. Public Speaking at Meetings

- 7.1 You should not allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give an appearance of bias or special access to councillors.
- 7.2 All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as confidential under the provisions of the Local Government Act, 1972, in which case the public will be asked to leave the room.

7.3 Applicants, agents and members of the public who have made written representations on an application will be allowed to speak at Planning Committee meetings, but only in accordance with the agreed Council procedures.

7.4 You should avoid overfamiliarity with applicants, objectors and other members of the public when attending meetings, as this is open to misinterpretation.

8. Officers

8.1 You should not put pressure on officers to make a particular recommendation.

8.2 All members should pay particular attention to the professional advice and recommendations from officers. You are not bound to follow officers' advice or recommendations, but you should only depart from advice or recommendations where you have good reason to do so, based on clear and legitimate planning grounds.

8.3 Planning officers must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct; primarily the Royal Town Planning Institute's Code of Professional Conduct. The views, opinions and recommendations of planning officers may on occasion differ from the views, opinions or decisions of the Committee or its Members.

9. Decision Making

9.1 If you ask for a proposal to go before the Planning Committee or an Area Committee, rather than be determined through officer delegation, make sure that your reasons are recorded and repeated in the report to the Committee. Any such request must state the planning grounds on which it is based. A guidance note on member requests for referral of decisions to the appropriate committee is attached to this code.

9.2 You should come to meetings with an open mind and should demonstrate through your conduct at the meeting that you are giving careful, fair and balanced consideration to the issues under discussion. It is particularly important that applicants and members of the public have confidence in the way in which decisions are reached. The conduct of members can be important in ensuring that faith in the planning process is maintained.

- 9.3 You should keep in mind your obligation to make decisions in accordance with the Development Plan unless material considerations indicate otherwise, as required by section 54A of the Town and Country Planning Act 1990¹.
- 9.4 The Council's own proposals for development must be dealt with on exactly the same basis as applications submitted by members of the public. You should be particularly careful to ensure that any decision on a Council application is based purely on relevant planning considerations. Guidance about participation where the Council is the applicant is contained in paragraph 4.6.
- 9.5 You should make a decision only after you have considered all the relevant information needed to make a decision. If you feel you have had insufficient time to digest new information or that you need further information, you should say so and, if necessary, ask for a deferral or abstain.
- 9.6 You should not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 9.7 If you are expressing a view contrary to officer recommendations or the development plan, you should identify clearly the planning reasons leading you to take a different view.
- 9.8 Where any members are proposing to vote against the officer recommendations, the Chair shall make sure that their reasons are apparent before a vote is taken. These reasons must be recorded in the minutes if the officer recommendations are not agreed.

10. Development Control Forums

- 10.1 The provisions of this Code apply equally to member participation in Development Control Forums. In particular:
- You should declare any personal interest;
 - You should not participate in a Development Control Forum if you have a personal and prejudicial interest;

¹ "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."

- Member decisions are not made at Development Control Forums and you should be careful to avoid giving the impression that you are approaching the merits of the application with a closed mind.

11. Training

- 11.1 Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds and that appropriate weight is given to possibly competing factors. The Council offers training to councillors on planning law and procedure and all members are strongly urged to participate.

APPENDIX TO PLANNING CODE OF GOOD PRACTICE

MEMBER GUIDANCE NOTE

REQUESTS TO REFER PLANNING APPLICATIONS TO COMMITTEE

1. The scheme of delegation for planning and development control, in clause A1i), allows any Member of the City Council and any County Member representing a City Ward to request that an application be referred to the Committee for determination, provided the request is made within the timescales set out, that it is in writing, and that it states the planning grounds on which the request is made. Late requests should be avoided.
2. Members are advised to check the progress of the application with the case officer before making a request and also to inspect the application file. This may avoid the need for a referral.
3. It is important that the planning grounds for referral are stated in the written request. An information leaflet entitled 'How to Comment' explains what factors can typically be considered in assessing planning applications, depending on the circumstances of the case. This leaflet is sent out with neighbour notification letters. Planning grounds can include: whether the development accords with planning policy; whether the development is appropriate for the area; whether the development would cause harm to neighbouring amenity; whether the proposal would cause traffic congestion or be a danger to highway safety. Loss of property value, loss of trade to businesses and moral objections are not planning grounds. The case officer can give further advice if required.

4. Members may feel that a particular planning application raises planning issues of the kind described above that ought to be discussed and determined at Committee, rather than being determined under delegated powers. However, in deciding whether to make such a request, it is important that Members consider their role and responsibility in the decision making process. Advice on this and related matters is contained in the 'Planning Code of Good Practice', adopted by Council in September 2004.
5. It is important that Members approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If in making a request to refer an application to a Committee on which you have a decision making role, you express a firm commitment to support or oppose the application in advance of the meeting, you should not speak as a Member of the Committee or vote. You will, however, be able to speak and vote provided your written comments in support of your request are expressed in a way that makes it clear that you intend to keep an open mind until considering the officer report and all other evidence at Committee. You can obtain further advice on this issue from the Council's Head of Legal and Democratic Services.
6. On receipt of a written request by a Member for an application to be determined by Committee, the case officer will acknowledge the request in writing or by telephone. The case officer will also check with the Member that it is necessary for the application to be determined by Committee, rather than under delegated powers.
7. Members' representations are summarised in the officer report and also attached as an appendix to the Committee report.
8. It is not appropriate for a Member to request that Committee determines an application if they have a 'prejudicial' interest in it under the Council's Code of Conduct