

# **PART 7**

## **CODES AND PROTOCOLS**

**Brent Members' Code of Conduct**

**Planning Code of Practice**

**Licensing Code of Practice**

**Code of Practice on Publicity**

**Local Code of Corporate Governance**

**Protocol for Member/Officer Relations**

**Protocol on Members' Rights of Access to Information**

**Protocol on Call-in**

## BRENT COUNCIL CODE OF CONDUCT FOR MEMBERS

### PART 1

#### Introduction and interpretation

1. (1) This code applies to **you** as a member of Brent Council.
- (2) It is your responsibility to comply with the provisions of this Code.
- (3) In this Code –

“meeting” means any meeting of –

- (a) Full Council;
- (b) The Cabinet ;
- (c) Any of the council’s or Cabinet’s committees, sub-committees, joint committees or joint sub-committees;

“member” includes a co-opted member and an appointed member.

#### Scope

2. (1) You must comply with this Code whenever you –
  - (a) Conduct the business of the council (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 the council, and references to your official capacity are construed accordingly.
- (2) Where you act as a representative of the council –
  - (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 Brent Council’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### PART 2

#### High standards of conduct

3. You must maintain a high standard of conduct, and comply with the following general conduct principles:

#### The General Principles

**Selflessness** – you should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

**Integrity** – you should not place yourself in situations where your integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

**Objectivity** – you should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** – you should be accountable to the public for your actions and the manner in which you carry out your responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to your particular office.

**Openness** – you should be as open as possible about your actions and those of their authority, and should be prepared to give reasons for those actions.

**Honesty** – you should be truthful in your council work and avoid creating situations where your honesty may be called into question.

**Leadership** – you should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

### General Obligations

4. (1) You must treat others with respect.
  - (2) You must not –
    - (a) Do anything which may cause the council to breach any of the duties under the Equality Act 2010;
    - (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 the council’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, the council.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the council into disrepute.
6. 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) ~~t~~The disclosure is –
      - (aa) reasonable in all the circumstances; and
      - (bb) in the public interest; and
      - (cc) made in good faith and in compliance with the reasonable requirements of the council; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.

7. 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 the council –
  - (i) Act in accordance with the council's reasonable requirements;
  - (ii) Ensure that such resources are not used improperly for political purposes (including party political purposes)

8. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by –
- (a) The council's Chief Finance Officer; or
  - (b) The council'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 the council.

9. You must attend training sessions in accordance with the Planning Code of Practice and Licensing Code of Practice.

10. You must attend Safeguarding training provided by the local authority and receive, attend and consider -updates as appropriate.

### **PART 3**

#### **Interests**

##### **Registration of Interests**

11. (1) Within 28 days of this Code being adopted by the Council, or of your election, re-election or your appointment as a co-opted member (whichever is the later), you shall notify the Monitoring Officer of any interests which fall within the categories specified in Appendix A (Disclosable Pecuniary Interests) or Appendix B (Personal Interests).
- (2) You shall notify the Monitoring Officer of any change to interests or any new interests in Appendices A and B within 28 days of becoming aware of it.
- (3) The Monitoring Officer will maintain the council's register of interests and enter onto that register all interests notified to him/her.

##### **Sensitive Interests**

- 12 (1) A member will have a Sensitive Interest if the nature of the member's interest is such that the member and the Monitoring Officer consider that disclosure of the details of the interest could lead to the member, or a person connected with the member, being subject to violence or intimidation.
- (2) Where the member has a Sensitive Interest then the council's public register of interests will not include details of the interest, but may state that the member has an interest the details of which are withheld under this subsection.

(3) If sections 16 and 17 of this Code apply in relation to the sensitive interest those provisions are to be read as requiring the member to disclose not the nature of the interest but merely the fact that the member has an interest in the matter concerned.

### Definition of Interests

#### Personal Interests -

- 13 (1) For the purposes of this code you have a **personal interest in any** business of the authority where either -
- (a) The business of the authority relates to or is likely to affect an interest that you are required to register under Appendix B<sub>1</sub>; or
- (b) where a decision in relation to that business of the authority 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 other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- A**and that interest is not a Disclosable Pecuniary Interest.

- 13 (2) For the purpose of Paragraph 13 (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 persons in 13(2)(a) above, any firm in which persons in (a) above are a partner, or any company of which they are a director; or
- (c) any person or body in whom persons in (a) above 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 Appendix B of which persons in (a) above are a member or in a position of general control or management.

### Prejudicial Interests

- 14 (1) For the purposes of this code where you have a personal interest in any matter to be considered or being considered by your authority you also have a **prejudicial interest** in that matter 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 **and** where that matter:
- (a) affects your financial position or the financial position of a person or body described in paragraph 13 above, **or**
- (b) relates to the determining of any approval, consent, licence, permission, or registration in relation to you or any person or body described in paragraph 13 above.
- 14 (2) A personal interest in any matter to be considered or being considered by your Authority is not a prejudicial interest where that matter 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 entitled to the receipt of, such pay;

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

(v) any ceremonial honour given to members; **orand**

(vi) setting council tax or a precept under the Local Government Finance Act 1992

### **Disclosable Pecuniary Interests**

15. For the purposes of this code you have a disclosable pecuniary interest if it is of a description specified in regulations made by the Secretary of State as set out in Appendix A to this Code.

### **Disclosure of Interests and Participation in Meetings**

#### **Disclosure of personal interests**

16 (1) Where you have a personal interest in any matter being considered by your authority and you are present at a meeting of the authority at which the matter is considered, you should declare the existence and nature of the interest before the matter is discussed or as soon as it become apparent to you, but this is subject to section 12.

16 (2) Paragraph 16(1) only applies where you are aware or ought reasonably to be aware of the existence of the interest.

#### **Disclosure of pecuniary interests and prejudicial interests and effect on participation**

17. (1) Subsections (2) (3) (4) and (5) apply to you if you –  
 (a) Are present at a meeting of the council or of any committee, sub-committee, joint committee or joint sub-committee, Cabinet or Cabinet subcommittee meeting,  
 (b) Have a disclosable pecuniary interest **or** a prejudicial interest in any matter to be considered, or being considered, at the meeting, and  
 (c) Are aware that the condition in paragraph (b) is met.

(2) You must disclose the existence and nature of the interest to the meeting, but this is subject to section 12.

(3) If the interest is a disclosable pecuniary interest not yet entered in the council's register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) If the interest is a **disclosable pecuniary interest or a prejudicial interest** you may not  
 (a) participate, or participate further, in any discussion of the matter at the meeting, or  
 (b) participate in any vote, or further vote, taken on the matter at the meeting, (but this is subject to section 18 ) save that you may remain in the meeting only for the purpose of making representations, answering questions or giving evidence

relating to the matter, and provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. You should withdraw from the room in which the meeting is held for the duration of any discussion or vote on the matter once you have made representations, answered questions or given evidence relating to the matter.

- (5) Sub sections (6) and (7) apply if –
- (a) a function of the Council may be discharged by a member acting alone,
  - (b) you have a disclosable pecuniary interest **or** prejudicial interest in any matter to be dealt with, or being dealt with, by you in the course of discharging that function, and
  - (c) you are aware that the condition in sub section(b) is met.
- (6) If the interest is a disclosable pecuniary interest not yet entered in the Council's register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that the condition in sub section (5) (b) is met in relation to the matter.
- (7) You must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by you).
- (8) Where you give a notification for the purposes of sub sections (3) and (6), the Monitoring Officer will enter the interest notified in the Council's register.
- (9) You will be excluded from a meeting while any discussion or vote takes place in which, as a result of the operation of sub section (4), you may not participate.
- (10) For the purpose of this section, an interest is "subject to a pending notification" if –
- (a) under this section or section 11, the interest has been notified to the Monitoring Officer, but
  - (b) that interest has not yet been entered in the council's register in consequence of that notification.

### **Dispensations**

18. On a written request to the Council's Monitoring Officer, the Council may grant you a dispensation to participate on a discussion and **or** vote on a matter at a meeting where you would otherwise not be allowed to if the council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the ~~the~~ business; or it is in the interests of the inhabitants in the Council's area to allow you to take part or it is otherwise appropriate to grant a dispensation.

## Appendix A

### Disclosable Pecuniary Interests

Such interests of:

1. the member, or
2. the member's spouse or civil partner, or
3. a person with whom the member is living as husband and wife, or
4. a person with whom the member is living as if they were civil partners and the member is aware that that other person has the interest.

**Please note:**

Any person mentioned in 2, 3 & 4 above is known as a “**relevant person**”  
“**Member**” includes co-opted member.

<b>Subject</b>	<b>Prescribed description</b>
<i>Employment, office, trade, profession or vocation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<i>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</i>
<i>Contracts</i>	<i>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority -</i>  <i>(a) under which goods or services are to be provided or works are to be executed; and</i>  <i>(b) which has not been fully discharged.</i>  <i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Land</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Licences</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>
<i>Corporate tenancies</i>	<i>Any tenancy where (to the member's knowledge) -</i>  <i>(a) the landlord is the relevant authority; and</i> <i>(b) the tenant is a body in which the relevant person has a beneficial interest.</i>



**Securities**

*Any beneficial interest in securities of a body where—*  
*(a) that body (to the member's knowledge) has a place of business or land in the area of the relevant authority; and*  
*(b) either—*  
*(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or*  
*(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.*

**Appendix B****Personal Interests**

Any interest which relates to or is likely to affect:

- 1) any body of which the member is in a position of general control or management, and to which he / she is appointed or nominated by the Council.
- 2) any body:
  - a) exercising functions of a public nature;
  - b) directed to charitable purposes; or
  - c) whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

\_\_\_\_\_ of which the member of the Council is a member or in a position of general control or management.

- 3) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his / her office.

**PART 4****Miscellaneous****Related documents**

14. The council has adopted other codes and protocols which do not form part of this Code but which deal with specific activities you may be required or wish to carry out in the course of your duties as a councillor. You are required to comply with these and any breach may be regarded as a breach of this Code. The following codes and protocols are currently in effect:
  - (1) Planning Code of Practice
  - (2) Licensing Code of Practice
  - (3) Local Authority Code of Publicity
  - (4) Protocol for Member /Officer relations
  - (5) IT policies and Procedures

# PLANNING CODE OF PRACTICE

## Purpose of this Code

The Planning Code of Practice has been adopted by Brent Council to regulate the performance of its planning function. Its major objectives are to guide **m**Members and officers of the Council in dealing with planning related matters and to inform potential developers and the public generally of the standards adopted by the Council in the exercise of its planning powers. The Planning Code of Practice is, in addition to the Brent Members' Code of Conduct, adopted by the Council under the provisions of the Localism Act 2011. Members should follow the requirements of the Brent Members' Code and apply this Code in light of the Members' Code. The purpose of this Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters.

The Code seeks to ensure that officers and members consider and decide planning matters in a fair impartial and transparent manner. The provisions of this code are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that **m**Members of the Planning Committee making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members of the Council in dealing with and recording approaches from developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

If a member does not abide by this Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision; and the member may be at risk of either being named in a report to the Standards Committee or Council; or if the failure to abide by the Code is also likely to be a breach of the Members' Code of Conduct, of a complaint being made to the Monitoring Officer.

If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

## General

1. Members of the Planning Committee shall determine applications in accordance with the Unitary Development Plan unless material considerations indicate otherwise. The Brent Members' Code of Conduct and the law relating to Brent Council members' disclosable pecuniary interests, personal interests and prejudicial interests must be complied with throughout the decision making process. Decisions should not be influenced by the interests of Councillors or because of pressure exerted by applicants, agents or third parties. Members of the Planning Committee must take decisions in the public interest and take account only of material planning considerations. They should not allow themselves to be influenced by members of the public and applicants, agents or third parties who might approach them and they should not be influenced by party politics.
2. The council's planning process is a quasi-judicial process and members of the Planning Committee have a duty to follow the rules of natural justice and in accordance with the council's duty to act in a way that is compatible with Convention rights under the Human Rights Act 1998.
3. The rules of natural justice include: the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That principle means that members must be and be seen to be impartial and

without bias, and that members should not take part in any decision that affects their own interests.

- 4 The Human Rights that are particularly relevant to Planning decisions are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions.

### **Bias and Predetermination**

- 5 Members should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to a fair and informed observer that there was real possibility of bias, or where a member has predetermined the matter by closing their mind to the merits of the decision before they come to take it.
6. Section 25 of the Localism Act 2011 provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
7. Although the Localism Act recognises the reality of the role of members in matters of local interest and debate, it does not amount to the abolition of the concept of pre-determination. A member taking part in a decision on a planning matter must be open to any new arguments about the matter up until the moment of a decision. A member should not comment or make any commitment in advance as to how they intend to vote which might indicate that they have closed their mind. Any planning decision made by a member who can be shown to have approached the decision with a closed mind will still expose the council to the risk of legal challenge.

### **Accountability and Interests**

8. Members of the Council who have business or other interests which may bring them into contact with the Council's planning system on a regular basis should not be considered for membership of the Planning Committee. Those interests might include acting as an agent or consultant with respect to planning applications in the borough.
9. Members of the Council who are consistently unable to support the Council's planning policies should not be considered by their political group for membership of the Planning Committee.
10. If the Chair decides to allow a non-member of the Committee to speak, the non-member shall state the reason for wishing to speak. Such a member shall disclose the fact that he/she has been in contact with the applicant, agent or interested party if this be the case.

#### **Interests**

11. If a member of the Council has a personal interest in any planning application or other matter before the Planning Committee, then the member shall, if present, declare a personal interest at that meeting unless the interest arises because the member is a member of or is in a position of general control or management in a body to which they were appointed or nominated to by the Council or that exercises

functions of a public nature. In which case the member only needs to disclose the personal interest if they address the Planning Committee meeting on that item.

12. If a member has a disclosable pecuniary interest in any planning application or other matter before the Planning Committee, and the interest is not entered in the council's register, the member must disclose the interest to the meeting.
13. If a member has a discosable pecuniary interest or a prejudicial interest in a planning matter the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that they where a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a member will have the same right. Once the member has exercised that right then the member must withdraw from the room for the rest of that item and play no further part in the discussion or vote.
14. If a member of the Council has a disclosable pecuniary interest or a prejudicial interest in a planning application or other matter before the Committee, he/she shall not exercise his or her discretion to require the application or other matter to be referred from officers to the Planning Committee for consideration and nor shall he/she exercise his/her right to request a site visit.
15. For the avoidance of doubt, where a member of the Council is a Freemason or a member of a similar secret society and is aware that the applicant, agent or other interested party in relation to a particular planning application is also a Freemason or a member of the same secret society, the member shall treat this as a prejudicial interest for the purposes of paragraphs 13 and 14 above.
16. The Monitoring Officer shall maintain a register of contact made by applicants, agents or interested parties with individual members of the Council on each and every planning application, in which members of the Planning Committee must record approaches referred to in paragraph 24 and other members of the Council may record such approaches if they so wish.
17. If any officer of the Council who is involved in making recommendations or decisions on planning applications has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Strategic Director Regeneration and Growth and take no part in the decision making process. The declaration of such interest shall also be recorded in the minutes of the meeting. This public register to be available for inspection at Planning Committee meetings.
18. No officer of the Council shall engage in any paid work for any town planning matter for which Brent is the Local Planning Authority other than on behalf of the Council.
19. In relation to all matters not addressed above, all such officers shall comply with the Royal Town Planning Institute Practice Advice Note No.5 relating to Consultancy by Current and Former Employees or any guidance replacing this.

Call-in powers

20. Where under the provisions of the Constitution three members of the Council ask for an application or other matter to be decided by Committee rather than by officers, their request shall state:
- (i) the reason(s) which should solely relate to matters of material planning concern why they feel the application or other matter should not be dealt with under delegated powers; and
  - (ii) whether or not they have been approached by any person concerning the application or other matter and if so, by whom.

This information shall then be included in the relevant Planning Committee report.

Unless the request and the necessary supporting information outlined above has been provided by both members at least one week prior to the relevant meeting then the matter shall proceed to be determined by officers in accordance with their delegated powers.

21. A member considering using the “call-in” power should consider whether their objective could be achieved by an alternative means, for example by discussing the matter further with the relevant officer or facilitating a meeting between an objector and an officer, bearing in mind the additional cost to the council when a matter has to be considered by Committee. Where the call-in power is exercised the sponsoring member should attend the associated site visit and committee meeting.

Development proposals submitted by Councillors who sit on the Planning Committee

22. The Council’s Monitoring Officer should be informed of such a planning application and the application should be reported to the Planning Committee and not dealt with by officers under delegated powers.

Development proposals where the Council is the applicant or landowner

23. Where the council itself is the landowner or planning applicant then a Planning member should consider whether he or she has had such a significant personal involvement in advocating for, preparing or submitting the planning proposal that the member would be likely to be perceived as no longer able to act impartially or to determine the proposal purely on its planning merits. A member would not be required to withdraw simply because they were, for example, a member of both the Cabinet, or a proposing committee, as well as the planning committee. However a member with a relevant portfolio or individual responsibility for implementing a particular policy should carefully consider whether that role makes it inappropriate for them to participate in a particular planning decision.

Approaches to members of the Planning Committee

24. If an approach is made to a member of the Planning Committee from an applicant or agent or objector or other interested party in relation to a particular planning application or any matter which may give rise to a planning application, the member of the Planning Committee shall:
- (i) inform the person making such an approach that such matters should be addressed to officers or to members who are not members of the Planning Committee.

- (ii) disclose the fact and nature of such an approach at any meeting of the Planning Committee where the planning application or matter in question is considered; and
- (iii) record the approach in the register maintained by the Monitoring Officer under paragraph 11.

For the avoidance of any doubt, if the applicant, agent or objector or other interested party attend and/or speak at a Council organised briefing for members of the Planning Committee then that briefing does not constitute an approach which has to be registered with the Monitoring Officer or disclosed under (ii).

25. Where a planning application is to be determined under delegated powers Councillors should not put improper pressure on officers for a particular recommendation or do anything which compromises, or is likely to compromise the officer's impartiality.

### Site Visits

26. Save as provided by paragraph 14 above, any two members of the Council can request a site visit prior to a meeting of the Planning Committee at which the application in respect of the request is to be considered. The members, shall provide the following details at least two weeks before the date of the meeting at which the application is to be considered and a record shall be kept of those details:

- (i) their name;
- (ii) the reason for the request; and
- (iii) whether or not they have been approached concerning the application or other matter and if so, by whom.

If the details are not provided then the site visit shall not proceed. Alternatively, during any meeting of the Planning Committee, any member of the Planning Committee may request a site visit in respect of any application on the agenda of the meeting. The member must give the reason for the request.

27. The purpose of a site visit is to gain information relating to the land or buildings which are the subject of the planning application or other matter to be considered by the Planning Committee. A site visit may also assist members of the Planning Committee in matters relating to the context of the application or other matter in relation to the characteristics of the surrounding area.

28. Members of Planning Committee shall not enter any premises which are the subject of a planning application or other matter or known by them to be likely to become such in order to meet the agent, applicant or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a member of the Planning Committee is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out provided that the member is accompanied by a planning officer.

29. On site visits applicants or other interested parties shall only be permitted to point out to those members of the Planning Committee attending the site visit the features to look at either on the site or in the vicinity, which are relevant to the

application or other matter. No discussion will take place on the merits of the application or other matter.

30. Whilst on site visits, members of Planning Committee shall keep together as a group and shall not engage individually in discussion with applicants or objectors. Members should take care not to show any apparent partiality to people they already know when acknowledging members of the public or applicants that are present. Members attending the site visit should avoid expressing opinions about the application either to another Planning member, or to any person present.

### **Membership and Jurisdiction of the Planning Committee**

31. When the membership of the Planning Committee is determined, care shall be taken to ensure that for each Ward there is always at least one Councillor who is not a member of Planning Committee. This is so that there will always be a Councillor who is not a member of the Planning Committee with whom residents will be able to discuss planning matters.
32. Any briefings which may be held prior to the Planning Committee meetings shall be open to all members (and alternates) of the Planning Committee. These briefings can help to speed up decision making by giving officers notice of additional information members of the Planning Committee may require at the meeting.
33. All members of Planning Committee, and in particular the Chair, shall be informed from time to time about the relevant provisions concerning access to information contained in the Local Government Act 1972 and in the event of any dispute between members of the Planning Committee and officers as to the application of the 1985 Act, the advice of the Chief Legal Officer or his or her representative shall be obtained forthwith.

### **Meetings of the Planning Committee**

34. No material revision to any planning application which might lead to a change in the recommendation of officers shall be considered at Planning Committee unless it has been submitted such reasonable period in advance of the relevant Planning Committee meeting as is agreed by the Head of Area Planning and has been the subject of a full appraisal by officers and consultation where necessary and that the minutes shall record the fact that revisions have been made to the application and the reasons for these shall be recorded in the supplementary information.
35. If the Planning Committee wishes to grant planning permission contrary to officers' recommendations the application shall be deferred to the next meeting of the Committee for further consideration. Following a resolution of "minded to grant contrary to the officers' recommendation", the Chair shall put to the meeting for approval a statement of why the officers recommendation for refusal should be overturned, which, when approved, shall then be formally recorded in the minutes. When a planning application has been deferred, following a resolution of "minded to grant contrary to the officers' recommendation", then at the subsequent meeting the responsible officer shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for granting permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting permission, and a summary of the planning reasons for that decision shall be given, which reasons shall then be formally recorded in the minutes of the meeting.
36. When the Planning Committee vote to refuse an application contrary to the recommendation of officers, the Chair shall put to the meeting for approval a statement of the planning reasons for refusal of the application, which if approved

shall be entered into the minutes of that meeting. Where the reason for refusal proposed by the Chair is not approved by the meeting, or where in the Chair's view it is not then possible to formulate planning reasons for refusal, the application shall be deferred for further consideration at the next meeting of the Committee. At the next meeting of the Committee the application shall be accompanied by a further written report from officers, in which the officers shall advise on possible planning reasons for refusal and the evidence that would be available to substantiate those reasons. If the Committee is still of the same view then it shall again consider its reasons for refusing permission which shall be recorded in the minutes of the meeting.

37. Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their deliberations. Members of the Planning Committee shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors and shall not bully any person. Members of the Planning Committee should not make up their mind before hearing and considering all relevant information at the meeting and should not declare in advance of the vote, how they intend to vote on a particular application or other matter.
38. Members of the Planning Committee should not speak to members of the public (including applicants, agents and journalists) during a meeting of the Planning Committee or immediately prior to or after the meeting concerned, other than where permitted by this Code or Standing Orders.
39. When questioning members of the public or the applicant who have spoken at a meeting of the Committee, members of the Planning Committee shall ensure that their questions relate only to planning matters relevant to the particular application, and the question should not be party political.
40. The minutes of the Planning Committee shall record the names of those voting in favour, against or abstaining:
  - (i) on any resolution of "Minded to grant or minded to refuse contrary to Officers Recommendation";
  - (ii) on any approval or refusal of an application referred to a subsequent meeting following such a resolution.
41. A member of the Planning Committee shall not vote in relation to any planning matter unless he or she has been present in the meeting of the Planning Committee throughout the consideration of that particular matter as required by Standing Orders— Any dispute as to whether the member of the Planning Committee in question should be permitted to vote shall be decided by the Chair having taken appropriate advice from legal or other officers present.
42. Unless all members of the Planning Committee indicate that they intend to vote in accordance with the officers' recommendation on a particular item, the responsible officer shall be allowed time, at the beginning of the consideration of each application, to summarise his or her advice. If after discussion it appears that any member of the Planning Committee is minded to vote contrary to the officers' recommendation, the officer shall be allowed a further opportunity to respond to new points which have been raised, and to address the implications of a contrary decision.



### **Member and Officer Relations**

43. Any criticism by members of Planning Committee of officers in relation to the handling of any planning matter shall be made in writing to the Strategic Director Regeneration and Growth and not to the officer concerned. No such criticism shall be raised in public.
44. If any officer feels or suspects that pressure is being exerted upon him or her by any member of the Council in relation to any particular planning matter, he or she shall forthwith notify the matter in writing to the Strategic Director Regeneration and Growth.
45. Members of Planning Committee shall not attempt in any way to influence the terms of the officers' report or recommendation upon any planning matter.

### **Training**

46. Members of the Planning Committee (and substitute members) must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Member of the Planning committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Planning Committee.
47. Members should be aware that training is particularly important for members who are new to the Planning Committee and for members who have not attended training in the recent past.
48. Where a member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

### **Review of Code of Practice**

50. The Chief Legal Officer is instructed to commission a report independent of the planning service once every three years on the operation of this Code of Practice. The report should address the extent of compliance with the Code by officers and members, contain an analysis of decisions being made against officers' recommendations and set out any appropriate recommendations for improvement.

# LICENSING CODE OF PRACTICE

## Purpose of this Code

The Licensing Code of Practice has been adopted by Brent Council to regulate the performance of its licensing function. Its major objectives are to guide members and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. The Alcohol and Entertainment Licensing Sub-Committees exercise functions under the Licensing Act 2003 (the sale by retail of alcohol, the supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment), and the General Purposes Committee exercises the Council's licensing functions under all other legislation. Except where otherwise stated, references in this Code are to both committees and the expression "Licensing Committee" should be interpreted accordingly. The Licensing Code of Practice is in addition to the Brent Members' Code of Conduct adopted under the provisions of the Localism Act 2011. Members should follow the requirements of the Brent Members' Code and apply this Code in light of the Members' Code. The provisions of this code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that members making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

This Code also draws members' attention to the different status of the Licensing Committees from normal Council committees, by their quasi-judicial nature and the requirement to strictly follow the rules of natural justice.

If a member does not abide by the Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision and the member may be at risk of either being named in a report to the Standards Committee or Council; or of the failure to abide by the Code is also likely to be a breach of the Members' Code of Conduct, of a complaint being made to the Monitoring Officer.

If you have any doubts about the interpretation of this Code, you should consult appropriate officers on the point.

## The Code

- A. On the Licensing Committees, Members are exercising quasi-judicial functions and as a consequence have a duty to follow the rules of natural justice and act in accordance with the Council's duty to act in a way that is compatible with the Convention rights under the Human Rights Act 1998.
- B. The rules of natural justice include: the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That principle means that Members must be and be seen to be impartial and without bias, and that Members should not take part in any decision that affects their own interests.
- C. The Human Rights that are particularly relevant to the Licensing process are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the

right to respect for a person's private and family life, home and possessions. Further information about these rights is set out in Annexe 1 to this Code.

## **1. General provisions as to conduct**

### **Bias and predetermination**

- 1.1 No one should decide a case where they are not impartial or seen to be impartial. Licensing members should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to be fair and informed observer that there was a real possibility of bias, or where a member has predetermined the matter by closing their minds to the merits of the decision before they come to it.
- 1.2 Section 25 of the Localism Act 2011 provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to a particular matter.
- 1.3 Although the Localism Act recognises the reality of the role of the members in matters of local interest and debate, it does not amount to the abolition of the concept of pre-determination. A member of the licensing committee must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the member hearing the evidence and arguments on both sides. A member should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind. Any licensing decision made by a member who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.

### **Accountability and Interests**

- 1.4 If a member of the Council has a personal interest in any licensing application or other matter before the Licensing Committee, then the member shall, if present, declare a personal interest at that meeting unless the interest arises because the member is a member of or is in a position of general control or management in a body to which they were appointed or nominated to by the Council or that exercises functions of a public nature. In which case the member only needs to disclose the personal interest if they address the Licensing Committee meeting on that item.
- 1.5 If a member has a disclosable pecuniary interest in any application or other matter before the Licensing Committee, and the interest is not entered in the council's register, the member must disclose the interest to the meeting.
- 1.6 If a member has a disclosable pecuniary interest or a prejudicial interest in a matter then the member shall withdraw from the room where the meeting is being held and not take part in the discussion or a vote on the matter save that if the member has made representations under the Licensing Act, and is therefore entitled to speak at the meeting, the member may make representations, answer questions or give evidence in respect of the application or matter in question in so far as the public have the right to do so. A member must then withdraw from the room for the rest of that item and play no further part in the discussion.

- 1.7 Members of the Licensing Committees should not determine any application if the member, his/her relative, friend or associate is the applicant or agent for that matter or an objector.
- 1.8 Members who have business or other interests which may bring them into contact with the Council's licensing system on a regular basis should not be considered for membership of the Licensing Committees.

#### Approaches

- 1.9 If an approach is received by a member of a Licensing Committee from an applicant, objector, their agents or an interested party in relation to a particular licensing application or any matter which may give rise to a licence application, the member shall:
  - (a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected members who are not members of the Licensing Committees;
  - (b) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned;
  - (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.
- 1.10 If an elected member who is not a member of the Licensing Committee is contacted by an applicant objector or interested party then that member should discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will include the relevant information in the report to the Licensing Committee. If an elected member wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.
- 1.11 Any elected member who is not a member of the General Purposes Committee but who is a member for the Ward in which the premises are located (or a member of an adjoining Ward which is affected by the application) shall be entitled to address a meeting of the General Purposes Committee on the subject of a particular licence application. However he/she shall disclose whether he/she has been in contact with the applicant, objectors their agents or an interested party and whether they have a personal or disclosable pecuniary interest or prejudicial interest in the license application. If a Ward member has a disclosable pecuniary interest or a prejudicial interest in a matter before the General Purposes Committee, the members shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that where a member of the public has the right to make representations, answer questions, or give evidence, then a member will have the same right, after which the member must then withdraw from the room for the rest of that item and

play no further part in the discussion or vote. (This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees)

- 1.12 No amendment to any licence application shall be considered at the Licensing Committees unless it can be taken into account without causing prejudice to objectors or persons who might otherwise have objected.

## **2. Site visits**

- 2.1 If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committees. A site visit may also assist members in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Members should avoid expressing opinions during site visits to any person present, including other members.

- 2.2 During site visits, members of the Licensing Committees shall not engage individually in discussion with applicants or objectors.

- 2.3 On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Members features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.

- 2.4 A Member of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:

- (i) their reason for the request; and
- (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the member provides these at least one week prior to the relevant meeting, the site visit will not proceed.

- 2.5 If any Member of the Licensing Committee wishes to informally view an applications site than that viewing must only take place if it can be done from a public place. Members of Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a member is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out provided that the member is accompanied by a licensing officer.

## **3. Involvement of officers**

- 3.1 Members of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.

- 3.2 Any criticism by Members of the Licensing Committees or an officer in relation to the handing of any licence application shall be made in writing to the Strategic Director of Environment and Neighbourhoods and *not to the Officer handling the application*. No such criticism shall be raised in public.

- 3.3 If any officer feels or suspects that pressure is being exerted upon him/her by any member of the Council in relation to any particular application, he or she shall forthwith notify the matter in writing to the Monitoring Officer.
- 3.4 If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Monitoring Officer and take no part. This public register to be available for inspection at Licensing Committee meetings.
- 3.5 No officer of the Council shall engage in any paid work for any licensing matter for which Brent is the Licensing Authority other than on behalf of the Council.

#### **4. Conduct of meetings**

- 4.1 Members of the Licensing Committees shall refrain from personal abuse and party-political considerations shall play no part in the committee's deliberations. Members shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors and shall not bully any person. Members should not make up their minds before hearing and considering all relevant information at the meeting and should not declare in advance of the vote how they intend to vote on a particular application.
- 4.2 The Monitoring Officer shall maintain a register of contact made by applicants, licensees, objectors, agents or interested parties with individual members of the Council on each and every licence application.
- 4.3 Members of the Licensing Committees should not speak to members of the public (including applicants and agents) during a meeting of the Licensing Committee or immediately prior to or after the meeting concerned other than in accordance with this Code or Standing Orders.
- 4.4 When questioning witnesses at a meeting of a Licensing Committee, members shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 4.5 The Licensing Committee should hear both sides of the case, in accordance with the rules of natural justice. The Committee must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity *in advance of the hearing* to prepare their case in answer to the objectors.
- 4.6 It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 4.7 Hearsay evidence, whilst admissible, must be treated with great reservation by members, who must make an assessment of its weight and credibility.
- 4.8 When new matters are raised as objections by any person at a hearing of the General Purposes Committee, the Committee is not obliged to hear them. However, if members feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph

does not apply to the Alcohol and Entertainment Licensing Sub-Committees, as new objections cannot be raised at the hearing)

## 5 **Licensing Sub-Committee Procedures**

### *Alcohol and Licensing Sub-Committee*

(A) The following procedure should be followed at meetings of the Alcohol and Entertainment Licensing Sub-Committees.

A.1 The Chair will ask the parties to the hearing to identify themselves and confirm whether they are represented or not.

A.2 The sub-committee will consider any requests that have been made by any party for another person to speak at the hearing.

A.3 The Chair will explain the procedure to be followed at the hearing.

A.4 Where there are a number of parties bringing representations either in support or objection to the granting of the licence application officers will attempt before the hearing to agree a limit in the number of people who will address the sub-committee.

A.5 If any party has indicated that they will not attend or failed to indicate whether or not they will attend and is absent, the Sub-Committee may hold the hearing in that party's absence or decide to adjourn.

A.6 A Licensing Officer will give details of the application and of the number and type of representations received as set out in the papers circulated.

A.7 Persons who have made representations will be allowed to address the sub-committee for up to 5 minutes each (unless the Chair permits a longer period). They should not repeat what is already set out in their representations or notice. In their address they should provide clarification on any points previously requested by the Council. Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.

A.8 The order in which persons making representations shall be called to speak is as follows;

i. Statutory Parties including the Police, Environmental Health, Fire Authority, Child Protection Unit or other bodies as appropriate

ii. Interested parties making representations in objection to the licence application

iii. Interested parties making representations in support of the licence application

A.9 The members of the sub-committee may ask questions of the person making representations after their address.

A.10 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.11 Where a person making relevant representations has requested that another person be permitted to speak and the sub-committee have allowed this under 2 above, they may be entitled to speak for up to 5 minutes (if the chair permits this) after questioning of the objector who made the request and provided that this does not disadvantage another party to the proceedings

A.12 The members of the sub-committee may ask questions of such other person after they have spoken.

A.13 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.14 The same procedure as set out in 2.7 to 2.11 above is followed in respect of the applicant.

A.15 The members of the sub-committee may ask further questions of any party or other person allowed to appear at this stage.

A.16 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.

A.17 The sub-committee will consider its decision in private save that the licensing officer, legal adviser and committee clerk will be entitled to remain.

A.18 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.

A.19 Documentary evidence will only be considered by the Sub-Committee if this has been provided to the Council and the other party (or parties) prior to the hearing, or with the consent of other parties, at the hearing. The Chair does have the discretion to accept the filing of late evidence provided that all relevant parties agree and are not adversely affected by late disclosure. Each case will need to be looked at on its own merits and advice given by officers accordingly.

*(B) General Purposes Committee*

The following procedure should be followed at meetings of the General Purposes Committee.

B.1 The Chair outlines details of the application

B.2 The Chair invites identification of persons at the meeting:

- the applicant;
- those attending to object or give evidence; and
- those Officers and Members forming the Committee.

B.3 The Chair outlines the procedure of the hearing to those present



**B.4 The Objectors state their case:**

- The individual objectors (or their representatives) will be invited to state their case;
- The applicant (or their representative) will be invited to question the objectors or their witnesses; and
- Members of the Committee may ask questions of the objectors through the Chair.

**B.5 Non-Members of the Committee (if any present) will address the Committee**

- Non-members who are entitled to address the Committee (see 1.6 above) and wish to, will be invited to do so.
- The applicant (or their representative) will be invited to question the non-members who have spoken.
- The objectors (or their representative) will be invited to question such non-members.
- Members of the Committee may ask questions of such non-members through the Chair.

**B.6 The Technical Officers Report**

- Where appropriate, technical officers advising the Committee will make their observations.
- The applicant and objectors will be invited to ask questions of the technical officers.
- Members of the Committee may ask questions of the technical officers through the Chair.

**B.7 The Applicants State Their Case**

- The applicant is invited to state their case.
- The objectors (or their representative) will be invited to question the applicant.
- Members of the Committee may ask questions of the applicant through the Chair.

**B.8 Summing Up**

- The objectors will be permitted to “Sum Up”.
- The applicant will be permitted to “Sum Up”.

## **6. Making the decision**

- 6.1 The decision whether or not to grant a licensing application is a decision for the members of the Licensing Committee only. [*The assessment of the weight and credibility of evidence is for Committee members alone to decide.*]
- 6.2 Members shall retire to decide the matter in closed session. The Legal Officer, Licensing Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer and Licensing Officer will only provide advice on legal issues relating to the application.
- 6.3 In accordance with regulations, members of the Alcohol and Entertainment Licensing Sub-Committees should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
  - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 6.4 The Licensing Committee will return to open session to announce its decision, and will confirm its decision in writing with reasons usually within 5 working days (in respect of the Alcohol and Licensing Sub-Committee) and 7 days (in respect of the General Purposes Committee). The written notice will set out the rights of appeal against a decision.
- 6.5 Members own knowledge of the circumstances surrounding an application is valid, provided that they are put to the applicant for a response. In reaching their decision members must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and members have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 6.6 Members considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Members must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.
- 6.7 Members should be aware that an unreasonable decision taking into account the above criteria, is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and may have to pay costs. The role of officers is to point this out and advise members as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council’s fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

## **7. Appeals**

- 7.1 The Licensing Committee’s decision is not a final one. In respect of decisions of the General Purposes Committee, the applicant has the right to appeal to the Magistrates Court, subsequently to the Crown Court (or in certain instances directly to the Crown Court), and beyond.

- 7.2 In respect of decisions of the Alcohol and Entertainment Licensing Sub-Committees, all parties (the Applicant(s), interested parties and responsible authorities) have the right of appeal to the Magistrates' Court. The Magistrates' decision is however final.
- 7.3 An appeal must be lodged with the Justices' Chief Executive for the Magistrates' Court within 21 days beginning on the day on which the appellant was notified by the Licensing Authority of the decision to be appealed against.
- 7.4 On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence.
- 7.5 Members who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 7.6 Taking this factor into account along with the real risk of costs against the Council, members must be wary of relying on any matters which could not readily be proved in evidence. In short, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

## **8. Training**

- 8.1 Members of the Licensing Committee (and alternate members) must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Member of the Licensing Committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Licensing Committee.
- 8.2 Members should be aware that training is particularly important for members who are new to the Licensing Committee and for members who have not attended training in the recent past.
- 8.3 Where a member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

## **ANNEXE 1**

### **Convention Rights**

#### **ARTICLE 6**

Article 6 of the European Convention on Human Rights provides (in part):

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' or Crown Courts, so satisfying the provisions of Article 6.

The Committee must however conduct a fair hearing in accordance with the rules of natural justice.

#### **ARTICLE 1 OF THE FIRST PROTOCOL**

Article 1 of the First Protocol also has relevance to the licensing function. This states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principals of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

An existing licence is a possession under Article 1 of the First Protocol.

Any decision to, for example, revoke a licence must be according to the law. Any decision to impose terms and conditions on the grant of a licence will need to be proportionate and necessary to protect the interests of a democratic society.

Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.

#### **ARTICLE 8**

The impact of a decision on a neighbouring property also brings into play the right to respect for home, privacy and family life (Article 8)

Article 8 states:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."

## The Code of Recommended Practice on Local Authority Publicity

### 1. Introduction

- 1.1 This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
- 1.2 Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.
- 1.3 Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

### Principles

- 1.4 Publicity by local authorities should:-
- be lawful
  - be cost effective
  - be objective
  - be even-handed
  - be appropriate
  - have regard to equality and diversity
  - be issued with care during periods of heightened sensitivity

### Lawfulness

- 1.5 Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.
- 1.6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
- 1.7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
- 1.8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.

- 1.9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

### **Cost Effectiveness**

- 1.10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
- 1.11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
- 1.12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
- 1.13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
- 1.14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

### **Objectivity**

- 1.15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.
- 1.16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
- 1.17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.

- 1.18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

### **Even-Handedness**

- 1.19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
- 1.20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the “face” of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
- 1.21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
- 1.22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
- 1.23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
- 1.24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
- 1.25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.



**Appropriate Use of Publicity**

- 1.26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
- 1.27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
- 1.28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
- 1.29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
- 1.30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newsheets or similar publications published by the local authority, should do this on the front page of the publication.

**Equality and Diversity, etc**

- 1.31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
- 1.32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

**Care During Periods of Heightened Sensitivity**

- 1.33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
- 1.34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to

publish factual information which identifies the names, wards and parties of candidates at elections.

- 1.35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

## LOCAL CODE OF CORPORATE GOVERNANCE

### Introduction

Each local authority operates through a governance framework. The governance framework is an interrelated system that brings together an underlying set of legislative requirements, standards of behaviour, and management processes.

Good governance means that the way a local authority operates is based on sound and transparent decision making with an effective process to support it.

This Code sets out the Council's governance framework. It is based on Guidance issued by the Chartered Institute of Public Finance and Accountancy ('CIPFA') and the Society of Local Authority Chief Executives ('SOLACE') that was originally published in 2007 entitled Delivering Good Governance in Local Government and which has subsequently updated.

There are six core principles and further supporting principles identified by CIPFA/SOLACE which underpin and inform the way in which a local authority should perform its services and other functions. These principles inform the Council's governance framework, the Local Code of Corporate Governance and the standards by which the Council is audited.

The principles and standards set out below in this Code reflect those set out by the current CIPFA/SOLACE Guidance

### **1. Focusing on the purpose of the Council and on outcomes for the community and creating and implementing a vision for the local area**

The Council will demonstrate strategic leadership, ensure that users receive a high quality of service whether directly, in partnership or by commissioning and ensure the best use of resources and secure excellent value for money for residents by

- developing and promoting a clear vision of the Council's purpose and intended outcomes for the community and the local area and ensure that is clearly communicated, both within the Council and to external stakeholders
- ~~regularly reviewing~~ the basis of its vision for the local area and its implications on its governance arrangements
- ensuring that partnerships are underpinned by a common vision of their work that is understood and agreed by all parties
- publishing an annual report on a timely basis to communicate its activities and achievements **and** its financial position and performance
- deciding how the quality of service for users is to be measured and making sure that the information needed to review service effectively and regularly is available
- putting in place effective arrangements to identify and deal with failures in service delivery

- deciding how value for money is measured and making sure that the authority or partnership has the information needed to review value for money and performance effectively
- measuring the environmental and community safety impact of policies, plans and decisions

## **2. Members and officers working together to achieve a common purpose with clearly defined functions and roles**

The Council ensures effective leadership by being clear about respective executive and non executive functions, having constructive working relationships between members and officers, and making sure that partnership arrangements are clear. The Council will achieve this by

- Setting out a clear statement of the respective roles and responsibilities of the Cabinet and of the Cabinet's members individually and the approach towards putting this into practice
- Setting out a clear statement of the respective roles and responsibilities of authority members, members generally and of senior officers
- Having a scheme of delegation and reserve powers within the constitution including a formal schedule of those matters reserved specifically for collective decision of the authority taking account of relevant legislation and ensure that it is monitored and updated when required
- Ensuring the Chief Executive responsible and accountable to the authority for all aspects of operational management
- Ensuring a senior officer (the S151 officer) is responsible to the authority for ensuring that appropriate advice is given on all financial matters, for keeping financial records and accounts, and for maintaining an effective system of internal financial control
- Ensuring a senior officer (the monitoring officer) is responsible to the authority for ensuring that agreed procedures are followed and that all applicable statutes and regulations are complied with.
- Having protocols to ensure effective communication between members and officers in their respective roles
- Setting out the terms and conditions for remuneration of members and officers and an effective structure for managing the process.
- Ensuring that the organisation's vision, strategic plans, priorities and targets are developed through robust mechanisms, and in consultation with the local community and other key stakeholders, and that they are clearly articulated and disseminated
- Ensuring when working in partnership that members are clear about their roles and responsibilities both individually and collectively in relation to the partnership and to the authority
- Ensuring when working in partnership that there is clarity about the legal status of the partnership and that representatives of organisations both understand and make clear to all other parties the extent of their authority to bind their organisation to partner decisions

## **3. Promoting values of the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour**

The Council will ensure the members and officers maintain high standards of conduct and that organisational values are put into practice and are effective. The Council will

- ensure that the authority's leadership sets a tone for the organisation by creating a climate of openness, support and respect
- ensure that standards of conduct and personal behaviour expected of members and staff, of work between members and staff and between the authority, its partners and the community are defined and communicated through codes of conduct and protocols
- put in place arrangements to ensure that members and employees of the authority are not influenced by prejudice, bias or conflict of interest in dealing with different stakeholders and put in place appropriate processes to ensure that they continue to operate in practice
- develop and maintain shared values, including leadership values both for the organisation and staff reflecting public expectations and communicate these with members, staff, the community and partners
- put in place arrangements to ensure that procedures and operations are designed in conformity with appropriate ethical standards, and monitor their continuing effectiveness in practice.
- develop and maintain an effective Standards Committee
- use the organisation's shared values to act as a guide for decision making and as a basis for developing positive and trusting relationships within the authority
- in pursuing the vision of a partnership, agree a set of values against which decision making and actions can be judged. Such values must be demonstrated by partners' behaviour both individually and collectively.

#### **4. Taking informed and transparent decisions which are subject to effective scrutiny and managing risk**

The council will be rigorous and transparent about how decisions are made and will reflect upon constructive scrutiny. It will ensure good quality information to make decisions, have in place and effective risk management system and use its legal powers for the benefit of the community. The Council will

- develop and maintain an effective scrutiny function which encourages constructive challenge and enhances the organisation's performance overall and of any organisation for which it is responsible.
- develop and maintain open and effective mechanisms for documenting evidence for decisions and recording the criteria, rationale and considerations on which decisions are based
- put in place arrangements to safeguard members and employees against conflicts of interest and put in place appropriate processes to ensure that they continue to operate in practice
- develop and maintain an effective audit committee which is independent
- put in place effective, transparent and accessible arrangements for dealing with complaints
- ensure that those making decisions whether for the authority or partnership are provided with information that is fit for the purpose – relevant, timely and gives clear explanations of technical issues and their implications.
- ensure that professional advice on matters that have legal or financial implications is available and recorded well in advance of decision making and used appropriately
- ensure that risk management is embedded into the culture of the organisation, with members and managers at all levels recognising that risk management is part of their job
- ensure that arrangements are in place for whistle blowing to which staff and all those contracting with the authority have access

- actively recognise the limits of lawful activity placed on it, for example the ultra vires doctrine but also strive to utilise powers to the full benefit of our communities
- recognise the limits of lawful action and observe both the specific requirements of legislation and the general responsibilities placed on local authorities by public law
- observe all specific legislative requirements placed upon it, as well as the requirements of general law, and in particular integrate the key principles of good administrative – rationality, legality and natural justice into its procedures and decision making processes

**5. Developing the capacity and capability of members and officers to be effective**

The Council will make sure that members and officers have the skills, knowledge and resources needed to perform well, and that those skills are evaluated and developed. It will also engage and encourage new talent. The Council will

- provide induction programmes tailored to individual needs and opportunities for members and officers to update their knowledge on a regular basis
- ensure that the statutory officers have the skills, resources and support necessary to perform effectively in their roles and that these roles are properly understood throughout the organisation
- assess the skills required by members and officers and make a commitment to develop those skills to enable roles to be carried out effectively
- develop skills on a continuing basis to improve performance including the ability to scrutinise and challenge and to recognise when outside expert advice is needed
- ensure that effective arrangements are in place for reviewing the performance of the authority as a whole and agreeing an action plan which might for example aim to address any training or development needs
- ensure that effective arrangements are in place designed to encourage individuals from all sections of the community to engage with, contribute to and participate in the work of the authority
- ensure that career structures are in place for members and officers to encourage participation and development

**6. Engaging with local people and other stakeholders to ensure robust public accountability**

The Council will effectively engage local people and stakeholders, engage in dialogue with and accountability to the public and make best use of human resources by

- making clear within the Council, to all staff and the community, to whom the Council is accountable and for what
- considering those stakeholder bodies to whom the organisation is accountable and assessing the effectiveness of the relationships and any changes required
- producing an annual report on scrutiny function activity

- Ensuring that clear channels of communication are in place with all sections of the community and other stakeholders including monitoring arrangements to ensure that they operate effectively
- holding meetings in public unless there are good reasons for confidentiality
- ensuring arrangements are in place to enable the authority to engage with all sections of the community effectively. These arrangements recognise that different sections of the community have different priorities and establish explicit processes for dealing with these competing demands
- Establishing a clear policy on the types of issues it will meaningfully consult on or engage with the public and service users including a feedback mechanism for those consultees to demonstrate what has changed as a result
- On an annual basis publish a performance plan giving information on the authority's vision, strategy, plans and financial statements as well as information about its outcomes, achievements and the satisfaction of service users in the previous period
- ensuring that the authority as a whole is open and accessible to the community, service users and its staff and ensuring that it has made a commitment to openness and transparency in all its dealings, including partnerships subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so
- developing and maintain a clear policy on how staff and their representatives are consulted and involved in decision making

### **Annual Review and Reporting**

Each year the Council will carry out a review of the governance arrangements measured against the Code and the principles set out in the CIPFA/SOLACE guidance to ensure compliance with this Code, and the delivery of good governance within the local government framework and current good practice. The purpose of the review will be to provide assurance that governance arrangements are good and operating effectively and to identify any action required to improve effective governance in the future.

The outcome of the review will take the form of an Annual Governance Statement prepared on behalf of the Leader at the Council and Chief Executive. It will be submitted to the Audit Committee for consideration and review with the annual accounts to meet the statutory requirement of the Accounts and Audit Regulations 2006. This requires findings of the review of the system of internal control to be considered by a committee of the relevant body, or by members of the body meeting as a whole.

The Governance Framework consists of a range of documents, policies and procedures developed, maintained and promoted by a number of different departments which are published and promoted to members, officers and others by publication on the Council's website.

This Code will be reviewed after the Annual audit and when any new CIPFA/SOLACE guidance is issued.



## **PROTOCOL FOR MEMBER/OFFICER RELATIONS**

### **1. INTRODUCTION**

- 1.1. The purpose of this Protocol is to guide members and officers of the Council in their relations with one another.
- 1.2. This Protocol forms part of a series of Codes which are set out in the Constitution. Members are reminded that breach of this protocol could result in action being taken against that member under the Members' Code of Conduct which can include investigation and reports to the Council's Standards Committee. Officers are also bound by this protocol and breaches by officers are addressed under the Council's disciplinary processes.
- 1.3. Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues that may arise.
- 1.4. This protocol is to a large extent no more than a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.5. This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and as such demand very high standards of personal conduct.

### **2. RELATIONS BETWEEN MEMBERS AND OFFICERS**

- 2.1 Members and officers should at all times treat each other with respect and courtesy. It is essential for the operation of the Council that there is a close working relationship, built on mutual respect, between members and officers.
- 2.2 It is clearly important that there should be a close working relationship between the Leader, Cabinet Members or Chair of a committee or sub-committee and the Chief Officers and other senior officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other members and other party groups or with Council business generally.
- 2.3 Officers are not obliged to attend members' surgeries and it is recommended that they do not.
- 2.4 Whilst the Leader of the Cabinet or Chair of a committee (or sub-committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer will always be fully responsible for the contents of any reports submitted in his/her name. Any issues arising between the Leader or a Chair and a Chief Officer in this area should be referred to the Chief Executive for resolution.

### 3. OFFICER ADVICE TO PARTY GROUPS

- 1.1. It is common practice for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups.
- 1.2. The support provided by officers can take many forms, ranging from a briefing meeting with the Leader of the Cabinet, Cabinet member, or a committee chair to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 1.3. Certain points must however be clearly understood by members and officers alike. In particular:
  - (a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *Council* business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not invited to be present nor attend at meetings, or parts of meetings, when matters of *party* business are to be discussed;
  - (b) party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - (c) similarly, where officers provide information and advice to party group meetings in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Council or the Cabinet or a relevant committee or sub-committee thereof, when the matter in question is considered.
- 3.4. Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Brent Members Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.
- 3.5. Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group. Similarly, members should not disclose confidential or exempt information to other persons, including other members and non-members who may not be entitled to receive that information.
- 3.6. Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### **4 SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS**

- 4.1 The only basis upon which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.
- 4.2 Members should not seek, and officers should not provide, support or assistance for any other purpose, including political purposes.

#### **5 CORRESPONDENCE**

- 5.1 It should not normally be necessary for an officer to copy correspondence between an individual member and the officer to any other member. Where, exceptionally, it is necessary to copy the correspondence to another member, this should be made clear to the author of the original correspondence.
- 5.2 Official letters on behalf of the Council should be sent out under the name of the appropriate officer rather than a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear under the name of a member, but this should be the exception rather than the norm. This would normally be in the name of the Leader or other Cabinet member.
- 5.3 Members should not write letters which create obligations or give instructions on behalf of the Council.
- 5.4 Members should not coerce officers to send particular correspondence or to write or refrain from writing a particular statement.
- 5.5 The Council's logo may be used on correspondence from members but only where the correspondence relates to Council business. Guidance on letterheads and the use of the Council's logo will be issued from time to time and members should comply with that guidance. Members should also be familiar with the Code of Practice on Local Authority Publicity which may be relevant.

#### **6 INVOLVEMENT OF WARD COUNCILLORS**

- 6.1 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward members should be notified at the outset of the exercise.

#### **7 PRESS RELEASES AND PUBLICITY**

- 7.1 Press releases issued by the Council's Head of Communications may contain quotes from the Leader, Cabinet Members, or the appropriate Chair of committees. Press releases will be confined to factual information and an explanation of agreed Council policy. Where the press make a request for political comments this will be referred to the relevant party spokesperson(s).
- 7.2 The Members of the Cabinet relevant chairs and vice-chairs and group spokesperson(s) will be sent copies of Council press releases when they are

published. Where Council press releases relate solely to a specific ward issue the ward members will also receive a copy of the press release when it is issued.

7.3 Any press release issued by the Council under the above arrangements will comply with the Local Government Act 1986 and the Code of Practice on Local Authority Publicity, and in particular:

- must have the principal purpose of explaining or commenting upon Council policy
- must be factually correct; and
- must not include materials the main effect of which is party political (i.e. designed to affect public support for a political party).

7.4 Special care in relation to press releases and publicity should be taken during the pre-election period. Members and officers should pay particular attention to any guidance issued on this point by the Monitoring Officer, Chief Executive or other relevant officer(s).

7.5 Members of the Council may respond to requests for press, radio and television interviews, but these will be given in a personal capacity and will be the personal responsibility of the member concerned. Where a formal Council view is requested this will be referred by the Head of Communications to, the Leader of the Cabinet, the appropriate Cabinet member, or the appropriate committee Chair.

7.6 The recognised channel for press approaches to the Council is through the Head of Communications. At his/her discretion, officers may deal with any request for information or questions asked by the press, television or radio, and may accept invitations to broadcast or appear on television in order to give the facts of a situation or explain the Council's practices. It is important that the relevant senior officer(s) is involved in signing off any draft response prepared. The Leader of the Cabinet, Cabinet member, or relevant chair will be informed as soon as practicable.

7.7 When press conferences or media events setting out agreed Council policy are arranged Leader and other members of the Cabinet, or the relevant chair and vice-chair of the committee, will be invited to attend.

7.8 Members should not coerce officers into issuing publicity or organising events which would, or might, contravene the rules on political publicity.

## **8. VISITS**

8.1 Any arrangements for visiting relevant Council establishments shall be available to relevant party spokesperson(s) on an equal basis.

## **9. DIRECTIONS TO STAFF**

9.1 Members should not issue any instruction to officers to do or to refrain from doing anything. There are exceptions to this in relation to the Leader and members of the Cabinet where the issue relates to Council policy or business and are executive matters. This general rule shall not however, prevent committee chairs from requesting officers to make arrangements or provide documents in respect of meetings of which they are chair.

- 9.2 Members should not make statements to staff whether verbally or in writing which could be construed as amounting to a suspension, dismissal or disciplinary action nor do anything which could amount to constructive dismissal.

## 10 STAFF APPROACHES TO MEMBERS

10.1 It is important that appropriate boundaries of behaviour and proper communication channels are maintained at all times which reflect the respective roles of officers and members in the Council.

10.2 The Brent Council officers' Code of Conduct sets out standards of behaviour for officers, breach of which can lead to disciplinary action. Included in that Code are the following restrictions on officers' interaction with Members

- do not canvass members on employment related matters nor seek to influence members prior to any meetings of the Senior Staff Appointments Sub Committee or Staff Appeals Sub Committee, other than in the context of giving proper professional advice
- do not take up any staffing problems or issues with members.

Any such approaches from officers or ex officers of the Council to a Member should be referred by the member to the Director Human Resources and Administration.

## 11. CODE OF CONDUCT AND CODES OF PRACTICE

11.1 Members must adhere to the Brent Members Code of Conduct, the Planning Code of Practice and the Licensing Code of Practice at all times and the general principles of conduct set out in the Localism Act 2011 namely:

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty
- Leadership.

## **PROTOCOL ON MEMBERS' RIGHTS OF ACCESS TO INFORMATION**

### **1. INTRODUCTION**

- 1.1 The purpose of this protocol is:
- (a) to set out the rights of access to Council information that members of the Council have; and
  - (b) to provide guidance to members and officers on the approach to be adopted in the exercise of these rights in respect of availability of Cabinet and Committee Reports and to information held by the Council generally.
- 1.2 This protocol does not deal with the rights of access of the public and the press which are set out in the Access to Information Rules.

### **2. GENERAL PRINCIPLES**

- 2.1 Members are free to approach Council staff of appropriate seniority to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Service Area or Corporate Director or another senior officer of the department concerned.
- 2.2 Members should not try to use their position to coerce officers into releasing to them information which they are not entitled to see. Any issues should be taken up with the relevant Service Area or Corporate Director.
- 2.3 Any difficulty as to whether a member is entitled to particular information should be referred by the relevant member or officer for advice from the Chief Legal Officer. The final decision in a disputed case is a matter for the relevant Council committee or sub-committee or in the case of executive functions, the Cabinet or its committee(s).
- 2.4 The effect of the rules contained in statute and regulations is that all councillors are entitled to see all reports to the Cabinet and Committees in advance, together with documents relating to the matters contained in the report, except those that are exempt information as set out in the Access to Information Rules in Part 6 of the Constitution. The restriction on access under category 3 only applies in so far as the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract and there is no restriction for members on access to information that is exempt because it falls within category 6. Members of the Scrutiny Committee may be able to see those excluded reports after the decision has been taken if the report concerns a matter in their work programme or is called in to be considered by them. This is the position set out in the Access to Information Rules in the Constitution.
- 2.5 Reports containing confidential information as defined in the legislation (i.e. information stated by the government to be confidential or which is covered by a prohibition on disclosure in legislation or which is covered by a court order) cannot be made public and the public must be excluded from any part of a meeting during which such a report is discussed. There is no discretion in respect of this category of information.

- 2.6 The decision as to whether a report due to be considered by the Cabinet or its Highways Committee or the Barham Park Trust Committee, the Council or one of its committees contains exempt information as set out in the legislation and whether or not it should be generally circulated is made by the "proper officer". The proper officer in Brent is the Head of Executive and Member Services. The proper officer will be exercising a discretion in deciding whether to circulate exempt papers other than to members of the relevant body and that discretion must be exercised reasonably. The Head of Executive and Member Services will take advice from the Chief Legal Officer.
- 2.7 There is no statutory right for councillors to attend meetings of bodies of which they are not a member while confidential or exempt reports are being considered.
- 2.8 It is a matter for the body which is meeting (i.e. the Cabinet or its Highways Committee or Barham Park Trust Committee a Council committee) whether other councillors are allowed, as a matter of discretion, to remain at an otherwise open meeting while exempt matters are discussed. The Cabinet or the committee will be exercising discretion in deciding whether to allow any councillors who are not members of the body to remain and that discretion must be exercised reasonably.
- 2.9 Members have further rights of access beyond those specifically given in statute in certain circumstances. These additional rights are described as "common law rights". A member is entitled to see documents which are reasonably necessary to enable him or her to carry out his or her duties **as a Councillor**. This is generally described as the "need to know" principle.
- 2.10 There is no simple definition of this. Various court cases have given indications of how the common law right should be interpreted. There is no right to a "roving commission" to satisfy curiosity and the right will not arise if there is some form of ulterior or indirect motive (such as to assist someone in litigation against the council) which underlies the wish for access. Ulterior or indirect motive would cover any case where the "real" reason the Councillor wants access is not to do with carrying out his or her role **as a Councillor** (e.g. where the reason is to do with the members position as a party member, as a resident or as a member of any association.) Extra care will need to be taken in considering the application of this right in cases where there is litigation underway or contemplated connected to the information sought. However, the fact that the information is potentially embarrassing for the Cabinet or Council as a whole is not in itself a reason to deny access to information to which a Councillor is otherwise entitled. A member of a committee will normally be entitled to access to papers concerning matters for which the committee is responsible.
- 2.11 Reports which members are not entitled to see as of right may be made available to them and this Protocol explains the circumstances when this may happen.

### **3. APPLYING A PRINCIPLE OF OPENNESS IN THE WRITING OF REPORTS**

- 3.1 Reports to Committees and the Cabinet should only be marked exempt when this cannot reasonably be avoided in order to protect the interests of the Council and/or third parties in accordance with the statutory rules on exempt reports. Report writers should bear in mind the qualifications in respect of the categories of exempt information as marked in the Table at paragraph 53 of Part 6 of this Constitution and should also bear in mind that information which has been exempt at one stage may not remain so. For example, information which if disclosed at an early stage might have prejudiced the Council in negotiations for a

contract may at a later stage not be capable of having that effect. The information would then no longer be exempt.

- 3.2 It is sometimes possible for reports to be written in such a way that exempt information is separated out from the main body of the report to be included in a separate exempt sheet. Sometimes information in reports could be made anonymous without the effectiveness of the report being reduced. This is one way of ensuring that as many reports, and as much information, are made accessible as possible. There will still inevitably be a number of reports which are marked exempt.
- 3.3 Officers who write reports should strive to avoid entire reports being below the line (exempt) by omitting exempt information where possible and appropriate and in other cases trying to separate out the exempt information on to separate sheets.
- 3.4 Where a report is split in this way, the chair at the meeting at which it is considered will need to be careful to ensure that members are aware that there is additional information in an exempt section of the report. Guidance on how to handle reports split in this way is contained in section 6.4 of this Protocol.

#### **4. ACCESS TO REPORTS**

- 4.1 The Head of Executive and Member Services intends to apply a presumption of openness when exercising his discretion concerning giving members access to exempt reports that they do not have a positive right to see. The following sections set out the normal practice that will be followed in respect of automatic despatch of reports to members and in respect of responding to requests from members for reports.
- 4.2 All reports will of course be despatched to all members of the relevant committee or other body.
- 4.3 Subject to section 5 below, all reports (normally including exempt reports) will be sent to Leaders of Party Groups. The Head of Executive and Member Services would of course retain discretion not to despatch copies automatically in appropriate cases, for example if a report concerned a matter in which the member had a personal interest or concerned a person known to the member.
- 4.4 Subject to section 5 below, specific reports (normally including exempt reports) will be despatched to any councillor on request.
- 4.5 In some cases it may be appropriate for a member requesting access to a report to be given an opportunity to see the report without a copy being supplied for the member making the request to take away.
- 4.6 Members automatically sent exempt reports, or receiving them after making a request, would not be entitled to share the reports with other members of their party group but could alert them to the advisability of requesting a copy of the report/calling the report in. Other members could request a copy direct from the Head of Executive and Member Services. Such a request would then be dealt with in accordance with the principles set out in this section 4 and in section 5 below.
- 4.7 The Head of Executive and Member Services reserves the right not to provide exempt information to any councillor not entitled to it as of right if he believes the information is wanted for an improper purpose.



## **5. PARTICULARLY SENSITIVE CATEGORIES OF INFORMATION**

- 5.1 Reports containing some categories of exempt information are less appropriate for automatic circulation or distribution on request to members not directly concerned in them through their role on the Cabinet or a committee than others.
- 5.2 It would not normally be appropriate for reports covered by categories 1, 2 and 5 in the Table at paragraph 53 of Part 6 of this Constitution to be made generally available. These categories cover information about particular individuals or which enables individuals to be identified. Reports containing information falling into these exempt categories will only be provided to (or in some case made available to) councillors who are not members of the relevant body if they are able to positively demonstrate to the Head of Executive and Member Services (if necessary on the advice of the Chief Legal Officer) that they have a need to have a copy of or see the report in order properly to carry out their duties as a Councillor.
- 5.3 Reports containing information falling into category 3 to which members are not automatically entitled (terms proposed in the course of negotiations for a contract) may also be particularly sensitive. These reports will normally be provided as a matter of course to the Leaders of each political group and be made available or copied to other members on their specific request. However, where the report is particularly sensitive this will not happen. This may be the case for example where negotiations are on going in relation to price or price sensitive aspects of the contract.
- 5.4 Officers relying on category 3 on the basis that a report contains information about terms proposed in the course of negotiations for a contract will be expected either to prepare a report which separates the exempt from the non exempt information so the latter can be freely circulated, or to produce, on request, an expanded summary of the report for councillors who are not members of the decision making body and are not provided with a copy of the report but who want to know more about the matter than is contained in the brief "Summary" section within the report.
- 5.5 Separating out exempt information into a separate appendix, where possible, in order that the main body of the report can be publicly available is good practice in all cases and not just where category 3 (in respect of information about terms proposed in the course of negotiations for a contract) is relied on. Where a report is split in this way, when the open part of the report is considered at the Council, committee or Cabinet meeting the chair of the meeting shall draw to the meeting's attention that the report is a split report and that further information appears in the exempt papers. If any member of the body considering the report indicates that they wish to comment on or question the report in a manner likely to involve discussion of the exempt information, the body shall consider whether discussion of the item should be postponed until a part of the meeting from which it is expected the public will be excluded.
- 5.6 Information falling into categories 8-10 (Standards Committee reports) may also be particularly sensitive. The Head of Executive and Member Services will seek the advice of the Chief Legal Officer on any request by a member who is not a member of the Standards Committee for a report covered by these exemptions before providing a copy of, or allowing access to, the report.

## **6. ESTABLISHING A NEED TO KNOW**

- 6.1 It is not possible to include in this Protocol hard and fast rules as to the application of the "need to know" principle as it will inevitably depend very much on the specific circumstances. Where this principle applies members will be entitled to access to reports as of right even if access would not otherwise be given under the earlier sections of this protocol. However, the following general principles can be identified.
- 6.2 The Chair of the Scrutiny Committee is likely to have a greater need (but no absolute right) to have access to exempt reports specifically concerning those issues for which those committee are responsible, principally matters forming part of the work programme of the committee and matters which have been recently considered by the Cabinet .
- 6.3 Party Leaders are likely to have a greater need (but no absolute right) to have access to exempt reports than ordinary councillors with no special role.
- 6.4 Ward Members may have a particular need to know about matters affecting their ward. This does not mean they are entitled to access all information the Council has concerning matters affecting their ward. For example, if the information is confidential and could not in any event be passed on by the Ward member to constituents, a clear need to know for reasons that did not involve sharing the information with constituents would need to be established.
- 6.5 A Councillor will generally have a need to know information a constituent had asked the councillor to obtain on their behalf if the constituent would themselves be entitled to that information.

## **7. ACCESS TO OTHER FORMS OF INFORMATION**

- 7.1 All Service Area and Corporate Directors should ensure that relevant information within their areas of responsibility is supplied to particular members according to their legitimate individual needs and requests. This may be by way of committee reports, letters or any other appropriate means. In fulfilling this obligation, such directors should have particular regard to the information needs of members as local representatives, including:
- information on all significant matters which particularly affect the member's ward
  - information on local matters in which the member may have expressed a specific interest, even though they do not directly concern the ward he/she represents
  - where relevant, information at two stages: when a decision is being considered and when it is being implemented.
- 7.2 If a director considers that meeting a request for information would involve an unreasonable commitment of resources, the member making the request shall be so advised. If that member persists in requesting the information then the director may refer the matter initially to the Leader of the Cabinet or the appropriate committee of sub-committee chair (or in the absence of the Leader or chair the Deputy Leader or Vice Chair) and then on to the Cabinet or the appropriate committee or sub-committee if necessary.

- 7.3 Officers should not release to members or non-members any information which they are aware is exempt or confidential and which that person is not entitled to receive.
- 7.4 Positive briefings (i.e. those which originate from officers otherwise than in response to a request or enquiry) will generally only be given to members of the Cabinet or chairs or vice-chairs of committees or sub-committees although officers are not prevented from giving briefing to other members if they feel that is appropriate.
- 7.5 'Fishing expeditions' will not be responded to and the reasons for a member's request for information will be sought.
- 7.6 Ward members have a legitimate role as advocates for their constituents as a group and as individuals. Ward members seeking information about individual constituents will need to demonstrate that they have the agreement of their constituent to the disclosure by the Council of the information. This will usually be by way of written confirmation, especially in the case of sensitive personal information. Ward members cannot use their role as a Councillor to obtain for constituents information to which the constituents themselves would not be entitled.
- 7.7 All requests for information will be dealt with in accordance with the established legal principles governing members' rights to information.
- 7.8 More detailed advice about access to specific documents can be obtained from the Chief Legal Officer.

## **8. FREEDOM OF INFORMATION ACT**

- 8.1 Councillors have the same rights to access to information under the FOIA as anyone else. The special rights of access members have, as described above, may overlap with rights under the FOIA or may allow Councillors access to information (or documents) that would not be available to them under the FOIA. For example, it is not necessary to say why information is wanted if it is requested under the FOIA but it would be necessary to state this if a Councillor was relying on their need to know as a Councillor. It may be that information that is not available to a Councillor under the FOIA (because it is covered by an exemption) may be available to them on the basis of their special rights as a Councillor. So, in some respect the FOIA rights are wider than Councillor's other rights and in some respects they are narrower.

## **9. GUIDANCE ON POTENTIAL PENALTIES AND CLAIMS IF LOSS IS CAUSED BY DISCLOSURE OF PERSONAL OR COMMERCIAL SENSITIVE INFORMATION**

- 9.1 Much of the information kept by the Council relates to individual clients and officers and members are expected to be discreet in their handling of such information which is disclosed to them.
- 9.2 One element of this will be obligations to individuals or organisations about whom a report contains information which is confidential to respect that confidentiality. Wrongful disclosure of information which results in some form of damage to a person or business to which the obligation is owed could be actionable against the Council. Information is often provided by people to the Council for a particular purpose and to disclose or use it for another purpose can lead to a Data

Protection Act breach. Clearly the Council itself could be damaged by information wrongly disclosed. Wrongful disclosure by a Councillor would be a matter to be dealt with under the Members Code of Conduct and could result in a complaint to the Standards Committee about the member concerned.

9.3 The Brent Members Code of Conduct provides that:

Paragraph 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”

Paragraph 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”

9.4 A breach of the Brent Members Code of Conduct can lead to sanctions being imposed on the member concerned.

## PROTOCOL ON CALL-IN

### 1. Introduction

- 1.1 The basic premise of call-in is that it is a failsafe mechanism enabling non executive Councillors to make the Cabinet re-consider a particular decision if it is of major concern or in Members eyes profoundly flawed.
- 1.2 The statutory guidance on call-in states that there needs to be an appropriate balance between effectively holding the Cabinet to account, being able to question decisions prior to them being implemented and allowing effective, efficient decision making. It also balances the need to make the process accessible and the need to ensure that call-in procedures are not abused or used to delay or slow down the decision making process.
- 1.3 As call-in can inevitably result in a delay to the implementation of decisions it should not be used for party political purposes to seek to further discuss a decision that some members do not agree with. Equally, the rights of non executive members to call-in a decision and exercise their right to question the decision, the decision maker and consider alternative options needs to be respected.
- 1.4 This protocol is designed to provide a locally agreed framework within which call-in can operate, a clear set of criteria against which a call-in request can be judged and a format for the effective conduct of the meeting considering the call in.

### 2. What is a call-in?

- 2.1 A decision made by the council's Cabinet can be called in for review before it is implemented. Decisions can be called in by five non-executive members or by the Scrutiny Committee. If a Cabinet decision is called-in, that decision should not be implemented until it has been considered by scrutiny. Called in decisions are considered by the Scrutiny Committee. An urgency procedure is in place for any decision that cannot afford to be delayed.
- 2.2 The Scrutiny Committee will meet within 15 working days of the decision being made. If the Committee agrees with the reasons for the call in, the decision is referred back to the Cabinet along with the reasons why the Committee thinks it should be reconsidered. The Cabinet will then decide whether to implement the original decision or review the decision based on the views of the Scrutiny Committee. If the Committee does not agree with the reasons for call in then the matter is not referred back to the Cabinet and the original decision is implemented.

### 3. The call-in process

- 3.1 A call in request must be submitted within 5 days of the relevant decision being made or in the case of a decision made by officers within 5 days of the date on which the record of the decision is made publicly available in accordance with the Access to Information Rules. When submitting the call in request members must set out the following:
  - an explanation as to why they are calling in the decision and if they are calling in all or part of the decision(s).
  - an outline of the suggested alternative course of action.
- 3.2 The call-in request form or a similar format should be used to ensure full

information is provided.

3.3 When a call-in request is submitted the Head of Executive and Member Services will refer it to the Chief Legal Officer and the Head of Policy and Scrutiny (the council's designated scrutiny officer) who will decide whether or not the call-in conforms with this protocol. The call-in request will be assessed against the following criteria:

- Is the call-in process being used as a means of gaining information / understanding or discussing general concerns with Members and officers? If this could be achieved through the general overview and scrutiny process or by talking to the relevant officer or lead member informally the call-in will not be valid,
- Does the call-in duplicate a recent call-in on the same issue? If the call-in duplicates another call-in made within the previous 6 months it will not be valid,
- Have the reasons for calling in the decision already been discussed by the Scrutiny Committee? If the reasons for calling in the decision have been discussed by the Scrutiny Committee prior to the decision being made the call-in will not be valid,
- Call-in of a decision of the Cabinet referring a matter to Full Council for consideration will not be valid,
- Call in of operational management decisions taken by officers will not be valid
- If the call in request is considered to be frivolous, vexatious or clearly outside the call-in provisions it may be deemed invalid. Prior to deciding the validity the Chief Legal Officer and the Head of Policy and Scrutiny may seek clarification from the members concerned.

#### **4. The Conduct of the call-in Meeting**

4.1 The Scrutiny Committee is an official committee of the council and its meeting are held in public.

4.2 The purpose of a call-in meeting is for non executive members to examine and consider the decision made by the Cabinet and for members of the committee to make suggestions and recommendations they consider appropriate. The Scrutiny Committee provides an opportunity for members to seek clarification of the methodology used in enabling a decision to be made, as well as explore work undertaken by officers culminating in the matter coming before the Cabinet .

4.3 The relevant Cabinet Portfolio Holder and chief officer (or his/her representative) will be invited to attend the Call-in Committee meeting to explain the reasons for the decision, respond to the issues raised in the call-in request and answer questions at the meeting.

4.4 It is the chair of the Scrutiny Committee's responsibility to manage the meeting effectively by applying standing orders, maintaining good discipline and fostering a culture of respect. All contributions to the meeting should go through the chair and the chair should ensure that no purely personal disagreements or comments are allowed to continue.

4.5 To ensure that the meeting is effective the chair will:

- (a) Start each call-in agenda item by asking a representative of the members that called in the decision to set out the reasons for the call in.
  - (b) If a member of the public has made a request to address the meeting, the rules relating to members of the public addressing a meeting as set out in Standing Orders apply. Members of the public can be allowed to speak for 2 minutes or 3 minutes in exceptional circumstances. If a number of requests to speak have been received then the chair should seek to limit the number of contributions to avoid hearing the same points repeated and should seek advice from the Head of Executive and Member Services about how this should be managed.
  - (c) Ensure that all of the members of the public who it has been agreed will address the meeting are heard prior to the lead member and any relevant officers being asked to respond to the issues raised by the call-in.
  - (d) Invite members of the committee to question the lead member and officers and discuss the issues. Members who are not members of the committee but wish to ask a question can be invited to do so.
  - (e) Having considered the call-in invite members of the committee to come to one of the following conclusions:
    - That the grounds for the call-in are upheld. In these circumstances the committee must set out what it wants the Cabinet to do.
    - That the grounds for the call-in are rejected and the decision can be implemented.
- 4.6 Ensure that any member wishing to make a recommendation to the Cabinet clearly states what course of action they are proposing.