

Chapter 5.2 - Planning Committee Code of Practice

(Updated Council 12/11/08, 02/03/11, 11/06/14)

Introduction

This Code sets out how the Council expects Councillors to conduct themselves in carrying out the business of the Planning Committee, particularly in handling of planning applications, etc. In the main it is a formalising of current practices and procedures. This Code is supplementary to the Members' Code of Conduct (the Members' Code) adopted by Council on 27 June 2007.

The Code will be publicised from time to time and will be made available to anyone on request. It will be reviewed periodically, and may be updated at any time to maintain compliance with legislation and Government guidance. A copy of the Code is supplied to every Councillor serving on the Planning Committee.

(1) General Role and Conduct

Councillors and officers have different, but complementary, roles. Both serve the public, but Councillors are responsible to the electorate while officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to officers through a Council, Cabinet, Cabinet Member or Committee decision, in accordance with the Council's scheme of delegation. They must always act impartially. Any other system, which develops, is open to question. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's positions.

The basis of the planning system is the consideration of private proposals against wider public interests. Members of the Planning Committee must take decisions on behalf of the community as a whole. Much is often at stake in the process and opposing views are often strongly held by those involved. Whilst members of the Planning Committee should take account of those views, they must not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on a Planning Committee.

Members of the Planning Committee should be prudent about their social contacts with known developers and agents, and refrain altogether from such contacts when developments are contemplated or applications are being proposed or when controversial decisions are likely to be made.

Members of the Planning Committee may be offered gifts or hospitality from people with an interest in a planning proposal. Such offers should be declined. If receipt of hospitality is unavoidable – for example, where to refuse light refreshments on an extended visit would cause offence – those receiving it should ensure that it is of the minimum level and should declare its receipt as soon as possible. All offers, whether accepted or not, should be recorded in the hospitality book by the Council's Monitoring Officer.

(2) Membership of the Conservation Advisory Group and the Planning Committee

The Council agreed on the 12th May 2004 that Councillors should not serve on both the Conservation Advisory Group and the Planning Committee.

(3) Membership of the Green Belt Forum and the Planning Committee

The Council agreed on the 7th November 2007 that Councillors should not serve on both the Green Belt Forum and the Planning Committee.

(4) Declarations and Registration of Interests

The law and the Members' Code set out requirements and guidance for Councillors on declaring disclosable or other pecuniary interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review their situation regularly. When doing so it must be borne in mind that the National Code advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Councillor.

Councillors who have interests, or investments, which would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.

The Council's Monitoring Officer is happy to advise on the Code of Practice. It is for Members of the Planning Committee to interpret this advice using the guiding rule that one should not use one's position to further a private or personal interest, rather than the general public interest or give grounds for such suspicion.

Such private interests could arise through family, friends, clubs, Freemasons, trade unions and voluntary bodies. If so, then not only must the interest be disclosed, but the Councillors should not take any further

part in the debate or vote. The responsibility for declaring an interest lies with the individual member.

(5) Training

Members of the Planning Committee must exercise their representational role on behalf of their constituents. At the same time the planning process requires them to take decisions within a legal framework which is evolving continuously through legislation and case law.

To remain eligible to serve on the Planning Committee Councillors appointed to the Committee must have received formal training in planning procedures and planning law in the course of their first month of service unless they shall have received such training in the proceeding two years.

(6) Lobbying

(a) Being Lobbied

When being lobbied members of the Planning Committee should not express an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves so far as is practical to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant officer so that their opinions can be included in the officer's report to the Committee.

If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee.

(b) Organisation of Lobbying

In general, members of the Planning Committee should avoid organising support for or opposition to a planning application and should not lobby other members. If a member of the Planning Committee feels it appropriate to campaign in support of, or in opposition to, a particular application, the proper course of action at the committee meeting would be to make statement of their views but not to take part in the subsequent Committee discussion or to vote.

A member of the Planning Committee also has a duty to represent the view of the electorate. Therefore nothing in this Code inhibits a member's right to put forward those views and support them if the member wishes, at the Planning Committee meeting. However, members should be

mindful of possible predetermination or a perception of bias and therefore keep an open mind until they have heard all the facts. The member should declare on whose behalf such views are being represented.

(7) Committee Reports

Each application to be determined by the Planning Committee shall be the subject of a written report, which describes the nature of the proposal, and the substance of objections or other comments from those notified or consulted. There shall be a clear recommendation for the decision. Where the recommendation is contrary to development plan policy this must be recorded with a written summary of the material considerations which justify the recommendation. An officer who augments a written report with an oral report to the Committee shall make and retain a note of that oral report.

(8) Decisions Contrary to Recommendation

If it appears that the Committee may be minded to make a decision contrary to the officer's recommendation the officer should be given the opportunity to explain the implications of the contrary decision before it is taken. The Committee should consider whether to defer the formal decision until it has a full draft of the decision before it.

If a decision is taken contrary to advice (whether for refusal or permission), a Minute of the Committee's reasons shall be made and a copy placed on the application file. Similarly, a note of any additions, deletions or alterations to conditions decided by the Committee shall be made on the file.

(9) Site Visits

A site visit will be used only when a proposal is contentious or particularly complicated and when in the Committee's view the expected benefit in assisting the Committee to determine the application is substantial. The nature of that expected benefit shall be minuted as the reason for the decision to make a site visit.

A site visit will normally take place immediately preceding the next Committee meeting following the decision to make the visit and should be arranged by the planning case officer. The applicant, the occupiers and the owners of private land to which access is desirable to consider the application shall be notified in writing and prior agreement shall be obtained if possible. The written notice shall make it clear that at the site visit only factual information or answers relating to the recorded matters

which have caused the visit to be made may be given. No lobbying will be permitted.

Members must not talk individually with applicants, objectors or others in the course of a site visit. So far as practicable, information, question and answers should be given in the hearing of all members in attendance. The ward councillors will also be notified of and able to attend site visits.

A note shall be made of members attending site visits.

(10) Discussions with Applicants

Discussions between an applicant or potential applicant and the Council are encouraged but they should not become, or be perceived to become, part of the lobbying process. Such discussions should therefore take place within the following guidelines.

It must be made clear at the outset that the discussion will not bind the Council to a particular decision and that any views expressed are personal and provisional.

Advice should be considered and based upon the development plan and material considerations. Planning policies should be interpreted consistently.

Officers should make it clear whether they are the decision-maker or not. They should make a written note of any contentious points at the time and confirm this by letter. Normally, Councillors should direct any approach made to them for a meeting to officers. If practical when Councillors meet an applicant or potential applicant a professionally qualified officer should attend.

(11) Development Proposals by Councillors and the Council

Such proposals must be handled in a way, which gives no grounds for accusations of bias.

An officer must not act as an agent for anyone pursuing a planning matter with the Council. Any Councillor who so acts must take no part in the decision making process for the proposal.

Should any Committee member (or a relative) submit their own proposal for the Council's approval they must inform the Council's Monitoring Officer and take no part in processing the determination of it.

In accordance with the scheme of delegation, such proposals will not be dealt with under powers delegated to an officer and must be identified as being those of a committee member in a written report to the Planning Committee.

Proposals for the Council's own development or where it submits applications on behalf of another party must be treated in the same way as those of private developers, save that they must not be dealt with under powers delegated to the officer unless the proposals fall within the "other" development category (covering applications for changes of use, householder development, adverts and listed building consent) and no objection has been received. In such circumstances, the applications can be determined under authority delegated to officers.

(12) Protocol for Cabinet Member for Economic Development to attend Planning Committee

The Cabinet member for Economic Development (or equivalent) will be able to attend the Planning Committee. His/her role at those meetings will be to put forward the Council's views on relevant matters such as policies in the Council's Local Development Framework, master planning and urban design, and strategic regeneration and economic development issues to give a policy context the Committee's deliberations on particular matters. He/she will not be a member of the Committee and will not have a vote.

His/her role at the meeting will not be dissimilar to that undertaken by the Chair of the Conservation Advisory Group in relation to relevant matters.

The Cabinet member will be invited by the Chair to comment on any particular application prior to the start of any formal debate on that item, once any deputations and contributions from ward councillors have been received. They will not then be permitted to participate any further in the debate with their contribution restricted to those matters identified above and will not otherwise participate in the Committee's decision making process.

(13) Other Protocols

Some aspects of procedure are governed by other protocols already adopted by the Council. These include:

- a scheme of delegation whereby the Assistant Director Planning, Highways & Transportation has authority to determine certain of applications in given circumstances.

- a procedure allowing applicants and third parties to address the Planning Committee.
- guidelines for publicity and neighbour notification concerning planning applications.
- the Council's complaints procedure.

Those protocols shall be followed within the spirit and intent of this Code of Practice.

Chapter 5.2(a)– Probity in Planning

London Borough of Enfield
September 2010

- a guide to procedures and protocol for Councillors & Officers involved in making decisions on planning applications and other planning matters

(Updated Council: 02/03/11)

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CODE OF PRACTICE : PROBITY IN PLANNING

1. EXECUTIVE SUMMARY

1.1 This guidance report gives an overview of probity issues in planning, including Members of the Planning Committee training and gives information on the approved Code of Practice.

A brief summary of the recommended approach that should be taken by planning committee members as well as key issues to avoid is listed below. These are covered in greater detail within the body of this guide. Members should be aware that the Localism Bill is likely to make changes to planning legislation in a large number of areas and will in the future affect how such legislation is implemented and considered at Planning Committee. This Guide will be revised and updated once the Localism Bill is enacted and the necessary training will be provided to Members

1.2

- **Do** listen to all deputations and officer presentations before coming to a decision.
- **Do not** make statements that can be perceived as predetermining any applications
- **Do** treat all applicants the same irrespective of race, gender, disability, nationality, religion, age, sexual orientation, family status or any other irrelevant factor.
- **Do not** do anything which may cause the Council to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)

- **Do** deal with all applications in an impartial way and refrain from putting inappropriate pressure on officers to change recommendations.
- **Do not** do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
- **Do** give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.
- **Do not** resolve to overturn recommendations of officers without first **if** possible discussing and confirming planning reasons to do so.
- **Do** disclose at the planning committee prior to any discussion the existence and nature of any personal or prejudicial interest at the commencement of that consideration, or when the interest becomes apparent.
- **Do not** fail to disclose and personal or prejudicial interest. If there is any doubt please consult the Assistant Director of Corporate Governance or the Legal Advisor to the committee.
- **Do** consider each matter on its individual merits and should not give the impression that they individually or as a political group have already come to their decision before all the material considerations have been taken into account.
- **Do not** block vote in political block.
- **Do** ensure that at a Site Inspection Panel, questions and answers should be given in the hearing of all members in attendance Members must not talk individually with applicants, objectors or others in the course of a site visit.
- **Do not** talk individually with applicants, objectors or others in the course of a site visit.
- **Do** reject any offers or gifts, hospitality or future favours made personally or to the Committee or Council generally. Where approaches are made details should be forwarded to the Assistant Director of Corporate Governance in writing. Any offers of hospitality shall be recorded and sent to the Monitoring Officer (Assistant Director of Corporate Governance).

2. **BACKGROUND AND BASIC PRINCIPLES**

- 2.1 This Code of Practice has been produced to provide on the Council's planning functions. It is produced principally for the benefit of Councillors, especially those on the Planning Committee and Officers dealing with planning related matters and has regard to current advice and examples of good practice. Most of the guidelines included in this document applies principally to Members of the

Planning Committee however specific guidance for non planning committee members is included in Appendix H with advice on their involvement with applicants and the local community with regard to planning applications as well as opportunities to speak at planning committee

- 2.2 Probity in planning has been the subject of some scrutiny by central government in recent years. This code aims to assist Members of the Planning Committee and those Officers who service Planning Committee to make well informed and consistent decisions in light of the Council's Development Plans and the government guidance¹.

3. CODE OF PRACTICE

- 3.1. It is recommended that each local authority should have its own local code of conduct dealing with the issues set out in the guidance². In response to that recommendation the Planning Committee considered a briefing report on Probity in Planning in July 2009. Issues were raised by Members about the content and recommendations contained within the report. This guidance document sets out the protocol for Members of the Council and Members of the Planning Committee in respect of site visits, responding to lobbying and engaging in pre-application discussions. The Local Government Association Code sets standards for and aims to improve public confidence in the planning system but also provides a mechanism for protecting the Council and its Members who act within it. Details of the main elements of the Local Government Association Code appear at Appendix A to this report.
- 3.2. Planning law requires Members of Local Planning Authorities to determine all planning applications in accordance with the Statutory Development Plan unless material planning considerations indicate otherwise. This responsibility must be performed without undue influence or personal interest. Members of Local Planning Authorities also have a duty to take into account all representations made to the Planning Committee including those received as a result of consultation with interested bodies, or as a result of public notice or neighbour notifications. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. A conclusion should not be reached until all the facts have been presented in the report and considered at Committee.

4. ROLE OF ALL PLANNING COMMITTEE MEMBERS TRAINING

¹ Nolan Report 'Standard of Conduct in Local Government' and the Local Government Association Paper 'Probity in Planning'

² 'Probity in Planning' Local Government Association

- 4.1 The London Borough of Enfield is required by its constitution to provide training to all Members of the Planning Committee within one month of their appointment to the Planning Committee to enable them to sit on the Planning Committee. The Government endorses this approach and has suggested a syllabus for this training which can be seen at Appendix C. The Development Management section endeavours to make additional training available for Members of the Planning Committee on a variety of topics of relevance usually as bimonthly briefings carried out by officers.
- 4.2 The planning system relies on Planning Committee Members and Officers acting in a way that is fair, and is clearly seen to be so. Planning decisions must be taken openly, fairly, with sound judgement and for justifiable reasons.
- 4.3 Councillors have two roles in the planning system:
 - they make decisions about planning applications, and
 - they act as representatives of public opinion in their communities and convey and defend decisions of the Authority to their constituents.
- 4.4 Planning Officers responsible for the preparation of written reports and for advising Members at the Committee meetings will be qualified to an appropriate level in Town Planning. Whether or not they are members of the Royal Town Planning Institute (RTPI), they will be required to undertake continued professional development to a level required by the RTPI.
- 4.5 Training for Members of the Planning Committee takes various forms, including an intensive introductory training session, officer briefings, written notes, updates and guidance on new and emerging policy, legislation and other planning issues. A record will be kept of all Members' training and attendance.
- 4.6 The advantages of these training and briefing sessions are that Members do not have to travel far to receive the training, it can be tailored to the particular issues faced by the Authority, it is relatively cheap and can be laid on at times to suit particular Members. However, internal training may be combined with external training so that Councillors gain a wider perspective and see how the same issue is tackled by other Authorities. A record will be kept by the Head of Development Management of the training undertaken by each Member.
- 4.7 The Head of Development Management will give newly elected Councillors a copy of this guidance along with the Planning Handbook.
- 4.8 The delivery of the Development Management Service will be monitored and reports on performance will be made to the Planning Committee at 6 monthly intervals. The Development Management protocols will be reviewed on an annual basis.

5. PRE-COMMITTEE MEETINGS

- 5.1 Pre-application meetings between potential applicants and Planning Officers are encouraged by the Council, and can be of considerable benefit to both parties. There is a well established and successful pre-application advice service already in operation.
- 5.2 It should always be made clear at the outset that discussions will not bind the Council to making a particular decision.
- 5.3 Any Member of the Planning Committee receiving a request to attend or organise a meeting to discuss a proposal must refer the request as soon as possible to the Head of Development Management. This is to ensure that Officers can also be present at the meeting and that all parties are given an equal opportunity to present their point of view. Members will decline to attend meetings which are to be conducted other than in accordance with details as outlined in Appendix D. Conducting these pre-application meetings in accordance with Appendix D will protect the Member and the Council against adverse perceptions.
- 5.4 Where an applicant or any other interested party requests a meeting with any Member of the Planning Committee to discuss a proposal in advance of its determination by the Committee the following general principles shall be observed.
 - (i) The meeting shall take place at the Council offices and shall be arranged through the Planning & Environmental Protection Division.
 - (ii) Officers will also attend the meeting and no meeting shall occur without the presence throughout of officers.
 - (iii) A written record will be made of what was discussed at the meeting and those present will be advised of this. It may then form part of the discussion when considering the various issues.
 - (iv) All such meetings will be conducted on the strict understanding that any view or opinion expressed by Officers, the Chair, Vice Chair and any other Member present, is not binding on the Council and any formal decision can only be made by the Committee once it is in possession of all the material considerations. This must be expressly stated at the start of the meeting.
- 5.5 Where a Member receives any written representations these should be passed on to the Head of Development Management and the Committee Administrator within 48 hours of receipt in order that it may be brought to the attention of the Committee. Members should minimise their social contacts with developers and agents and refrain altogether from such social contact when the Member concerned is likely to be involved in deciding a particular matter in which the developer or agent has an interest.

5.6 The above advice is directed towards Members of the Planning Committee rather than other Members.

6. **HOSPITALITY**

6.1 Because of the interests involved, the acceptance of gifts and hospitality from developers or objectors is likely to lead to allegations of impropriety. Members and Officers should reject any offers or gifts, hospitality or future favours made personally or to the Committee or Council generally. Great care must be exercised.

6.2 Where approaches are made details should be forwarded to the Assistant Director of Corporate Governance in writing. Any offers of hospitality shall be recorded and sent to the Monitoring Officer and Assistant Director of Corporate Governance.

7. **LOBBYING**

7.1 Although lobbying is an acceptable and normal part of the political process, it can lead to questions about whether a Councillor is being honest and impartial.

7.2 Members of the Planning Committee may respond to lobbying and engage in pre-application discussions at their discretion as long as the procedures in Appendix D are complied with but must expressing views in advance of the consideration of all material factors of a case at Committee.

7.3 A copy of the code is contained in Appendix D (See also paragraph 5.3 – Pre Committee Meetings). Failure to adhere to these guidance notes may give rise to the perception of a prejudicial or personal interest which may limit Members participation at planning committee. Advice can be sought from the legal section.

8. **SITE VISITS**

8.1 Members of the Planning Committee should only request a site visit where the impact or effect of the proposed development is difficult to visualise from the plans, photographs and other documents available to the Committee or where there is some physical aspect of the proposal which cannot be adequately addressed in Committee without a site visit. Site visits help Members of the Planning Committee to learn more about an application before they make their decision. Committee site visits shall be undertaken in appropriate cases with an Officer always in attendance. The purpose of Committee site visits shall

principally be to view and obtain information about the site and its surroundings. This will help Members of the Planning Committee to understand comments made by the applicant and objectors. If there is third party/applicant attendance Members of the Planning Committee may hear representations but should not give comment or enter into discussion. A record of the site visit and findings shall be kept, noted in the subsequent Committee report and listed on a background paper.

- 8.2 Appendix E sets out guidance on how site visits shall be conducted. Ward Councillors may attend the Site Visit but must adhere to the guidance set out in Appendix E.
- 8.3 The deferral of an application for a site visit shall be to aid the consideration of the matters before the Committee. This should be reasonable and the reason for deferral should be fully minuted.

9. PLANNING COMMITTEE : TAKING THE DECISION – OFFICER REPORTS AND RECOMMENDATIONS TO COMMITTEE

- 9.1 An Officer of the Council will provide to the Planning Committee a report setting out the relative merit or otherwise of a particular proposed development and will make a recommendation based on their professional opinion
- 9.2 Reports prepared for the Committee form the basis on which Members' decisions are made. They may be subject to close scrutiny by the Planning Inspectorate, the Ombudsman or the High Court and will need to be explained and justified by the preparing officer. The report should be clear and accurate and include an exposition of the Development Plan, Site and Relevant History, the substance of objections and the views of consultees and all material considerations. The report should contain a technical appraisal, which justifies the recommendation. The decision maker should be able to reach a proper conclusion from the report alone.
- 9.3 Verbal updating at Committee is acceptable but a written note of any changes to the recommendation should be circulated where possible.
- 9.4 The Planning Committee may receive, at the discretion of the Chair, in person deputations in relation to a proposed development.
- 9.5 Any report recommending a departure from the Development Plan must be clearly marked as such and must give full and clear justification for such departure.
- 9.6 Members of the Planning Committee will consider the Officer's report, any updates to the Officer's report and deputations made to the Committee.

Members may disagree with the Officers recommendation. When a motion is put which is contrary to the Officer's recommendation, the proposer must state clearly the planning justification in support of the proposition and, as appropriate, the reasons for approval, refusal, or the imposition of any condition. The final formal wording of such reasons or conditions can be delegated to the Assistant Director of Planning & Environmental Protection and shall appear in the official minutes of the meeting.

10. COMMITTEE PROCEDURES

- 10.1 Planning applications shall be determined in accordance with the approved scheme of delegation.
- 10.2 The Agenda for Planning Committee shall be made available to the public at least 5 clear working days prior to the date of the Committee as required by Section 100B of the Local Government Act 1972 (as amended by the Local Government (Access to Information) Act 1985).
- 10.3 The Agenda for Planning Committee shall include a list of:
- All applications to be determined by the Committee with a recommendation from the Assistant Director of Planning and Environmental Protection.
 - All delegated decisions since the previous Committee
 - All Appeals and decisions received.
- 10.4 The Planning Committee shall operate in accordance with the procedures outlined at Appendix F which will be produced in full on each agenda.
- 10.5 If any application is deferred for determination at a later Committee the reasons for this shall be stated before the vote is taken and this will be fully minuted. If an application is deferred at the request of a Member of the Committee, this shall be proposed and seconded. This will include those deferred for site visits.
- 10.6 If the Committee decides to grant or refuse permission against the officer's recommendation reasons should be given for doing so. This will then be recorded in the minutes and may have to be substantiated at any appeal or judicial proceedings.
- 10.7 If any Member wishes to refer an application to the planning committee which otherwise would have been dealt with under delegated powers they must follow the following steps:
- (i) The requests must be made in writing to the Assistant Director of Planning and Environmental Protection within 21 days of the circulation of details of the application (weekly list)

- (ii) The Chair of the Planning Committee has the discretionary power to agree or disagree with the call in request from any Member

11. MONITORING OF DEVELOPMENT

- 11.1 Periodic site visits will be conducted to enable Members of the Committee to monitor the quality of planning permissions granted. A briefing note will be prepared by the Assistant Director of Planning & Environmental Protection for each such visit.

12. COMMITTEE MEETINGS

- 12.1 A Member of the Planning Committee who does not have significant personal or pecuniary interest can nevertheless have had contact with an interested party in the planning matter which is before the Committee to determine. That contact shall be disclosed to the Committee at that meeting and the Member should avoid pre-determining their position.
- 12.2 Members and Officers are required by law to have regard to all material considerations and to make a determination in accordance with the Development Plan unless material considerations indicate otherwise.
- 12.3 Members and Officers should only address their minds to planning considerations and shall disregard non-planning considerations when considering applications and other planning matters.

13. DECLARATIONS OF INTEREST

- 13.1 Members of the Planning Committee should consider each matter on its individual merits and should not give the impression that they individually or as a political group have already come to their decision before all the material considerations have been taken into account.
- 13.2 Whilst Members of the Planning Committee are free to discuss their opinion on planning matters at political group meetings, decisions shall not be made on how to vote on particular applications prior to the Committee meeting concerned.
- 13.3 The law and the National Code of Local Government Conduct set out requirements and guidance for Councillors, respectively, on declaring pecuniary and non-pecuniary interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review their personal situation regularly. When doing so it must be borne in mind that the National Code advises that not only should impropriety be avoided but also any

appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Councillor.

- 13.4 Where a Member of the Planning Committee has had any personal involvement with an applicant, agent or interested party which could leave an observer with the impression that the involvement could affect the Member's judgement in any matter coming before the Committee related to that applicant, agent or interested party, the Member concerned shall declare an interest. There are two types on interest: Personal and Prejudicial interests.
 - 13.4.1 Personal interest: is one which affects the Councillor, the members of the Councillor's family or their close associates more than it would a member of the public. A personal interest should be declared in the matter and the Councillor may continue to consider the application at Planning Committee.
 - 13.4.2 Prejudicial Interest: A personal interest may be a prejudicial interest if the item under discussion affects the Councillors financial interests or it relates to a licensing, planning or regulatory matter and a member of the public knowing all the relevant facts would think that the interest was so significant as to prejudice the Councillors judgement of the item. A prejudicial interest should be declared at the outset of the meeting or when it becomes known. A Member with a prejudicial interest may speak at the Planning committee meeting but they should withdraw after they have spoken. This is to ensure they do not influence other Members of the committee
- 13.5 A Member of Planning committee who considers either that they have, or may be perceived to have, predetermined their position on a particular item should not take part in the consideration or determination of that matter. The Member should declare their predetermined position at the outset of the meeting. In the event that the Member wishes to address the committee on the application, then, at the discretion of the chair they may do so. When the affected Member has finished speaking the Member should leave the room.
- 13.6 Members of the Planning Committee who are unsure as to whether to declare an interest, should ask the Assistant Director of Legal Services and/or the Assistant Director Corporate Governance for advice, although the Member must make the final decision.
- 13.7 Where appropriate, the Standards Committee may provide a dispensation by way of an exception in circumstances where Members of the Planning Committee declare an interest by virtue of a political membership.
14. **DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS AND OFFICERS**

- 14.1 Where known, applications by any Member, any Senior Manager or Officer of Development Management Services or their spouses / partners must be dealt with by the Committee. This rule will apply regardless of whether the application is in line with policy, is not controversial, or falls within the scheme under delegated powers.
- 14.2 Members and Officers who have made applications which are before the Committee for consideration must declare their interests, and then leave the room whilst the application is being considered.

15. **PLANNING OBLIGATIONS**

- 15.1 Where a planning obligation (usually known as a 106 Agreement) is required or offered in connection with any development proposals the Council may negotiate these agreements with developers for them to provide local community facilities if the Council agree to the development in accordance with any guidance.
- 15.2 Officers will negotiate with developers and applicants in appropriate cases. Members of the Planning Committee may be involved in discussions. Reports to the Planning Committee must include a summary of the main points of the proposed agreement between the Council and developer.
- 15.3 Once a planning obligation has been completed it will be entered in a register maintained by the Council and be available for inspection by the public unless there is a need to respect confidential or commercially sensitive information.
- 15.4 Members of the Planning Committee receive regular reports on Section 106 contributions to scrutinise and monitor performance, delivery and outcomes.

16. **COMPLAINTS**

- 16.1 The Council has a system for reviewing and dealing with complaints. It operates a formal complaints procedure, details of which are available from any of the Council's reception offices at the Civic Centre, Silver Street, Enfield. In cases of maladministration, the Local Government Ombudsman may be contacted on PO Box 4771, Coventry, CV4 0EH or by emailing advice@lgo.org.uk.

17. **PUBLIC ATTENDANCE AT COMMITTEE MEETINGS**

- 17.1 The Nolan Committee suggests that it is good practice to allow opportunities for applicants, objectors and interested parties to make presentation to the Planning Committee on the basis that this enhances public confidence and direct lobbying may be reduced.
- 17.2 The practice is set out in Appendix G should apply to everyone including residents, applicants, agents and developers. Separate arrangements exist for Members not appointed to the Planning Committee to address the Committee.

18. **PLANNING COMMITTEE**

- 18.1 The Planning Committee normally meets every fourth Tuesday at 7:30pm in the Civic Centre, Silver Street, Enfield to consider all planning applications that have not been determined under delegated powers. A copy of the scheme of delegation is available from the Environment Direct reception in the B Block reception of the Civic Centre.
- 18.2 The agenda for the Planning Committee is prepared so that it is available for public inspection at least 5 full days in advance of the Committee.
- 18.3 The Planning Committee would normally make one of the following decisions on applications placed before them:
- approval of the proposal with or without conditions or the requirements to enter into Section 106 Agreements;
 - refusal of the proposal;
 - referral to the Mayor of London with a recommendation to approve;
 - deferral for a Site Visit;
 - deferral for further specific negotiations between the applicant and the Council;
 - deferral for specific additional information.
- 18.4 Public speaking is intended to aid Members to make an informed decision and to ensure that the Council's procedures accord with Human Rights Legislation and the principles of Best Value.
- 18.5 Following any deputations and a general discussion on the merits of the application the formal decision making process is as follows:
- 18.6 The first motion is to :-
- (a) to accept the Officers recommendation, and
 - (b) to grant planning permission

18.7 If Members vote not to accept the officer recommendation then a second motion is made to

(a) to reject the officers recommendation

18.8 Following this there would be a further discussion of the reasons and a further motion is made to either:-

- (i) grant permission with different reasons
- (ii) refuse permission with reasons
- (iii) defer for a site inspection panel
- (iv) defer the application to request further information
- (v) defer for officers to draft robust reasons

18.9 Members need to make their vote clear by raising their hands up and the votes will be counted

Appendix A

Code of Practice for Members and Officers – Main Elements

It is recommended that the following statements form the basis of this Code of Practice.

- (i) Members shall at all times act in accordance with the current statutory and/or national and local code/s of Local Government conduct.
- (ii) The successful operation of the planning system relies on ensuring that Officers and Members act in a way which is not only fair but is clearly seen to be so. Members have a particular duty to represent their constituents, but also an overriding duty to the wider community. They should act in the interests of the general public in relation to planning matters. However, there is no reason why a local Member should not participate in the decision making process for a particular planning application, provided they abide by this code.
- (iii) The role of the Planning Officer is to advise and assist Members in matters of planning policy and their determination of planning application by providing impartial, professional advice. They will ensure that all the necessary information for a decision to be made is provided together with a clear and accurate analysis of the issues including setting the application against the Development Plan policies and all other material considerations. All reports to Members will contain a clear recommendation.
- (iv) The Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct, (Appendix B), and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers in the Authority advising on planning matters are expected to act in accordance with the RTPI Code of Conduct whether or not they are RTPI members. Members of the Council should respect these professional responsibilities at all times.

Appendix B

The Royal Town Planning Institute Code of Professional Conduct

The Chartered Object of the Royal Town Planning Institute is to advance the science and art of town planning for the benefit of the public. It is the purpose of this Code to ensure that in all their professional activities members of the Royal Town Planning Institute:

- (a) shall act with complete competence, honesty and integrity;
- (b) shall fearlessly and impartially exercise their independent professional judgement to the best of their skills and understanding;
- (c) shall discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Code;
- (d) shall not discriminate on the grounds of race, sex, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity;
- (e) shall not bring the profession or the Royal Town Planning Institute into disrepute.

To this end the Council has drawn up the undermentioned numbered clauses which spell out in more detail the requirements of this Code. These requirements shall apply notwithstanding any permission or agreement to the contrary by or with the client or body employing or consulting any member.

In this Code the word "member" means every corporate member, non-corporate member, honorary member and students of the Institute. Words purporting the singular number include the plural and vice versa.

- (i) Members shall take all reasonable steps to maintain their professional competence throughout their working lives and shall comply with the Council's continuing professional development regulations as amended from time to time.
- (ii) Members who, as employers or managers, have responsibility for other members shall take all reasonable steps to encourage and support such other members in the maintenance of professional competence and in compliance with the Council's continuing professional development regulations.
- (iii) In their professional activities members shall not discriminate on the grounds of race, sex, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity.
- (iv) Members shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions and shall not knowingly enter into any contract or agreement which requires them to do so.
- (v) Members shall take all reasonable precautions to ensure that no conflict of duty arises between the interests of one employer or client and another, or between

the interest of any employer or client and the interests of themselves or their firms or business associates. Any such conflict shall be immediately reported and subsequently confirmed in writing to all parties concerned.

- (vi) Members shall not disclose or use to the advantage of themselves, their clients' information acquired in confidence in the course of their work.
- (vii) Members shall disclose to their employers or clients any discounts, gifts or commissions received from any third parties in connection with their work as professional planners.
- (viii) Before commencing work on any commission members shall ensure that their terms of engagement have been given and confirmed in writing to their clients and shall satisfy themselves that these terms have been accepted.
- (ix) Members shall notify their clients in writing before undertaking work or incurring fees or expenses additional to those previously agreed and shall satisfy themselves that the necessary instructions have been received.
- (x) When accepting instructions from private individuals members shall ensure that the services offered are appropriate to the individual's requirements.
- (xi) The Council may from time to time publish supplementary regulations relating to such matters as continuing professional development, planning aid, professional indemnity insurance, professional designations or direct professional access to the Bar, and members shall comply with any such regulations.
- (xii) Members with responsibility for the work of a company or of a practice or partnership or of a local planning authority or of any central government department or agency or of any other organisation or body any of which is engaged in town planning work, or for the work of any department, section or team within any such organisation or body, shall take all reasonable steps to ensure that all town planning matters in the organisation or body, or within that part of the organisation or body for which they have responsibility, are conducted in accordance with this Code, whoever undertakes such work.
- (xiii) Members practising outside the United Kingdom and Ireland shall order their professional conduct in such a way as to uphold the status and integrity of the Royal Town Planning Institute and the profession of town planning.

Appendix C

External Planning Advisory Service Training Modules

The Planning Advisory Service provide online guidance and advice on their website www.pas.gov.uk . Members are encouraged to view these guidance and briefing notes as a valuable reference in addition to the in house officer training and briefings. The most relevant area pertains to Development Management and this module includes sections on

- The culture of development management
- Pre application advice
- Resourcing implications
- Councillor Involvement in Development Management

Appendix D

Lobbying and Members

Elected Members, when approached by an individual or group in respect of either a current or proposed application should:

- Listen to and note the facts and opinions expressed;
- Advise the lobbyists to submit these views in writing to the Assistant Director of Planning & Environmental Protection;
- Explain the decision making process of the Council;
- Avoid giving, or appearing to give, any commitment as to the likely outcome of the proposal;
- Make it clear that any opinion given is personal and not the position of the Assistant Director of Planning & Environmental Protection;
- Pass on information of any such discussions to the Assistant Director of Planning & Environmental Protection;
- Declare any contact under these circumstances at the relevant Committee before any vote is taken.

Elected Members may be requested to meet with prospective applicants or other interested parties. Such meetings should not be common practice. However, when such meetings are held Members of the Planning Committee should:

- Advise the Head of Development Management of the intention to hold such a meeting;
- Discuss the need for an officer to attend;
- Ensure that an accurate record of the meeting is provided in writing to the Assistant Director of Planning & Environmental Protection to include within the application file;
- In accordance with the National Code of Conduct, Members should avoid placing themselves in a position that could lead the public to thinking they are seeking preferential treatment for themselves, for relatives or friends or any firm or body with which they are personally connected.

Appendix E
Code Of Conduct
Planning Committee Site Visits

- 1 All site visits to be undertaken by the Planning Committee will be determined by the Chair of the Committee prior to the finalisation of the agenda for any particular meeting. A site visit will be used only when a proposal is contentious or particularly complicated and when in the Committee's view the expected benefit in assisting the Committee to determine the application is substantial. The nature of that expected benefit shall be minuted as the reason for the decision to make a site visit.
- 2 A site visit will normally take place immediately preceding the next Committee meeting following the decision to make the visit and should be arranged by the planning case officer.
- 3 The applicant, the occupiers and the owners of private land to which access is desirable to consider the application shall be notified in writing and prior agreement shall be obtained if possible. The written notice shall make it clear that at the site visit only factual information or answers relating to the recorded matters which have caused the visit to be made may be given. No lobbying will be permitted.
- 4 Members must not talk individually with applicants, objectors or others in the course of a site visit. So far as practicable, information, question and answers should be given in the hearing of all members in attendance. The ward councillors will also be notified of and able to attend site visits.
- 5 A note shall be made of members attending site visits.
- 6 The Committee will arrive on time at the site.
- 7 Site visits do not commence until the Chair or his nominated substitute and the authorised officer of the Council has arrived on site.
- 8 The Chair of the Committee will introduce the participants and explain the purpose of the inspection making it clear that the panel is not authorised to make a decision on the application.
- 9 The authorised Case Officer will set out the main issues relating to the application, i.e. what the application involves, relevant planning policies, the main grounds of objection and relevant responses from consultees.

- 10 There will be an opportunity for Members of the Committee to ask questions to the officer.
- 11 The site meeting will be conducted with all those attending remaining together as a single group throughout. No lobbying will be permitted.
- 12 Documents, letters, or positions concerning the planning issues or the site visit from any party will not normally be accepted at any site visit.
- 13 The Chair will terminate the meeting and the Committee will depart.

Appendix F

All applications reported to Committee have been considered and determined in accordance with principles set out in:-

The Human Rights Act; Section 17 of the Crime and Disorder Act; The report on the Lawrence Inquiry.

- 1 Full written reports are included for consideration by the Committee. Planning officers will make further comments or representations to the Committee where he feels this will add to the consideration of matters by Committee. All items will be considered in the order on the printed agenda unless the Chair is made aware of a large public presence in respect of a particular item when, with the Committee's agreement, the order may be changed.
- 2 Other than Members of the Committee, other Councillors, with the prior agreement of the Chair, officers of the Council and those registered to make deputations, no one else will be allowed to address the Committee. The Committee will determine applications in accordance with the recommendation of the Assistant Director of Planning & Environmental Protection unless they consider material considerations override this recommendation. In order that the process is fair and transparent the Chair shall carry out the following steps:
 - (i) Invite Members of the Planning Committee to vote on the recommendation outlined in the report
 - (ii) If Members of the Planning Committee vote not to agree with the officer recommendation then Members need to make one of the following decisions
 - (a) Encourage the formation of tentative reasons for approval or refusal by discussing a predisposition with planning officers
 - (b) Writing down the reasons as part of a mover's motion;
 - (c) If a very strong objection from officers on validity of reasons, Members should consider deferring the matter to another meeting to have the putative reasons tested and discussed
 - (d) If no strong objection the Chair may invite a Member vote on any of the following outcomes
 - (i) overturn the recommendation
 - (ii) defer the application for putative reasons to be tested and discussed among officers
 - (iii) defer the application for a site visit
 - (iv) defer the application for further negotiations to address the committee's specific concerns
 - (v) defer the application for further information to be submitted to address the committee's specific concerns

- 3 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain *in full* their reasons for not agreeing with the officer's recommendation. The officer should also be given an opportunity to explain the implications of the contrary decision.
- 4 After each application has been considered the Chair will state the outcome of the application.

Appendix G

Procedures for Public Speaking

1. Public speaking will only be permitted where the applicants, objectors, developers or agents' comments have previously been submitted in writing and the procedure for registering to speak has been complied with. Details of current procedure can be obtained from Democratic Services.
2. The Assistant Director of Corporate Governance must be notified by Midday on the day before the Committee meeting. This can be in writing or by e-mail or by telephone. Details including the name, address, and day-time contact number must be left.
3. At the discretion of the Chair objectors have a total of five minutes, or this time can be split amongst objectors for two or more objectors, to address Committee. If other people have requested to speak on an item details will be provided and then it will be decided on how their views are presented. Any deviation on this would be at the discretion of the Chair of Planning Committee.
4. Public speaking will be permitted whenever the application is considered by the Planning Committee, i.e. if the application is deferred a further address to Committee will be permitted in certain circumstances i.e if the application was deferred for additional information. Normally no further deputations will be heard if the application had previously been deferred for a Site Inspection Panel.
5. Those people addressing Committee will be advised when they have 30 seconds of their allotted five minutes remaining and will be expected to cease talking immediately on being advised that the five minutes is up.
6. Ward Councillors are also afforded 5 minutes to make a deputation.
7. Those people who have advised the Assistant Director of Corporate Governance of their desire to address Committee are requested to identify themselves to the Committee Clerk 15 minutes before Committee commences. This will enable the order of the discussion of items on the agenda to be varied at the Chair's discretion if it is appropriate.
8. The discussion on applications will be in the following order:
 - (i) Chair of Planning to announce the application
 - (ii) Planning officers will present the item
 - (iii) Objector to address Committee
 - (iv) Ward Members (not on Planning Committee) to address Committee
 - (v) Applicant/agent to address Committee
 - (vi) Planning officers or if appropriate other Council officers to respond to any issues raised

- (vii) Members questions and debate
- (viii) Planning officers or if appropriate other Council officers to respond to any issues raised
- (ix) Proposition
- (x) Vote
- (xi) In addressing the Committee applicants, agents, supporters and objectors are requested to restrict their comments to issues which are material planning considerations. Advice on what constitutes a material consideration may be obtained from the Development Management Service.

Appendix H

Guide to non planning committee members on involvement in planning applications

Lobbying is an acceptable and normal part of the political process and non planning committee Members may meet with applicants and/or objectors and may quite freely make their opinions known.

If any non planning committee Member wishes to refer an application to the planning committee which otherwise would have been dealt with under delegated powers they must follow the following steps:

- (iii) The requests must be made in writing to the Assistant Director of Planning and Environmental Protection within 21 days of the circulation of details of the application (weekly list)
- (iv) The Chair of the Planning Committee has the discretionary power to agree or disagree with the call in request from any Member

Members of the Planning Committee may engage in pre-application discussions.

Members may request to speak at committee with the permission of the chair, and they need not advise Democratic Services in advance, they will normally be allowed 5 minutes to speak.

Chapter 5.3 – Licensing and Gambling Code of Conduct

(Updated: Council 23/1/08)

THE LONDON BOROUGH OF ENFIELD LICENSING & GAMBLING CODE OF CONDUCT

1. DEFINITIONS

- 1.1 “Licensing Committee” (‘the Committee’) refers to the Committee established in accordance with Section 6 of the Licensing Act 2003 and consists of at least ten, but not more than fifteen, Members of the London Borough of Enfield (‘the Council’) as Licensing Authority.
- 1.2 “Licensing Sub-Committee” (‘the Sub-Committee’) refers to no more than three Members of the Committee meeting as its Sub-Committee. The Sub-Committee is responsible for hearing applications made under the Licensing Act 2003 and the Gambling Act 2005.

2. INTRODUCTION

- 2.1 This Licensing & Gambling Code of Conduct (‘the Licensing Code’) relates to the conduct of all Members in respect of both licensing and gambling, including Members of the Committee and any Sub-Committees appointed.
- 2.2 The Code is supplementary to the Members’ Code of Conduct (‘the Members’ Code’) adopted by Council on 27 June 2007.

3. MEMBERS’ ROLE IN OPPOSING APPLICATIONS UNDER THE LICENSING ACT 2003 AND THE GAMBLING ACT 2005

- 3.1 The role of Members in opposing applications differs depending on whether the application was made under the Licensing Act 2003 or the Gambling Act 2005.
- 3.2 The role of Members in opposing applications for premises licence or club premises certificate under the Licensing Act 2003 is as follows:
 - 3.2.1 Members may represent persons who live in the vicinity or persons involved in a business in the vicinity, but only when asked to do so. Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, Members may choose to do so, but then must confine themselves to matters which arose during the hearing and/or were contained within the letters of representation;

- 3.2.2 Members may make representations in a personal capacity, subject to the restrictions as set out in paragraph 5.6 below.
- 3.3 The role of Members in opposing applications for premises licence under the Gambling Act 2005 is as follows:
- 3.3.1 Members may represent persons who live sufficiently close to the premises to be likely to be affected, or persons who have business interests that might be affected by the authorised activities but only when asked to do so. Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, Members may choose to do so, but must then confine themselves to matters which arose during the hearing and/or were contained within the letters of representations;
- 3.3.2 Members may make representations in personal capacity, subject to the restrictions as set out in paragraph 5.6 below;
- 3.3.3 Members may send a letter of representation to the Licensing Unit and then may orally address the Sub-Committee without being asked by a resident specifically to do so (i.e. a general ward representation);
- 3.3.4 In order to make oral representations before the Licensing Sub-Committee, members must first send a letter of representation to the Licensing Unit within the specified timeframe. Where Members have a personal and prejudicial interest, the letter of representation must also outline the existence and nature of the interest;
- 3.3.5 If a Member decides not to attend the Sub-Committee hearing to make oral representations, their letter of representation will still be taken into account if it relates to one of the grounds for determination (see paragraph 7.7);
- 3.3.6 If Members making a general ward representation have no interest, or a personal interest only, they may remain for the duration of the hearing;
- 3.3.7 If Members making a general ward representation have a personal and prejudicial interest, they may attend the Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided that the public are also allowed to attend the meeting for the same purpose), they must then leave the room for the duration of the meeting but may be present for the announcement of the decision.

4. GIFTS AND HOSPITALITY

- 4.1 Members of the Licensing Committee should have particular regard to public perception when accepting any gift of hospitality from licensed premises (being premises licensed under the Licensing Act 2003 or Gambling Act 2005) in respect of which they might be called upon to consider an application, and should act with extreme caution when accepting any gift whatsoever, regardless of the monetary value.

4.2 It is generally acceptable for Members to accept light non-alcoholic refreshments (such as tea, coffee, soft drink, juice, biscuits, light snacks) whilst attending a meeting in an official capacity.

5. MEMBERS' INTERESTS – LICENSING AND GAMBLING APPLICATIONS

5.1 Members must comply with Part 2 of the Members' Code, which deals with Interests.

5.2 Members must always declare any personal interest, or personal and prejudicial interest, as defined by the Members' Code. The existence and nature of an interest must be declared when Members are sitting on the Sub-Committee or appearing before the Sub-Committee. This should include interests where Members have some doubt whether or not it is declarable and such an interest should be notified in advance of the hearing to the Legal Advisor for that hearing.

5.3 Members with a personal and prejudicial interest must not sit on the Sub-Committee and determine the application. As a general rule, Members are not invited to sit on any Sub-Committee which will consider applications relating to the ward which they represent.

5.4 Members with a personal and prejudicial interest may make an application under the Licensing Act 2003 or Gambling Act 2005, or act as a representative for the applicant, and may then attend the Sub-Committee hearing for the purpose of making the case, answering questions or giving evidence (provided that the public are also allowed to attend the meeting for the same purpose).

5.5 Members may be present for the announcement of the decision whether or not they are representing a party or have a personal and prejudicial interest.

5.6 Members who live in the vicinity of a premises subject to an application under the Licensing Act 2003, or who live sufficiently close to a premises subject to an application under the Gambling Act 2005 so as to be likely to be affected by gambling, would generally be regarded as having a personal and prejudicial interest. In such circumstances Members with a personal and prejudicial interest may:

5.6.1 Send a letter of representation to the Licensing Unit within the specified timeframes for making representations. The letter of representation must also outline the existence and nature of the interest;

5.6.2 Attend the Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided the public are also allowed to attend the meeting for the same purpose). In addition, whilst this is a matter for the Member, it is suggested that a Member with a personal and prejudicial interest may wish to consider whether or not their involvement could be such as to make it unwise for them to participate

because of an adverse potential impact on the reputation of themselves or of the Council;

- 5.6.3 In order to be able to make oral representations before the Sub-Committee, Members must first send a letter of representation to the Licensing Unit. If a Member decides not to attend the Licensing Sub-Committee hearing to make oral representations, the letter of representation will still be taken into account if it relates to one of the grounds for determination (see paragraphs 7.6/7.7) and the Member lives in the vicinity (Licensing Act 2003) / sufficiently close (Gambling Act 2005).
- 5.7 It is accepted that Members of the Sub-Committee may have visited the licensed premises in their personal lives. Members should declare if it amounts to a personal interest, or a personal and prejudicial interest.
- 5.8 Members involved in Council meetings which approved the Licensing Policy and the Gambling Policy, are not excluded from the Licensing Sub-Committee because of such involvement.

6. LOBBYING

Of Licensing Committee Members

- 6.1 If a Sub-Committee Member is approached by persons wishing to lobby him/her about a licence application under the Licensing Act 2003 or Gambling Act 2005 that they will be determining, then that Sub-Committee Member must politely explain that they cannot discuss the matter and refer the lobbyist to the Licensing Unit or to his/her Ward Member. However the member can explain the process of decision making in general terms.
- 6.2 Any written presentations received by a Sub-Committee Member should be passed to the Licensing Unit. Any such approach received in time should also be reported at the hearing at which the application is being determined.
- 6.3 Requests for procedural advice with regards to licensing applications should be referred to the Licensing Unit for advice and information.

Of or by all other Members

- 6.4 Other Members must not lobby Members who sit on the Sub-Committee, directly or indirectly, in writing or otherwise, in respect of items to be decided by the Sub-Committee with a view to influencing their decision. Any representation by other Members, on behalf of an interested party, should be sent to the Licensing Unit for inclusion in his report.

7. GUIDING PRINCIPLES FOR SUB-COMMITTEE MEMBERS

- 7.1 In respect of any application listed for consideration by a particular Sub-Committee, Members of that Sub-Committee must avoid expressing personal opinions prior to the hearing. To do so would indicate that the Member has made up his or her mind before hearing all the evidence.
- 7.2 Those Sub-Committee Members must not take nor declare a view on the merits of the application nor organise support or opposition in advance of the hearing, and must keep an open mind until after they have considered all the evidence and arguments presented.
- 7.3 Those Sub-Committee Members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality nor give the impression that they have done so.
- 7.4 Those Sub-Committee Members cannot represent one of the interested parties or applicant.
- 7.5 Decisions of the Sub-Committee shall not be taken in accordance with a political party direction given at a previous party group meeting or otherwise.
- 7.6 For applications heard under the Licensing Act 2003, the Sub-Committee must make their decisions based on the Licensing Objectives, having regard to the Guidance and Licensing Policy.
- 7.7 For applications heard under the Gambling Act 2005, the Sub-Committee should aim to permit the use of premises for gambling in so far as they think it:
 - 7.7.1 in accordance with any relevant Code of Practice;
 - 7.7.2 in accordance with any relevant Guidance;
 - 7.7.3 reasonably consistent with the Licensing Objectives (subject to 7.7.1 & 7.7.2 above); and
 - 7.7.4 in accordance with the authority's statement of Gambling Policy (subject to 7.7.1 & 7.7.3 above).

8. NATURAL JUSTICE

- 8.1 Members of the Sub-Committee must comply with the rules of natural justice, ensuring that parties have an opportunity to be heard, whilst acting fairly and impartially. When the Sub-Committee is making its determinations, the following principles must be considered:
 - 8.1.1 Free from the appearance of bias – Sub-Committee Members must make an objective and impartial determination of the issues based on the evidence and should not make, or give the appearance of making, a biased decision. Members of the Licensing Committee should not make

any public statements which may give the impressions to the public that they may not be objective when sitting on any Sub-Committee. Bias may include pre-judged ideas based on his/her own prejudices or party political influences;

- 8.1.2 Fair hearing – For a hearing to be fair a number of conditions must be satisfied, including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally the right to be given reasons for any decision made.

9. CONDUCT AT HEARINGS

- 9.1 Members of the Sub-Committee should not communicate directly with the applicant, interested parties or responsible authorities (N.B. the Licensing Unit is *not* a responsible authority) either immediately prior to the hearing, during the hearing, or after the hearing, other than publicly through the Chair.
- 9.2 Licensing Sub-Committee Members' questioning of speakers is to clarify arguments and views, and care should be taken not to express or indicate a view at that stage, nor to intimidate speakers.
- 9.3 Any material considered by the Sub-Committee that does not comprise part of any material supplied by the Licensing Unit must originate only from the applicant, an interested party or responsible authority, and must be tabled through the Chair. The nature of any such material must be clear to all present at the hearing and available for inspection.
- 9.4 Members must comply with the 'Procedures to be followed at hearings of the Licensing Sub-Committee', as amended from time to time.
- 9.5 Members should not take part or vote on an item if they have not familiarised themselves with the report and letters of representation and been present throughout consideration of the item.

10. RECORDING OF REASONS

- 10.1 The Sub-Committee must give reasons for its decisions. The reasons will be published in the minutes.
- 10.2 Members of the Sub-Committee should be aware of the dangers in publicly discussing the reasons with persons other than relevant Council officers prior to the formal publication of the minutes and subsequently.

11. APPLICATIONS SUBMITTED BY THE LOCAL AUTHORITY

- 11.1 Where the Local Authority applies for a premises licence under the Licensing Act 2003 for open spaces or buildings which it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Sub-Committee must hear and determine this application / review in exactly the same manner as other applications / reviews. The Sub-Committee must give no regard to the interests of the Council itself, aside from receiving relevant representations on this issue.
- 11.2 A dispensation to hear such applications will not usually be necessary, as a Member will not have a personal and prejudicial interest solely through being a Councillor.
- 11.3 Members who are part of the authority's decisions to apply for the licence, or who express a view in respect of such an application, should not also be part of the Sub-Committee.
- 11.4 Members of the Sub-Committee must be aware of any potential appearance of bias and must endeavour to avoid giving any potential appearance of bias even though none exists.

12. SITE VISITS

- 12.1 Site visits are generally unnecessary and can risk putting the Members and the Licensing Unit at risk of accusations of potential bias.

