

PART 6

CODE OF CONDUCT AND PROTOCOLS

The following schedules contain Codes and Protocols which have been adopted by the Council.

Full Council is required to adopt Schedule 1 (Code of Conduct for Councillors), Schedule 2 (Protocol for Councillor / Officer Relations) and Schedule 3 (Local Code of Best Practice relating to Planning Matters).

The remaining Protocols are adopted by their respective committees or bodies but are included within this Part 6 of the Constitution for completeness and ease of reference.

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CODE OF CONDUCT FOR COUNCILLORS

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

INTRODUCTION

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

DEFINITIONS

For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who:

- (a) is a member of any committee or sub-committee of the authority, or;
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".

For the purposes of this Code of Conduct, "local authority" includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

PURPOSE OF THE CODE OF CONDUCT

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

GENERAL PRINCIPLES OF COUNCILLOR CONDUCT

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

APPLICATION OF THE CODE OF CONDUCT

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

STANDARDS OF COUNCILLOR CONDUCT

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

GENERAL CONDUCT

1. RESPECT

As a councillor:

- 1.1. I treat other councillors and members of the public with respect.**
- 1.2. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow

councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. BULLYING, HARASSMENT AND DISCRIMINATION

As a councillor:

- 2.1. I do not bully any person.**
- 2.2. I do not harass any person.**
- 2.3. I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. IMPARTIALITY OF OFFICERS OF THE COUNCIL

As a councillor:

- 3.1. I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. CONFIDENTIALITY AND ACCESS TO INFORMATION

As a councillor:

4.1. I do not disclose information:

- (a) given to me in confidence by anyone**
- (b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - (i) I have received the consent of a person authorised to give it;**
 - (ii) I am required by law to do so;**
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - (iv) the disclosure is:**
 - 1. reasonable and in the public interest; and**
 - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - 3. I have consulted the Monitoring Officer prior to its release.**

4.2. I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3. I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. DISREPUTE

As a councillor:

5.1. I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary

members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. USE OF POSITION

As a councillor:

6.1. I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. USE OF LOCAL AUTHORITY RESOURCES AND FACILITIES

As a councillor:

7.1. I do not misuse council resources.

7.2. I will, when using the resources of the local authority or authorising their use by others:

- (a) act in accordance with the local authority's requirements; and**
- (b) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should

be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. COMPLYING WITH THE CODE OF CONDUCT

As a Councillor:

- 8.1. I undertake Code of Conduct training provided by my local authority.**
- 8.2. I cooperate with any Code of Conduct investigation and/or determination.**
- 8.3. I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 8.4. I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

PROTECTING YOUR REPUTATION AND THE REPUTATION OF THE LOCAL AUTHORITY

9. INTERESTS

As a councillor:

- 9.1. I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. GIFTS AND HOSPITALITY

As a councillor:

- 10.1. I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2. I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3. I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B - Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

"Disclosable pecuniary interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but

otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non- Registerable Interests

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which ***affects*** –
- a. your own financial interest or well-being;
 - b. a known financial interest or well-being of a friend, relative or close associate; or
 - c. a financial interest or wellbeing of a body included under Other Registerable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied.

9. Where a matter (referred to in paragraph 8 above) ***affects*** the financial interest or well-being:
- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by them in carrying out their duties as a councillor, or towards their election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract made between the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council</p> <p>—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licences	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer

Subject	Description
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; 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 councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

'director' includes a member of the committee of management of an industrial and provident society.

'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

You must register as an Other Registerable Interest:

- (a) any unpaid directorships
- (b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- (c) any body
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
 of which you are a member or in a position of general control or management

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACH OF THE CODE OF CONDUCT FOR COUNCILLORS

1. INTRODUCTION

- 1.1. The Council is required to adopt arrangements to deal with complaints that councillors have breached the Code of Conduct.

2. PROCESS

- Complaint received by Monitoring Officer.
- Upon receipt of a complaint under the Code of Conduct the Monitoring Officer (or their nominee) should undertake an initial assessment and may:-
 - (a) reject the complaint on the grounds that it falls outside the scope of a valid Code of Conduct complaint;
 - (b) determine that there is no breach of the Code and no further action should be taken; or
 - (c) where considered appropriate, enter into an early preliminary and informal dialogue with the complainant and the Councillor complained of, and agree a speedy informal resolution of the complaint
 - (d) refer the complaint to the Chair of Standards Committee for consideration in accordance with the procedure set out below.
- Types of informal resolution referred to in (c) above might include:
 - (a) An explanation by the subject Councillor of the circumstances surrounding the complaint;
 - (b) An apology from the subject Councillor;
 - (c) Agreement from the subject Councillor to attend relevant training or to take part in a mentoring process or, where the complainant is also a Councillor, an agreement to participate in mediation involving the appropriate Political Group Leaders;
 - (d) Offering to engage in a process of mediation or conciliation between the subject Councillor and the complainant;
 - (e) Correcting an entry in a register;
 - (f) Any other action capable of resolving the complaint.
- Where, in the opinion of the Monitoring Officer, the subject Councillor has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject Councillor of this decision.

- If mediation is unsuccessful, the Monitoring Officer will provide details of the complaint formally to the Councillor and seek an initial response. The Councillor will be advised of the right to speak to the Independent Person (IP).
- The Councillor must provide an initial response to the complaint within 14 calendar days. Failure to provide a response in this timeframe is likely to be considered a failure to cooperate with the investigation required under paragraph 8.2 of the Council's Code of Conduct. Unless exceptional circumstances exist which the Monitoring Officer considers justifying an extension of time, the complaint will be referred to the Chair for determination after the 14-day period regardless of whether or not a response has been received.
- The Chair of the Standards Committee in consultation with Councillors of the Standards Committee and the Monitoring Officer will then decide whether:
 - There is no breach of the Code and no further action should be taken; or
 - There is a potential breach of the Code and informal resolution is appropriate, to include for example mediation, training, apology, advice; or
 - There is a potential breach of the Code and the Monitoring Officer should undertake or commission an investigation into the complaint with a view to a report then being considered by the Standards Committee.
- The Councillor and complainant will be kept informed and will be notified of the outcome of the initial consideration by the Chair and members of the Committee.
- Where there is no further action to be taken, or the matter is dealt with by informal resolution, the Monitoring Officer shall report on such outcomes by way of an update report to the Standards Committee which will retain oversight of the arrangements.
- Where the matter is considered at a meeting of the Standards Committee further to an investigation, this will be at a formal meeting of the Committee subject to the relevant Procedure Rules contained in Part 4 of this Constitution.

3. CRITERIA TO BE USED IN DETERMINING THAT NO FURTHER ACTION SHOULD BE TAKEN

- 3.1. A complaint may be dismissed as requiring no further action at the initial assessment stage where the Chair, in consultation with Councillors of the Standards Committee, the Independent Persons and the Monitoring Officer considers that:-
- (a) the person complained about is no longer a member of the relevant local authority; or

- (b) the matter being complained about happened more than 12 months before the complaint was received; or
- (c) the matter or issue being complained about came to the complainant's notice more than 6 months before the complaint was received; or
- (d) insufficient information has been submitted at the outset to demonstrate that there has been a prima facie breach of the Code; or
- (e) the complaint is based essentially on hearsay evidence and is not supported at the outset by detailed and verifiable supporting evidence; or
- (f) the complaint does not relate to behaviour in the member's official capacity as a councillor; or
- (g) the matter complained about is so trivial that it would not be in the public interest or proportionate to pursue it further; or
- (h) the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant; or
- (i) the conduct complained about has already been the subject of investigation or enquiry by another public body; or
- (j) the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and there is nothing further to be gained; or
- (k) the complaint was made anonymously; or
- (l) the complainant has requested that their identity as complainant be withheld from the member, and it is considered that the matter cannot reasonably be taken further in these circumstances; or
- (m) the councillor has already apologised for the action that was the subject of the complaint, and this is considered sufficient to dispose of the complaint; or
- (n) the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual councillor(s).

PROTOCOL FOR COUNCILLOR/OFFICER RELATIONS

1. INTRODUCTION

- 1.1. This Protocol governs relations between Councillors and Officers.
- 1.2. Its purpose is to assist the smooth running of the work of the Council by:
 - promoting trust, openness, fairness and honesty by setting out some ground rules;
 - defining roles so as to:
 - be clear about responsibilities – who does what
 - avoid conflict, and
 - prevent duplication or omission
- 1.3. This Protocol applies to Councillors, Co-opted Members, and Officers. Unless the context indicates otherwise, Officer means a person employed by the Council, a person engaged directly by the Council to provide services or employed by an organisation that has contracted with the Council.
- 1.4. The Standards Committee will review the content and operation of this Protocol from time to time. Any Councillors or Officer suggestions for changes to it should be passed to the Monitoring Officer or Chief Executive who will bring them forward to the Standards Committee.
- 1.5. Councillors and Officers must follow this Protocol at all times.
- 1.6. Breaches of this Protocol by a Councillor may result in a complaint to the Council's Standards Committee.
- 1.7. Breaches by an Officer may lead to disciplinary action.

2. THE RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS

- 2.1. A recognition of, and respect for, the respective roles and responsibilities of Officers and Councillors is vital and mutual trust, respect and courtesy is key.

Councillors should:

1. respect Officers' professional integrity;
2. not involve Officers in any criticism of the position or conduct of other Councillors or Officers which is, or could be construed as being, of a personal or party political nature;
3. not apply pressure on Officers to:
 - (a) change their professional opinion or advice
 - (b) do anything which they are not empowered to do or which is against an Officer's professional judgment

- (c) take any action which the officer considers to be unlawful or illegal or which could amount to maladministration or breach any relevant Codes of Conduct, including professional codes of conduct
- 4. not do anything that compromises, or which is likely to compromise, the impartiality of Officers or those who work for or on behalf of the Council;
- 5. in seeking advice and support, have due regard to the seniority of the Officer with whom they are dealing;
- 6. not purport to exercise line management control over an Officer or issue any formal instruction to an Officer;
- 7. not disclose at a meeting open to the press and public, by comment to the media or by any other means to any person outside the Council, personal or confidential information which relates to a Council employee, past or present, except with that employee's consent;
- 8. not comment publicly on individual staff issues or perceived capability of individual staff. This does not prevent Councillors from exercising their legitimate right to hold Officers to account at relevant Council meetings;
- 9. ensure that all communication between them and Officers, including written communication, does not bring the Council into disrepute, or lead to the breakdown of mutual trust, respect and courtesy in Officer/Councillor relations;
- 10. endeavour to give timely responses to enquiries from Officers;
- 11. avoid personal close familiarity with Officers.

Officers should:

- 1. respect the political perspective of Councillors;
- 2. co-operate with all reasonable requests from Councillors and endeavour to give timely responses to enquiries from Councillors;
- 3. not seek to take advantage of Councillors or to cause them embarrassment or difficulties in the performance of their roles;
- 4. not act to frustrate the proper political objectives of Councillors;
- 5. not seek to influence a Councillor to make a decision in their favour;
- 6. not discuss with a Councillor personal matters concerning themselves or another individual Officer. This does not prevent Officers raising on a personal basis and in their own time a matter with their Ward Councillor;
- 7. not make claims or allegations to Councillors about other Officers;
- 8. maintain confidentiality;
- 9. perform their duties effectively, efficiently and with political neutrality;
- 10. behave in a professional and courteous manner;
- 11. be helpful to Councillors and understand and respect their roles, workload and pressures;
- 12. avoid personal close familiarity with Councillors;

13. report to their manager, the Monitoring Officer or the Chief Executive should a Councillor put pressure on them to deal with a matter outside Council procedure or policy;
 14. comply with the current Codes and Protocols applicable to Officers;
- 2.2. All Councillors have the same rights and obligations in relationships with Officers and should be treated equally. Where a political group forms the majority Administration it is recognised that the relationship between Officers, particularly Senior Officers, and the Administration will differ from that with opposition groups. Officers must ensure that, even when they are predominantly supporting the Leader and Cabinet Portfolio Holders, that their political neutrality is not compromised.
 - 2.3. Councillors and Officers must be particularly aware of the image of the Council at meetings open to the public and should treat each other with respect and courtesy regardless of an individual's personal, political or professional views. Meetings require a degree of formality to be adopted, both in the conduct of business and in the manner in which participants are addressed in order to maintain public confidence.
 - 2.4. Councillors may make written/oral representations to the relevant Senior Officer about issues raised by Officers with them as their ward Councillor, but the Councillor must:
 - avoid getting inappropriately involved in, for example, the internal office management, discipline and/or other employment related issues, because of actions of the Councillor(s) may be held to be the actions of the Council, as an "employer";
 - avoid taking a proactive part to represent or in any other way advocate on behalf of any such Officer in any staffing issues or disciplinary procedures brought by the Council against any such Officer.

3. OFFICER ADVICE TO POLITICAL GROUPS AND OTHER MEETINGS

Officer Advice to Political Groups

- 3.1. Officers serve the Council as a whole and not exclusively any Political Group, combination of Groups or individual Councillor. Officers must treat Political Groups and individual Councillors in a fair and even-handed manner.
- 3.2. There is statutory recognition of Political Groups. It is common practice for such Groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant formal Council body. Officers may on occasions be called upon to support and contribute to such deliberations by Political Groups but must at all times maintain a stance which is politically impartial. The support provided by Officers may range from a briefing meeting with a Chair or Cabinet Portfolio Holder before a meeting, to a presentation to a Political Group meeting.
- 3.3. Any advice given to a Political Group or Councillor will be treated with the strictest of confidence by the Officers concerned and not be accessible to any

other Political Group(s). Factual information upon which any advice is based will be available to all Political Groups.

- 3.4. When Officer attendance is requested for Political Group meetings:
1. the request to attend a Political Group meeting must be made through the Chief Executive or appropriate Senior Officer (Director or above);
 2. such a request can only be made in relation to Council business not Party policies or business;
 3. at the meeting Officers will:-
 - (a) provide relevant information and advice on Council business only and not on matters which are purely of a party political nature and must at all times do so in a way which is politically impartial;
 - (b) normally leave during the deliberations of the Political Group on the issue – to avoid any appearance of impropriety or misunderstanding;
 - (c) respect the confidentiality of any Political Group discussion at which they are present; Councillors must not do anything which compromises or is likely to compromise Officers' impartiality. This must not prevent an Officer providing feedback to other Senior Officers as appropriate.
- 3.5. The duration of an Officer's attendance at a Political Group meeting will be at the discretion of the Group, but an Officer may leave at any time if they feel it is no longer appropriate to be there.
- 3.6. An Officer accepting an invitation to the meeting of one Political Group must not decline an invitation to advise another Group about the same matter. They must give substantially the same advice to each.
- 3.7. An Officer must be given the opportunity of verifying comments and advice attributed to them in any written record of a Political Group meeting.
- 3.8. No Councillor will refer in public or at meetings of the Council to advice or information given by Officers to a Political Group meeting.
- 3.9. Political Group meetings perform an important part in the preliminaries to Council decision-making. However, they are not formal decision-making bodies of the Council and are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not rank as Council decisions.
- 3.10. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 3.11. The principles of this section apply to informal meetings of Cabinet.

Officer Advice to Other Meetings

- 3.12. Officers are available to attend meetings called under the arrangements set out in the Constitution and as specified in this Protocol. Other meetings such as area/community forums, public meetings, local meetings, consultations

arranged by Councillors are not official business meetings of the Council. Officers will not attend such other meetings unless authorised/agreed by the relevant Senior Officer.

4. LOCAL WARD ISSUES

- 4.1. To enable them to carry out their Ward role effectively, Councillors need to be fully informed about matters affecting their Ward. Senior Officers must ensure that all relevant staff are aware of the requirement to keep Ward Councillors informed, thus allowing Councillors to contribute to the decision-making process and develop their representative role.
- 4.2. This requirement is particularly important:
 - during the early stages of policy development, where practicable;
 - in relation to major or sensitive operational matters;
 - whenever any form of public consultation exercise is undertaken;
 - during an Overview and Scrutiny process.
- 4.3. When a public meeting is organised by Officers to consider a local issue, all the Councillors representing the Wards affected must be invited to attend the meeting. Similarly, when Officers undertake any form of consultation on a local issue, the Ward Councillors should be notified at the start of the exercise.
- 4.4. If Ward Councillors intend to arrange a public meeting on a matter concerning some aspect of the Council's work, they can invite a relevant Officer to attend if they so wish. Provided that the meeting has not been arranged on a party political basis an Officer may attend but is not obliged to do so and the meeting may be held in Council-owned premises.
- 4.5. Officers will not be able to attend such meetings in the immediate run-up to Council elections.
- 4.6. Officers must never be asked to attend Ward or Constituency Political Party meetings.
- 4.7. In seeking to deal with residents' queries or concerns, Councillors must not seek to place Officers under undue pressure to deal with their query in a way which circumvents the usual Council procedures. Officers may not be able to carry out the work required by Councillors in the requested timescale and may need to seek instructions from their managers. Corporate Customer response times apply.
- 4.8. If any of the Members of Parliament (MPs) are involved in a local issue, Officers may invite the MP, in addition to the Ward Councillors. If Officers consider this is not appropriate for any reason they may meet the MP separately.

5. CORRESPONDENCE INCLUDING EMAILS

- 5.1. Official correspondence written on behalf of the Council must normally be in the name of the relevant Officer rather than in the name of a Councillor. It may be appropriate in some circumstances, for example representations to a

Government Minister for letters to appear in the name of the appropriate Councillor, for example, the Leader – but this should be only in exceptional circumstances. Letters that, for example, set up meetings, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor.

- 5.2. The Chair may correspond in their own name.
- 5.3. Correspondence which creates legally enforceable obligations or gives instructions on behalf of the Council must never be sent in the name of a Councillor.

6. IF THINGS SHOULD GO WRONG

- 6.1. Councillors or Officers with questions about the implementation or interpretation of this Protocol should seek guidance from the Monitoring Officer.
- 6.2. If Councillors believe that an Officer has breached this Protocol or have concerns about the conduct, behaviour, or performance/capability of an Officer they should raise the matter direct with that Officer's manager or Director; where the Officer concerned is a Director the matter should be raised with the Chief Executive; and when the Officer is the Chief Executive, with the Monitoring Officer.
- 6.3. In all cases, the Officers with whom the concerns have been raised will report back to the Councillor concerned, giving as much information as they can as to the conclusions they have reached.
- 6.4. This procedure is only appropriate where their issues arise in the Councillor's capacity as a Member of the Council, rather than as a service user or individual affected by the Council's decision. In such cases their concerns should be dealt with in accordance with the Council's complaints procedure.
- 6.5. If Officers are concerned about the conduct of a Councillor they should raise the matter with their Manager or Director as appropriate. The Manager will discuss the matter with their Director, who will seek to resolve it to the Officer's satisfaction, in consultation with the Monitoring Officer, where appropriate. The aim of these discussions is to resolve the matter by conciliation, rather than by more formal means. Nevertheless, it must be recognised that Officers, like any members of the public, may make an allegation of a breach of the Code of Conduct for Councillors and can also use the procedures set out in the Council's Bullying and Harassment policy.
- 6.6. Where the concerns are about potential unlawful conduct of an Officer or Councillor, the Whistleblowing Policy or other Council policies may be relevant.

For further advice, please contact the Monitoring Officer, BCP Civic Centre, Bourne Avenue, Bournemouth BH2 6DY

Local Code of Best Practice relating to Planning Matters

1. Introduction

- 1.1. Bournemouth Christchurch and Poole (BCP) Council's Code of Conduct for Councillors provides guidance for elected Councillors about the high ethical standards expected of all those in public service. The Code of Conduct for Councillors is reproduced in Part 6 of the Council's Constitution. References to the Planning Committee in this Code and subsequent schedules contained in this Part 6 of the Constitution shall apply equally to both Area Planning Committees.
- 1.2. The Council through its Planning Committee makes decisions on certain planning related applications as set out in the Constitution. The principles for making planning decisions are laid down in local and national planning policy, development plans and legislation. The Planning and Compulsory Purchase Act 2004 in conjunction with the Town and Country Planning Act 1990 requires decisions to be made in accordance with relevant adopted Plans unless there are material planning reasons not to do so. In many instances, it is necessary in making decisions to exercise a level of judgement on the issues. This can involve balancing conflicting elements and taking account of relevant replies to consultations with interested parties and representations made by the public.
- 1.3. This Local Code of Best Practice for councillors and officers relating to planning matters applies to every councillor irrespective of whether or not they are a member of the Planning Committee. It also applies to all officers. It is supplemental to, and should be read in conjunction with, the Code of Conduct for Councillors.
- 1.4. The content of this Local Code addresses various issues involved in decision making. The processes and procedures that it identifies should help ensure that the public have confidence that planning decisions are made in an impartial, open, transparent and fair manner, taking account of all the relevant information.

2. General conduct of councillors and officers

- 2.1. Councillors and officers have different but complementary roles. This Code generally relates to all councillors but where it is more focused towards councillors appointed to the Planning Committee this is identified.
- 2.2. Councillors have a wide variety of roles and responsibilities. These include:
 - 2.2.1 being appointed to committees including Cabinet on which they make decisions relevant to a wide variety of different Council functions;
 - 2.2.2 playing an important part in community engagement; and
 - 2.2.3 being appointed to external bodies as trustees or directors.
- 2.3. Seven principles of public life have been identified as applying to all councillors and officers. These principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Further details of these principles are set out in the Code of Conduct for Councillors.

- 2.4. The Protocol for Councillor/Officer relations is a further document concerned with matters of conduct. It applies to both Councillors and Officers. A copy of it is reproduced in Part 6 of the Constitution.
- 2.5. Planning Officers must adhere to the Royal Town Planning Institute's Code of Conduct. Other specialist officers must comply with the requirements for conduct stipulated by their appropriate professional bodies. All Council staff must also comply with any relevant code of conduct for BCP Council employees.

3. The Planning application process

Pre-application discussions and meetings

- 3.1. If a Councillor appointed to the Planning Committee intends to vote on a planning application and is involved in any communication or discussion with any member of the public they should:
 - 3.1.1 remain impartial;
 - 3.1.2 recognise that their role on Planning Committee is not one of negotiator; and
 - 3.1.3 seek to avoid discussion on any detail relating to the application unless an officer is present.

Lobbying of Councillors / Discussions with Officers

- 3.2. Lobbying is a normal part of the planning process. It can occur in a variety of different situations ranging from seeking to secure the allocation of a site in a Local Plan to a particular planning application. It can involve councillors with many different roles from those involved in decisions relating to the use of management of Council land to councillors on the Planning Committee who determine applications.
- 3.3. The early engagement of councillors in planning issues relating to a potential planning application can be a positive contributor to helping ensure the sustainable development of the area that meets the need of the community.
- 3.4. In some circumstances, meetings or presentations may be arranged in advance of a related planning decision being made by councillors. To avoid the perception that councillors may have predetermined any decision or fettered their discretion in such circumstances:
 - 3.4.1 there should always be an officer present at a planning related meeting or presentation arranged by officers with a record of the meeting taken including notes of issues raised and any advice given by officers. These should be kept on a relevant file.
 - 3.4.2 officers should normally seek to make clear in advance and / or at the start of any such meeting or presentation that no part of any discussion will bind the Council and any view expressed is provisional;

- 3.4.3 The nature of some meetings and presentations may provide a legitimate reason as to why it would need to be confidential. A record of the reason(s) for such confidentiality should be noted on the relevant file and notes relating to any non-confidential elements should be clearly identifiable.
- 3.5. Depending upon the nature of their work, officers may well also find themselves being approached by members of the public with regard to various planning decisions. In the case of Planning Officers for example, such approaches may be made by a wide range of parties with an interest in the matter including the applicant, agent, consultee, a supporter or an objector. Whenever this occurs, an officer should always consider the nature and likely content of any discussion and reflect on whether it is appropriate to make a note of what was discussed including, as part of any note, recording express details of the advice given / outcomes of any negotiation. In many cases, to try and avoid disagreement going forward, seeking to agree a note of such matters with the other attendees may well be a sensible way forward.

Lobbying of Councillors appointed to the Planning Committee

- 3.6. Councillors on the Planning Committee are also likely to find themselves in various situations where members of the public including developers and other councillors seek to engage them on matters relating to a specific planning application. The general principles set out in clause 3.1 above are applicable to any circumstance when this might occur.
- 3.7. In addition, councillors appointed to the Planning Committee who intend to participate as a member of that Planning Committee in relation to an item should have regard to the following in relation to any such circumstance:
- 3.7.1 avoid saying anything that could give an indication that they have already made up their mind on an application and is no longer open to considering its merits;
 - 3.7.2 if any opinion is expressed, then make clear that it is a preliminary view only and a final decision will only be made when all relevant factual information is available at the time of the Planning Committee meeting. However, generally seek to limit any opinion to matters relating to procedure only;
 - 3.7.3 pass any written (including electronic) correspondence relating to a planning application of which the councillor is the main addressee (for an e-mail addressed to all members of the Planning Committee this will be the Chair of the Planning Committee), as soon as reasonably practicable to the case officer dealing with that application for recording on the file and as appropriate forwarding to other members on the Planning Committee;
 - 3.7.4 especially take care if invited to attend any meeting or presentation relating to an application not arranged by officers and in particular considering seeking advice from the Monitoring Officer before deciding whether to attend a meeting that appears to be for the purpose of lobbying; and

- 3.7.5 consider whether any contact (including any meeting) relating to a planning application other than one arranged by officers might be seen as significant and if so, disclose such contact at the relevant Planning Committee meeting in advance of a decision being taken.

Lobbying by councillors

- 3.8. As part of a councillor's role in representing their communities, ward councillors are likely to become involved in the decision-making process relating to planning applications.
- 3.9. To the extent this involves a councillor discussing any individual planning related application with an officer, it can be very easy for the impression to be given that a councillor is using their position to influence progress relating to the matter. It is important that any such discussions are therefore open and transparent. Consequently, officers may well seek to take a note of any such communication.
- 3.10. A ward councillor who is not taking part in the determination of a planning application at Planning Committee can make representations on behalf of their ward, may attend Planning Committee and with the agreement of the Chair of Planning Committee, address the Planning Committee in accordance with the Protocol on Public Speaking at Planning Committee. Any representations should relate to the planning merits of the application. When making representations as a ward councillor, the councillor should aim to make clear whether the opinion expressed is the view of the councillor or their constituents.
- 3.11. Councillors should avoid lobbying members of the Planning Committee and exerting undue pressure on planning officers in relation to any particular application.

4. Determining a Planning Application including Predetermination

- 4.1. Many decisions on planning applications and other related matters are delegated to officers. Details of such delegations are set out in Part 3 of the Constitution.
- 4.2. Other applications not delegated to officers are determined by councillors sitting on Planning Committee. Every application considered by Planning Committee will be accompanied by a report that has been produced by Officers. Copies of committee reports are available for consideration in accordance with the Council's Access to Information Rules. These are produced in Part 4 of the Constitution.

Predetermination

- 4.3. Every planning application should be determined having regard to all planning considerations that are relevant to it.
- 4.4. In the case of decisions by Planning Committee, the point in time when all relevant information will be available is the meeting of the Planning Committee at which an application is to be determined. Every councillor on the Planning

Committee should make their decision only after full consideration of the accompanying Officer report including its recommendation and having regard to all applicable information and discussion that takes place at the committee meeting.

- 4.5. If, prior to voting on a decision, a councillor on the Planning Committee fully commits themselves to a particular view on a planning application such that their mind is no longer open to considering the merits of the case that councillor should not take part in the item as a member of the Planning Committee.
- 4.6. This does not mean that a councillor cannot hold strong views about an application. In other words, a councillor can be predisposed towards a matter under discussion; however, that is not the same as having a closed mind.
- 4.7. In some cases, a councillor, including a member of the Planning Committee, may decide in advance of a Planning Committee meeting that they wish to commit themselves to a particular planning decision and seek to speak for or against it. This is not uncommon in the case of Ward Councillors. Councillors, including ward councillors, may request the opportunity to speak at a Planning Committee meeting. A member of the Planning Committee should make clear in advance of a meeting if this circumstance applies to them. In such a case, the member of the Planning Committee should also make their position clear at the start of the meeting, must not take part in discussion of the item as a member of the Planning Committee and must not vote on the item.

Membership of another local authority

- 4.8. Some councillors who sit on Planning Committee may also be members of another tier of local government. Such councillors should have regard to the guidance on interests contained in this Code and the Councillor Code of Conduct. In particular, if those councillors take part in any debate on a development proposal at a Parish/Town Council meeting, they should consider adopting a practice at the time of such participation of making clear that the views they express are based on information available at that time and as a consequence their views might change in the light of further information that becomes available prior to a determination by the Planning Committee.
- 4.9. If in doubt, councillors are recommended to seek further advice from the Monitoring Officer.

Political Group Meetings

- 4.10. As the point in time at which all information on a planning application will be available to councillors on a Planning Committee will be at the actual meeting of that committee, political group meetings in advance of the Planning Committee should not be used to determine how councillors should vote.
- 4.11. Further, since every planning application should be determined on its merits, the use of a party whip is not appropriate to seek to compel a member of the Planning Committee to vote in any particular way.

Applications by the Council or in respect of Council-owned land

- 4.12. Any application submitted by the Council or involving land forming part of the red line area of a planning application which is owned by the Council shall be determined by the Planning Committee.

Applications by Councillors and Officers

- 4.13. It is perfectly legitimate for a councillor or an officer to submit a planning application. However, to avoid any perceptions of impropriety the following should be applied to any such application.

- 4.13.1 Every application identified as submitted by or on behalf of a councillor or their spouse or civil partner in respect on any property (including land) in which they have a financial interest shall as provided for in Section 2, Part 3 of the Constitution be referred to the Planning Committee.
- 4.13.2 Every application identified as submitted by or on behalf of an officer working for the Council within its Planning Section or generally at Tier 3 or above at the time that the application is submitted or their spouse or civil partner shall as provided for in Section 2, Part 3 of the Constitution also be referred to the Planning Committee for determination.
- 4.13.3 An application from a councillor or officer will usually be identified as part of the registration process. However, councillors and officers to whom either of the two paragraphs above apply are encouraged to draw the fact that such an application has been submitted to the attention of both the Head of Planning (or any other Officer nominated by them) in writing and also the relevant case officer within twenty one days of the date of the application being submitted.
- 4.13.4 If an application is submitted by someone other than a councillor but relates to property (including land) in which the councillor has a legal interest, the councillor is also encouraged to provide such notification as identified above. This is in addition to any duty of disclosure the councillor may have for the purposes of the Councillor Code of Conduct. For the purpose of this code, the phrase “legal interest” means a legal interest registered at HM Land Registry in the name of the councillor.
- 4.13.5 No councillor or officer who submits or has a planning application submitted on behalf of themselves, their spouse or their civil partner should take part in handling the application on behalf of the Council or seek to use their position to influence the decision relating to that application. Councillors and officers should also be mindful of the need to consider potential conflicts arising in respect of applications by other family members and friends. If in doubt, advice should be sought from the Monitoring Officer.
- 4.13.6 No councillor or officer who acts as an agent for any person pursuing a planning matter with the Council should take part in handling the

application on behalf of the Council or seek to use their position to influence the decision relating to that application.

4.13.7 In considering the extent to which they can engage in any part of the process relating to a planning application including the consideration of that application at Planning Committee, a councillor should always have regard to the requirements of the Member Code of Conduct.

4.13.8 Where a councillor frequently declares an interest and therefore is unable to take part in the proper consideration of planning matters referred to the Planning Committee, the relevant political group should review the presence of that councillor on the Planning Committee with a view to replacing them with another councillor whose interests would not prevent them considering and deciding planning issues referred to the Committee.

Fraud, Corruption and Bribery

4.14. The Council, the Head of Paid Service and all its senior officers have a zero-tolerance commitment to issues of bribery and corruption.

4.15. Every councillor should inform the Monitoring Officer and every officer should report to their line manager or their Head of Service if any offer is made to them in relation to the exercise of any aspect of the Council's planning functions. Officers should also report to their line manager and councillors advise the Monitoring Officer of any matter that indicates a possible incidence of fraud, corruption or bribery.

Considering all relevant information

4.16. It is important that every councillor's decision takes account of all relevant planning considerations including any relevant representations and consultation responses. Any councillor who is absent during any part of the Planning Committee's consideration of an application (including any related officer presentation and public speaking) should not take any further part in the discussions on the application or vote on that application.

Site Visits

4.17. Site visits will be arranged and managed in accordance with the protocol agreed by the BCP Planning Committee.

Decisions contrary to an officer recommendation

4.18. If a councillor wishes to put forward a motion that a matter is dealt with contrary to an officer recommendation, that councillor should identify their reason(s) for refusal or approval including by reference to relevant Development Plan policies. In the case of a motion to approve, the councillor should also be aware that officers may seek clarification of any particular conditions / planning obligation that the councillor might wish to have imposed.

5. Training

- 5.1. As part of their induction programme, all new councillors will be expected to attend training sessions that are made available to them for the purposes of providing an introduction to the planning system. Where the Head of Planning identifies it as necessary, additional training sessions will also be made available to councillors appointed to the Planning Committee. Examples of this might include the introduction of new significant legislation. Councillors on Planning Committee are expected to make all reasonable efforts to attend such training. A councillor who is unable to attend such training will normally be expected to seek advice as to whether such training or information on its content can be made available to them separately. Democratic Services Unit will aim to keep a record of councillor attendance at training. Details of any councillor who fails to engage in planning training that is made available will be drawn to the attention of the relevant group leader.
- 5.2. No councillor shall sit as a member or substitute member on the Planning Committee unless they have received appropriate training provided for this purpose.

PLANNING COMMITTEE - PROTOCOL FOR SPEAKING / STATEMENTS AT PLANNING COMMITTEE

1. Introduction

- 1.1 The following protocol facilitates opportunities for applicant(s), objector(s) and supporter(s) to express their views on planning applications which are to be considered at a Planning Committee meeting. It does not therefore relate to any other item considered at Planning Committee in respect of which public speaking/questions shall only be permitted at the discretion of the Chair.
- 1.2 This protocol is separate from and is not intended to replicate or replace the procedure for submitting a written representation on a planning application to the Council during the consultation period.
- 1.3 **The email address for any person who wishes to register a request to speak and / or submit a statement for the purposes of this protocol or to correspond with Democratic Services on any aspect of this protocol is democratic.services@bcpcouncil.gov.uk**

2. Order of presentation of an application

- 2.1 The running order in which planning applications are heard will usually follow the order as appears on the agenda unless the Planning Committee otherwise determines.
- 2.2 In considering each application the Committee will normally take contributions in the following order:
 - a) presenting officer(s);
 - b) objector(s);
 - c) applicant(s) /supporter(s);
 - d) councillor who has called in an application (who is not a voting member of the Planning Committee in relation to that application) / ward councillor(s);
 - e) questions and discussion by voting members of the Planning Committee, which may include seeking points of clarification.

3. Guidance relating to the application of this protocol

- 3.1 The allocation of an opportunity to speak / provide a statement to be read out at Planning Committee under this protocol is not intended as a guarantee of a right to speak / have a statement read out.

- 3.2 The Chair has absolute discretion as to how this protocol shall be applied in respect of any individual application so far as it relates to the conduct of the meeting and as provided for in this protocol including whether in any circumstance it should be waived, added to or otherwise modified. This discretion includes the opportunity to speak (or submit a statement), varying the speaking time allowed and the number of speakers. In the event of any uncertainty as to the interpretation or application of any part of this protocol a determination by the Chair will be conclusive.
- 3.3 A failure to make a request to speak / submit a statement in accordance with any one or more of the requirements of this protocol will normally result in the request / submission of the statement not being treated as validly made and therefore not accepted.

4. Electronic facilities relating to Planning Committee

- 4.1. All electronic broadcasting and recording of a Planning Committee meeting by the Council and the provision of an opportunity to speak remotely at such a meeting is dependent upon such matters being accessible, operational and useable during the meeting. As a consequence, a meeting other than a wholly virtual meeting may proceed, including consideration of all applications relating to it, even if it cannot be electronically broadcast, recorded and/or any person is unable to speak / be heard at the time when the opportunity to do so on an application is made available.

5. Attending in person at a Planning Committee meeting/ wholly virtual meetings

- 5.1. Unless otherwise stated on the Council's website and/or the agenda Planning Committee will be held as a physical (in person) meeting. A Planning Committee meeting will only be held as a wholly virtual meeting during such time as a decision has been taken by BCP Council that committee meetings of the Council may be held in this way. In the event of there being a discretion as to whether a Planning Committee meeting shall be held as a wholly virtual meeting, then the Head of Planning in consultation with the Chair shall be able to determine whether such a discretion should be applied.

6. Provisions for speaking at Planning Committee (whether in person or remotely)

- 6.1. Any applicant, objector or supporter who wishes to speak at a Planning Committee meeting must register a request to speak in writing with Democratic Services at democratic.services@bcpcouncil.gov.uk by **10.00 am of the working day before the meeting.**
- 6.2. A person registering a request to speak must:
- a) make clear as to the application(s) on which they wish to speak and whether they support or oppose the application; and
 - b) provide contact details including a telephone number and/or email address at which they can be reached / advised that they have been given an opportunity to speak.

- 6.3. There will be a maximum combined time of **five** minutes allowed for any person(s) objecting to an application to speak. A further combined **five** minute maximum will also be allowed for any supporter(s). Up to **two** people may speak during each of these allotted times (the applicant(s) and any agent for the applicant(s) will each count as separate speakers in support). No speaker may speak for more than half this time (i.e. **two and a half minutes**) unless:
- a) there is no other speaker who has also been allotted to speak for the remainder of the five minutes allowed;
 - b) or the other allotted speaker fails to be present or is unable to be heard (in the case of remote speaking), at the Planning Committee meeting at the time when the opportunity to speak on the application is made available; or
 - c) the other allotted speaker expressly agrees to the speaker using more than half of the total speaking time allowed.
- 6.4. If more than two people seek to register a wish to speak for either side, an officer from Democratic Services may ask those seeking the opportunity to speak to appoint up to two representatives to address the Planning Committee. In the absence of agreement as to representatives, entitlement to speak will normally be allocated in accordance with the order when a request was received by Democratic Services. However, in the event of an applicant(s) and / or the agent of the applicant(s) wishing to speak in support of an application such person(s) will be given the option to elect to speak in preference to any other person registered to speak in support.
- 6.5. A person registered to speak may appoint a different person to speak on their behalf. The person registered to speak should normally notify Democratic Services of this appointment prior to the time that is made available to speak on the application.
- 6.6. A person may at any time withdraw their request to speak by notifying Democratic Services by email or in person on the day of that meeting. However, where such a withdrawal is made after the deadline date for receipt of requests then the available slot will not be made available for a new speaker. In cases where more than two requests to speak within the allocated five minutes were received by the deadline, Democratic Services will, where practicable, reallocate the slot in date receipt order.
- 6.7. During consideration of a planning application at a Planning Committee meeting, no question should be put or comment made to any councillor sitting on the Planning Committee by any applicant, objector or supporter whether as part of a speech or otherwise.

7. Questions to person speaking under this protocol

- 7.1. Questions will not normally be asked of any person who has been given the opportunity to speak for the purpose of this Protocol. However, the Chair at their absolute discretion may raise points of clarification.

8. Speaking as a ward councillor or other BCP councillor (whether in person or remotely)

- 8.1. Any ward councillor shall usually be afforded an opportunity to speak on an application at the Planning Committee meeting at which it is considered. Every ward councillor who is given the opportunity to speak will have up to **five** minutes each.
- 8.2. At the discretion of the Chair, any other councillor of BCP Council not sitting as a voting member of the Planning Committee may also be given the opportunity to speak on an application being considered at Planning Committee. Every such councillor will have up to **five** minutes each.
- 8.3. Any member of the Planning Committee who has exercised their call in powers to bring an application to the Planning Committee for decision should not vote on that item but subject to any requirements of the Member Code of Conduct, may have or, at the discretion of the Chair, be given the opportunity to speak in connection with it as a ward councillor or otherwise in accordance with the speaking provisions of this protocol. Such a member will usually be invited after speaking to move themselves from the area where voting members of the Planning Committee are sitting and may be requested to leave the room until consideration of that application has been concluded.

9. Speaking as a Parish or Town Council representative (whether in person or remotely)

- 9.1. A Parish or Town Council representative who wishes to speak as a representative of that Parish or Town Council must register as an objector or supporter and the same provisions for speaking as apply to any other objector or supporter applies to them. This applies even if that representative is also a councillor of BCP Council.

10. Content of speeches (whether in person or remotely) and use of supporting material

- 10.1. Speaking must be done in the form of an oral representation. This should only refer to planning related issues as these are the only matters the Planning Committee can consider when making decisions on planning applications. Speakers should normally direct their points to reinforcing or amplifying planning representations already made to the Council in writing in relation to the application being considered. Guidance on what constitutes planning considerations is included as part of this protocol. Speakers must take care to

avoid saying anything that might be libellous, slanderous, otherwise abusive to any person or group, including the applicant, any officer or councillor or might result in the disclosure of any personal information for which express consent has not been given.

- 10.2. A speaker who wishes to provide or rely on any photograph, illustration or other visual material when speaking (in person or remotely) must submit this to Democratic Services **by 12 noon two working days before the meeting**. All such material must be in an **electronic** format to be agreed by Democratic Services and will usually be displayed on the speaker's behalf by the presenting officer. The maximum number of slides to be displayed must not exceed **five**. Material provided after this time or in a format not agreed will not be accepted. The circulation or display of hard copies of such material at the Planning Committee meeting itself will normally not be allowed. In the interests of fairness, any material to be displayed must have already been submitted to and received by the Council as part of a representation/submission in relation to the application by the date of agenda publication for that Planning Committee meeting.
- 10.3. The ability to display material on screen is wholly dependent upon the availability and operation of suitable electronic equipment at the time of the Planning Committee meeting and cannot be guaranteed. Every person making a speech should therefore ensure that it is not dependent on such information being displayed.

11. Remote speaking at Planning Committee

- 11.1. In circumstances where the Council has put in place electronic facilities which enable a member of the public to be able to speak remotely to a Planning Committee meeting, a person may request the opportunity to speak remotely via those electronic facilities using their own equipment. In circumstances other than a wholly virtual meeting this would be as an alternative to attending the meeting in person. The provisions of this protocol relating to speaking at Planning Committee shall, unless the context otherwise necessitates, equally apply to remote speaking.
- 11.2. The opportunity to speak remotely is undertaken at a person's own risk on the understanding that should any technical issues affect their ability to participate remotely the meeting may still proceed to hear the item on which they wish to speak without their participation.
- 11.3. A person attending to speak remotely may at any time be required by the Chair or the Democratic Services Officer to leave any electronic facility that may be provided.

12. Non-attendance/ inability to be heard at Planning Committee

- 12.1. It is solely the responsibility of a person who has been given an opportunity to speak on an application at a Planning Committee meeting (whether in person or remotely) to ensure that they are present for that meeting at the time when an opportunity to speak is made available to them.
- 12.2. A failure / inability by any person to attend and speak in person or remotely at a Planning Committee meeting at the time made available for that person to speak on an application will normally be deemed a withdrawal of their wish to

speaking on that application. This will not therefore usually be regarded as a reason of itself to defer or prevent an application from being heard.

- 12.3. This protocol includes provisions enabling the opportunity to provide a statement as an alternative to speaking in person / as a default option in the event of a person being unable to speak at the appropriate meeting time.

13. Submission of statement as an alternative to speaking / for use in default

- 13.1. A person (including a councillor of BCP Council) who has registered to speak, may submit a statement to be read out on their behalf as an alternative to speaking at a Planning Committee meeting (whether in person or remotely).
- 13.2. Further, any person speaking on an application at Planning Committee may, at their discretion, additionally submit a statement which can be read out as provided for in this protocol in the event of not being able to attend and speak in person or remotely at the time when an opportunity is made available for that person to speak on the application. The person should identify that this is the purpose of the statement.

14. Provisions relating to a statement

- 14.1 Any statement submitted for the purpose of this protocol:
- a) must not exceed **450** words in total unless the statement is provided by a ward councillor or any other councillor who is not voting on the application under consideration in which case the statement may consist of up to **900** words;
 - b) must have been received by Democratic Services by **10.00am of the working day before the meeting** by emailing democratic.services@bcpcouncil.gov.uk
 - c) when submitted by a member of the public (as opposed to a councillor of BCP Council), will be treated as amounting to **two and a half minutes** of the total time allotted for speaking notwithstanding how long it does in fact take to read out;
 - d) must not normally be modified once the deadline time and date for receipt of the statement by Democratic Services has passed unless such modification is requested by an officer from Democratic Services; and
 - e) will normally be read out aloud by an officer from Democratic Services having regard to the order of presentation identified in this protocol.
- 14.2 A person who has been given the right to speak and who has submitted a statement in accordance with this protocol may at any time withdraw that statement prior to it being read out by giving notice to Democratic Services. Where such withdrawal occurs after the deadline date for registering a request to speak has passed, then a further opportunity for a statement to be submitted will not be made available. If the statement that has been withdrawn was submitted as an alternative to speaking, then if the person

withdrawing the statement wishes instead to exercise their opportunity to speak in person they should notify Democratic Services on or before the time of withdrawing the statement.

15. Assessment of information / documentation / statement

- 15.1. BCP Council reserves the right to check any statement and any information / documentation (including any photograph, illustration or other visual material) provided to it for use at a Planning Committee meeting and to prevent the use of such information / documentation in whole or part, in particular, if it:
- a) is considered to contain information of a kind that might be libellous, slanderous, abusive to any party including an applicant or might result in the disclosure of any personal information for which express consent has not been given; and / or
 - b) is identified as having anything on it that is considered could be an electronic virus, malware or similar.
- 15.2 The Head of Planning in consultation with the Chair shall have the absolute discretion to determine whether any such statement / information / documentation should not be used / read out in whole or part. If circumstances reasonably permit, Democratic Services may seek to request a person modify such statement / information / documentation to address any issue identified.

16. Guidance on what amounts to a material planning consideration

- 16.1. As at the date of adoption of this protocol, the National Planning Portal provides the following guidance on material planning considerations:

“A material consideration is a matter that should be taken into account in deciding a planning application or on an appeal against a planning decision. Material considerations can include (but are not limited to):

- *Overlooking/loss of privacy*
- *Loss of light or overshadowing*
- *Parking*
- *Highway safety*
- *Traffic*
- *Noise*
- *Effect on listed building and conservation area*
- *Layout and density of building*
- *Design, appearance and materials*
- *Government policy*
- *Disabled persons' access*
- *Proposals in the Development Plan*
- *Previous planning decisions (including appeal decisions)*
- *Nature conservation*

However, issues such as loss of view, or negative effect on the value of properties are not material considerations."

https://www.planningportal.co.uk/faqs/faq/4/what_are_material_considerations#:~:text=A%20material%20consideration%20is%20a,Loss%20of%20light%20or%20overshadowing

Note

For the purpose of this protocol:

- (a) reference to the "Chair" means the Chair of Planning Committee and shall include the Vice Chair of Planning Committee if the Chair is at any time unavailable or absent and the person presiding at the meeting of a Planning Committee at any time that both the Chair and Vice Chair of Planning Committee are unavailable or absent;
- (b) reference to the Head of Planning includes any officer nominated by them for the purposes of this protocol and if at any time the Head of Planning is unavailable, absent or the post is vacant / ceases to exist, then the Development Management Manager or if also unavailable / absent or that post is vacant/no longer exists then the next most senior officer in the development management team (or any of them if more than one) who is first contactable;
- (c) reference to 'ward councillor' means a councillor in whose ward the application being considered at a meeting of Planning Committee is situated in whole or part and who is not a voting member of the Planning Committee in respect of the application being considered; and
- (d) a "wholly virtual meeting" is a Planning Committee meeting where no one including officers and councillors physically attend the meeting; however, a meeting will not be held as a "wholly virtual meeting" unless legislation permits

Adopted by the Planning Committee on 17.11.22 and updated on 20.7.23

PLANNING COMMITTEE - SITE VISIT PROTOCOL

1. Purpose of the site visit

- 1.1. It is presumed that members of the Planning Committee will have familiarised themselves with the location and context of an application to be considered, in so far as this can be done from adjacent roads and public spaces and the relevant officer report to the Planning Committee.
- 1.2. In exceptional cases (such as the impact of the proposal is difficult to visualize from the plans and any supporting material, including photographs, as being unable to see the site from a public vantage point, or that there are other substantial benefits in carrying out a site visit), members of the Committee may suggest that the Planning Committee visit the site, or adjoining sites if relevant.

2. How decisions on a site visit are reached

- 2.1. Where prior to the Committee, and following release of the Planning Committee agenda papers, members of the Committee consider that exceptionally a site visit of the Planning Committee is necessary such requests should be made to Democratic Services prior to Chair's briefing. At the briefing the Chair, in consultation with officers, will consider whether this exceptional case is made, or alternatively seek further visual information from the officers to support the Committee in the absence of a formal Planning Committee site visit.
- 2.2. Where a site visit has not occurred prior to the Planning Committee meeting members of the Planning Committee can during the debate seek to adjourn or defer the decision on any given application until a site visit of the Planning Committee is arranged. In these cases, members of the Planning Committee will need to clearly set out firstly why a site visit is considered necessary when this was not identified prior to the Planning Committee meeting and secondly whether an adjournment or deferral can allow for officers to source additional information that would negate the need for a site visit.
- 2.3. The site visit by members of the Planning Committee forms part of the Planning Committee process, allowing Planning Committee members to view the site and where appropriate adjoining properties.

3. Arranging the Visit

- 3.1. Where a site visit has been agreed to be undertaken following the Chair's briefing this will be arranged to precede the Planning Committee and a schedule for the visit will be agreed between the Chair and officers. This will identify the timetable for the meeting and invited attendees.
- 3.2. Planning Services will then notify the applicant or their agent of the time and date of the proposed site visit and seek their authority for Members of the Planning Committee, Ward Councillors and officers to visit the site, where this cannot be achieved from a public point of access. Where the application site is on private land, the applicant or agent will be requested to be in attendance only to facilitate access.
- 3.3. All members of the Planning Committee will be invited to attend the site visit.

- 3.4. On occasion, officers of other services such as Transportation Services will be invited to attend a site visit to clarify factual matters.
- 3.5. Councillors have no right of entry to private land except by permission of the owner and they should not enter a private site until all are present and an officer has made contact on the site visit with the landowner/operator/applicant.
- 3.6. In the unlikely event that the landowner will not give permission to enter a private site, the site will have to be viewed from the public highway or from other adjacent land with the owner's permission.
- 3.7. Where the Planning Committee adjourn or defer the decision on the application until a site visit is arranged any visit will be organised immediately prior to the next Planning Committee in accordance with the above criteria.

4. Conduct of the Visit

- 4.1. The purpose of the site visit is to enable members of the Planning Committee to familiarise themselves with the site and its surroundings in order to understand the issues more clearly when considering the application at the Planning Committee. It is presumed that members of the Planning Committee will have familiarised themselves prior to the site visit with the location and context of an application to be considered, in so far as this can be done from adjacent roads and public spaces and the relevant officer report to the Planning Committee.
- 4.2. Whilst it may be necessary for an applicant or his agent to be present on the site (e.g. to provide access or for safety reasons), discussions with the applicant or their agent or any third party (including Ward Councillors and other Councillors) should be avoided and they will be advised that lobbying of members of the Planning Committee is unacceptable. Presentations by applicants will not be permitted.
- 4.3. As the site visit is part of the process of the Planning Committee considering an application, it is chaired by the Chair and formally opened and closed. This will provide clarity as to when the site visit has formally commenced. Until the Chair closes the site visit this protocol and procedures will be adhered to.
- 4.4. At the request of the Chair, the planning officer will describe the application to the assembled Councillors and display appropriate plans or drawings of the proposal. (It is expected that Councillors will already be familiar with the planning officer's report) The planning officer will indicate matters of fact in relation to the proposal and surrounding land, which will be material once the proposal, is debated.
- 4.5. Questions from Planning Committee members should be addressed to the planning officer and be of a factual nature, for example distances to adjoining or objectors' properties or the landscape features to be retained. If during the site visit it is necessary to seek information from the applicant or agent, at the discretion of the Chair an officer will undertake this.
- 4.6. At no time during the site visit should councillors debate or comment on the planning merits or otherwise of a proposal.

- 4.7. The role of the Ward Councillors (if not a member of the Planning Committee) will be limited to drawing attention to features of the site that he/she considers relevant to the committee in understanding the site, its surroundings and the proposal. The Councillors will not be permitted to make representations on the merits or otherwise of the application.
- 4.8. If members of the public attend the site visit they can only be allowed on the land with the permission of the land owner. Presentation or lobbying by members of the public will not be permitted.

5. General

- 5.1. Members of the Planning Committee should keep together, and it is essential that they should not allow themselves to be lobbied by anyone or enter into a discussion about the application or express any opinion about the application.
- 5.2. Members of the Planning Committee should ensure that they have seen all aspects of the site suggested by the accompanying officer or the Chair during the visit.
- 5.3. The Planning Committee will not make any formal decision at the site visit and no individual member of the Planning Committee should express a view of the merits of the application during the site visit.
- 5.4. The application will usually be one of the first items on the Agenda of the following Planning Committee meeting where the merits of the application will be debated.
- 5.5. Where it is considered that a site visit is necessary it is essential that all members of the Planning Committee are present and where members of the Planning Committee are unable to attend the site visit they will be unable to take part in the debate or vote on the application.
- 5.6. The decision of the Chair, (in consultation with the planning officer where appropriate), on all matters concerning site visit protocol is final.

6. Record of the Visit

- 6.1. A record of the visit will be made by an officer and retained on the planning application file. The record will include the timetable for the meeting, attendees and what was viewed on site.

7. Notes:

- 7.1. Officers will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.
- 7.2. Where appropriate, protective clothing e.g. high visibility jackets, hard hats will be provided for Councillors on arrival at the site. Councillors should, however, be aware of the need to wear appropriate footwear.
- 7.3. In the interests of sustainability and highway safety, car-sharing will be available, and members are encouraged to make use of this.

- 7.4. If a Councillor attending the site visit has special access requirements or wishes the Committee to visit other addresses (eg. an objector's home), early notification to the case officer will allow arrangements to be made.

Adopted by the Planning Committee on 30 May 2019

PLANNING COMMITTEE - PROTOCOL IN RELATION TO PRE-APPLICATION PRESENTATIONS

1. Introduction

- 1.1. The early engagement of councillors in relation to a potential planning application can be a positive contributor to seeking to ensure the provision of sustainable development within the area that best meets the aspirations and needs of the community.
- 1.2. The purpose of this protocol is to provide guidelines and a framework within which the Planning Committee will entertain and consider a presentation prepared for councillors by a potential applicant relating to a possible planning application that has not yet been submitted to the Council ("pre-application presentation").

2. Guidelines for identifying a pre-application presentation that might be taken to Planning Committee

- 2.1. The focus for pre-application presentations is limited to significant proposals. In considering any request for a pre-application presentation regard should be had to the following criteria for the purposes of determining those that may be suitable i.e. whether the relevant senior planning officer considers that the proposal:
 - (a) is of strategic importance to the whole or part of the Council area;
 - (b) involves a matter of significant national importance that has not previously been the subject of consideration within the Council area;
 - (c) may have a significant impact on a wide number of businesses/people and/or more than one Council ward;
 - (d) is on an extant Development Plan allocation and is important to securing one or more key Development Plan objectives;
 - (e) would provide a major development of significant importance to its locality and relates to a planning application previously refused by the Planning Committee; and/or
 - (f) any other proposal whose special circumstances the Head of Planning considers would justify a pre-application presentation being allowed.

3. General principles relating to a pre-application presentation

- 3.1. No part of a pre-application presentation or subsequent consideration / questions raised in relation to it is binding on the Council. Every observation / opinion given by any councillor or officer should be treated as provisional and no question asked should be taken as an indication of pre-determination with regard to the consideration of any planning application.
- 3.2. As a pre-application presentation is not part of an extant planning application, there is no requirement for any councillor to attend or participate in the pre-

application presentation in order to be able to vote on any related planning application that may subsequently be submitted.

- 3.3. The Protocol for Speaking / Statements at Planning Committee does not apply to a pre-application presentation. Neither questions nor statements by members of the public will normally be permitted.

4. Proceedings relating to the consideration of a pre-application presentation at Planning Committee

- 4.1. A pre-application presentation should normally consist of a presentation only. No other documents should be provided to councillors for the purposes of the pre-application presentation without the prior agreement of the Head of Planning and an officer from Democratic Services.
- 4.2. Documentation provided as part of the pre-application presentation should include:
- (a) a description of the site location,
 - (b) a plan sufficient to enable councillors to easily identify its location; and
 - (c) a description of the proposal to which the pre-application presentation relates that clearly enables councillors to understand the nature and extent of the proposal.
- 4.3. An electronic copy of any documentation produced for the purposes of the pre-application presentation (including any slides to be used as part of the presentation itself), should be provided to and accepted by both the Head of Planning (or any officer nominated by the Head of Planning for the purpose), and the Democratic Services Unit at least five clear working days prior to the date of publication of the Planning Committee meeting agenda to which it relates. All such documentation will normally form, and be made public as, part of the publication of the agenda for the meeting at which the pre-application presentation is scheduled to occur.
- 4.4. A pre-application presentation may be accompanied by such other information as the Head of Planning considers of assistance to councillors in relation to the presentation.
- 4.5. No part of the pre-application presentation, whether visual, written or verbal, should contain information of a kind that might be libellous, slanderous, abusive to any party or might result in the disclosure of any personal information for which express consent has not been given. Electronic information provided to the Council will not be accepted if it is identified as having anything on it that is considered could be an electronic virus, malware or similar.
- 4.6. The Council's adopted Access to Information Procedure Rules apply to a pre-application presentation. The expectation is that a pre-application presentation will usually be presented in public. However, subject as provided for in the Council's adopted Local Code of Best Practice relating to Planning Matters and in accordance with the Access to Information Procedure Rules, may be held wholly or partly as part of a meeting at which the public are excluded.

- 4.7. A pre-application presentation will normally take place prior to the consideration of any planning application at the Planning Committee meeting at which it is to be presented.
- 4.8. A pre-application presentation should not exceed more than twenty minutes (excluding any time taken by the Chair and/or any officer to introduce the presentation). An additional period of up to forty minutes will normally be allowed for questions to be asked. Such timings may be varied at the discretion of the Chair.
- 4.9. Any BCP councillor whether appointed to the Planning Committee or otherwise will usually be given the opportunity to attend a pre-application presentation and ask questions.
- 4.10. A councillor who wishes to speak should aim to confine themselves to only asking questions that raise issues relevant to the pre-application presentation. No speeches, statements or expressions of opinion will normally be permitted.
- 4.11. The order of asking questions is at the discretion of the Chair. However, where more than one councillor wishes to ask questions, the Chair will usually aim to give initial priority to members sitting on the Planning Committee followed by any councillor in whose ward the land to which the pre-application presentation relates is situated. In the event that there is insufficient time for all questions to be asked, councillors will be invited to send their questions to the Head of Planning for consideration and referral on as appropriate.
- 4.12. A pre-application presentation to the Planning Committee may be deferred/withdrawn:
- (a) from a published agenda in accordance with any relevant provision in the Constitution; and/or by a decision of the Planning Committee; or
 - (b) in advance of publication of an agenda at the absolute discretion of the Head of Planning.
- 4.13. Failure to comply with the requirements of this protocol may in particular result in a pre-application presentation being withdrawn or deferred.
- 4.14. For the purposes of this protocol, references to the “Chair” and “Head of Planning” shall, unless the context otherwise requires, have the same meanings as in the Protocol for Speaking/Statements at Planning Committee.

Adopted by the Planning Committee on 17 November 2022

LICENSING COMMITTEE AND SUB COMMITTEE – PROTOCOL FOR PUBLIC SPEAKING

1. Introduction

- 1.1 This protocol for public speaking applies to Licensing Committee and Sub Committee hearings in relation to matters including the licensing of alcohol, regulated entertainment, late night refreshment, gambling, sex establishments and hackney carriage and private hire drivers, vehicles and operators, as set out in Part 3.3 of the Council's Constitution.
- 1.2 These matters are considered in accordance with relevant legislation and associated regulations including the Licensing Act 2003 (as amended by the Police Reform and Social Responsibility Act 2011), the Gambling Act 2005, Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27 of the Policing and Crime Act 2009) and the Local Government (Miscellaneous Provisions) Act 1976.

2. Conduct of Hearings

- 2.1 Chair welcomes everyone, matters of general housekeeping are dealt with, notification that the hearing may be recorded for live and subsequent broadcast on the Council's website, reminder to switch mobile phones to silent, etc.
- 2.2 Chair asks everyone present to introduce themselves and state their role.
- 2.3 Chair checks that all persons who have given notice of their intention to speak and any person who wishes to withdraw a representation or wishes not to speak have been identified.
- 2.4 Chair explains proposed procedure and order of speaking for hearing as set out in Appendix A or B of this protocol as appropriate. All parties confirm agreement or make representations on procedure proposed.
- 2.5 Licensing Officer's report is presented.
- 2.6 Parties speak in the order agreed.
- 2.7 With the exception of hackney carriage and private hire hearings, parties who are speaking should not repeat the information which they have already given in writing in their representation. They will be able to expand on the written information given, provided the information remains relevant. Any additional information should be limited to the grounds of their representation(s). For example, if they are objecting on the grounds of Public Nuisance, then they should confine their comments to matters relating to Public Nuisance.
- 2.8 Members of the Licensing Committee or Sub Committee may ask questions after each party has spoken and once all parties have spoken. Parties will be allowed to ask questions through the Chair.
- 2.9 Once all parties have been heard, the parties will be given the opportunity to sum up. Party who spoke first to go last. The hearing will then conclude.

- 2.10 Members will deliberate in private with the clerk and legal representative as appropriate present.
- 2.11 The decision will be taken by the Committee and notification of the decision will be given as follows:
 - 2.11.1 For Licensing Act 2003 and Gambling Act 2005 hearings, determination must be within the period of five working days beginning with the day or the last day on which the hearing was held in accordance with the relevant Regulations, unless otherwise specified (for example, the issuing of a counter notice following objection to a TEN, in which case the determination must be at the conclusion of the hearing).
 - 2.11.2 For Sex Establishment and other hearings, where possible determination will be within the period of five working days beginning with the day or the last day on which the hearing was held.
 - 2.11.3 For Hackney Carriage and Private Hire hearings, notification of the decision will be given at the conclusion of the hearing, followed by a written decision letter where possible within the period of five working days beginning with the day or the last day on which the hearing was held.
- 2.12 Notification of the decision will include information for all parties of any right of appeal as appropriate.

3 General points

- 3.1 Hearings convened under the Licensing Act 2003 and the Gambling Act 2005 and associated regulations may be held remotely as required, if the Chairman agrees it is expedient to do so in the circumstances.
- 3.2 The hearing may be adjourned at any time at the discretion of the Members.
- 3.3 Members may amend the procedure at any time if they consider it to be in the public interest or in the interest of a fair hearing.
- 3.4 The Sub Committee may decide to conduct all or part of a hearing in non-public session in accordance with the relevant Regulations and/or where exempt information is likely to be disclosed.
- 3.5 The Chair may exclude any person from a hearing for being disruptive.
- 3.6 Meetings of the Licensing Committee in public session are recorded by the Council for live and subsequent broadcast on its website.
- 3.7 The hearing will take the form of a discussion.

- 3.8 Only persons (or their representatives) who have made an application, are subject to an application or have submitted a written representation or objection to the Licensing Authority under the relevant Act are permitted to speak at the hearing.
- 3.9 Any further information to support an application, representation, objection or notice (as applicable) can be submitted before the hearing. It may only be submitted at the hearing with the consent of all parties in accordance with any relevant Regulations. Wherever possible the Licensing Authority encourages parties to submit information at the earliest opportunity to allow sufficient time for this to be considered before the hearing and avoid the need for adjournment.
- 3.10 If a party has informed the Authority that they do not intend to participate, or be represented at the hearing, or has failed to advise whether they intend to participate or not, the hearing may proceed in their absence.
- 3.11 For other matters which are the responsibility of the Licensing Committee and not included in this protocol, the Meeting Procedure Rules in Part 4D of the Council's Constitution in relation to public questions, statements and petitions shall apply. This includes such matters as making recommendations on relevant licensing policies, approving the level of fees charged by the Council, and making decisions on tariffs charged by the Public Carriage Trade.
- 3.12 The Council's Constitution can be accessed using the following link:
<https://democracy.bcpccouncil.gov.uk/ieListMeetings.aspx?CommitteeID=151&Info=1&bcr=1>

For further information please contact democratic.services@bcpcouncil.gov.uk

Proposed procedure and order of speaking for hearings (other than hackney carriage and private hire hearings)

1. The Licensing Officer presents report.
2. Questions of the Licensing Officer on their report. Members of the Sub-Committee to go first, then the applicant/licence holder.
3. Applicant will make their Application.
4. Questions of the Applicant by all parties, Members of the Committee/Sub-Committee to go first.
5. Responsible Authorities and Other Persons will make their representations.
6. Questions of the Responsible Authorities and Other Persons. Members of the Committee/Sub-Committee to go first.
7. All parties will be given an opportunity to sum up (with the party who spoke last to go first). The hearing will then conclude.
8. Sub-Committee will deliberate in private with Legal Adviser and Clerk present. (Councillors new to Licensing may observe but will not take part in the decision making).
9. Notification of the Sub Committee's decision will be given in accordance with the requirements of the Licensing Act and Gambling Act regulations. For other hearings, where possible determination will be within the period of five working days beginning with the day or the last day on which the hearing was held.
10. The notification of decision will include information about the right of appeal as appropriate.

Proposed procedure and order of speaking for Hackney Carriage and Private Hire hearings

1. The Licensing Officer presents their report.
2. Questions of the Licensing Officer on their report. Members of the Sub-Committee to go first, then the applicant/licence holder.
3. Applicant/licence holder presents their case.
4. Questions of the applicant/licence holder by all parties, Members of the Committee/Sub-Committee to go first.
5. All parties will be given an opportunity to sum up (with the party who spoke last to go first). The Hearing will then conclude.
6. Sub-Committee will deliberate in private with Legal Adviser and Clerk present. (Councillors new to Licensing may observe deliberations but will not take part in the decision making).
7. Notification of the decision will be given following deliberations at the conclusion of the hearing, to be followed by a written decision letter where possible within the period of five working days beginning with the day or the last day on which the hearing was held.
8. The Legal Adviser will advise parties of any right of appeal as appropriate at the conclusion of the Hearing. Information about the right of appeal as appropriate will also be included in the written decision letter.

Adopted by the Licensing Committee on 7.12.23

LICENSING COMMITTEE AND SUB-COMMITTEE - SITE VISIT PROTOCOL

1. When this Protocol applies

- 1.1. The protocol applies to the Licensing Committee and its Sub Committees in undertaking the functions set out in Part 3(A)-3 of the Council's Constitution: <https://democracy.bcpccouncil.gov.uk/ieListMeetings.aspx?CommitteeID=151&Info=1&bcr=1>
- 1.2. (Note: The term 'Sub-Committee' is used throughout the protocol for ease of reading, the protocol applies to any Committee or Sub-Committee arranged to consider a matter)

2. Purpose of the site visit

- 2.1. Site visits are generally unnecessary and should only be required in exceptional circumstances, as a fact-finding exercise where a visit would provide substantial benefit in the consideration of an application, and where one or more of the following criteria are met:
 - The impact of an application is difficult to visualise from the information provided in the report and any supporting material.
 - The internal layout of a premises is difficult to assess from the information provided in the report and any supporting material.
 - Where relevant factors cannot be fully ascertained from any supporting information or the plans submitted to the Licensing Officer and available at the hearing, to members' satisfaction.
 - Site Inspections by the sub-committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to the decision.
- 2.2. Visual material in the form of photographs or video presentation should be requested in the first instance as this may overcome the need for a site visit.

3. Requesting and agreeing a site visit

- 3.1. Where prior to the meeting, and following publication of the agenda and reports, a member of a Sub-Committee considers that exceptionally a site visit is necessary they should first contact the Licensing Officer to discuss their concerns to see if additional information can be requested from parties to address the issues raised. Following this, if the member still considers a site visit is necessary they should submit the request in writing to the Licensing Officer and explain the exceptional circumstances. The Licensing Officer shall consult with the other members of the Sub-Committee to seek their agreement (unanimous or majority decision required).
- 3.2. The Licensing Officer may also recommend that a Sub-Committee undertake a site visit by exception prior to the hearing. The Licensing Officer shall consult

the members of the Sub Committee to explain the exceptional circumstances and seek their agreement (unanimous or majority decision required).

- 3.3. Should a Sub-Committee agree that a site visit is justified the reasons for this should be recorded and conveyed in writing by the Licensing Officer to all parties.
- 3.4. Members of a Sub-Committee may adjourn or defer consideration of an application at a hearing in exceptional circumstances to undertake a site visit. Members should be mindful of the delay caused and should give reasons why the site visit is now considered necessary when it was not identified as needed prior to the meeting. Consideration should also be given to whether an adjournment or deferral can allow officers to source additional information that would overcome the need for a site visit.

4. Arranging the Visit

- 4.1. The date and time of a site visit shall be agreed in consultation with Members of a Sub-Committee and the landowner/operator/applicant as appropriate.
- 4.2. All parties will be notified of the date and time of the site visit by the Licensing Officer.
- 4.3. The Licensing Officer will liaise with the landowner/operator/applicant to make arrangements for the Sub-Committee to view the premises as required, where this cannot be done from a public point of access.
- 4.4. Members of the Sub-Committee and other parties have no right of entry to private land except by permission of the owner and they should not enter a private site until all are present and a Licensing Officer has made contact on site with the landowner/operator/ applicant. In the unlikely event that the permission is not given to enter a private site, the site will have to be viewed from the public highway or from other adjacent land with the owner's permission.

5. Conduct of the Visit

- 5.1. The Sub-Committee shall conduct the visit as a group and should avoid being separated at any time. The Sub-Committee shall be accompanied by a Licensing Officer at all times.
- 5.2. The Licensing Officer shall provide an introductory briefing, outlining the purpose of the site visit, which is to establish matters of fact relating only to the reasons given for the visit being necessary. It should be made clear that formal consideration and determination of the application shall take place at the appropriate hearing.
- 5.3. Questions from members of the Sub-Committee should be addressed to the Licensing Officer and be of a factual nature. If during the site visit it is necessary to seek information from the applicant or other party present, this should be done through the Licensing Officer who will undertake this and provide a response.

- 5.4. At no time during the site visit should the Sub-Committee debate or comment on the merits or otherwise of an application, or be drawn into discussions with the applicant or any other party.
- 5.5. No representations from the applicant or any other party shall be received on the site visit. All parties will be advised that lobbying of members of the Sub-Committee is not permitted.
- 5.6. Members of the Sub-Committee shall not accept any refreshments on the premises or any other form of hospitality or gift.
- 5.7. All members of the Sub-Committee hearing the application are required to attend the visit to be able to participate at the formal hearing.

6. Record of the Visit

- 6.1. A record of the visit will be made, to include details of attendees, what was viewed, questions asked, and responses provided. This information shall be repeated at the subsequent hearing if required for the benefit of any party not present at the site visit.

7. General

- 7.1. The Licensing Officer will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.
- 7.2. Where appropriate, protective clothing e.g. high visibility jackets, hard hats will be provided on arrival at the site. Members of the Sub-Committee should wear appropriate clothing and footwear.
- 7.3. Members of the Sub-Committee are responsible for making their own travelling arrangements to and from site visits and are encouraged to do so by car share or other sustainable means.
- 7.4. If anyone attending the site visit has special access requirements the Licensing Officer should be notified at the earliest opportunity to allow arrangements to be made.

Adopted by the Licensing Committee on 18 December 2019

GUIDANCE TO COUNCILLORS AND OFFICERS APPOINTED TO OUTSIDE BODIES

1. Introduction

- 1.1. This guidance sets out the main issues which Councillors and Officers should consider when appointed by the Council to serve on outside bodies.
- 1.2. In the context of this guidance 'outside bodies' include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Councillors or Officers may be involved as a director, trustee, governor or member (with or without voting powers).
- 1.3. Councillors and Officers who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
- 1.4. With the increasing emphasis on partnership working, Councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors and Officers always need to be clear about their roles and be alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.
- 1.5. The purpose of this guidance is to assist Councillors and Officers in the discharge of their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of Councillors and Officers appointed by the Council to serve on outside bodies, though much of the advice applies equally to Councillors and Officers who are involved with outside bodies in a private capacity; in these situations, however, the Council's insurances will not apply.
- 1.6. This guidance is general and Councillors and Officers should contact the Monitoring Officer for further advice if they have any particular issues of concern.

2. Issues to consider before appointment

- 2.1. Before accepting an appointment to an outside body Councillors and Officers should check the following:
 - (a) The legal status of the organisation, e.g. company, trust, charity, unincorporated association;
 - (b) The capacity in which the Councillor or Officer is to be appointed, e.g., director, trustee,
 - (c) Whether the Councillor or Officer will have voting rights or observer status;
 - (d) The purpose of the organisation and how this relates to the Council's functions and objectives;

- (e) The relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
 - (f) The requirements of the organisation's governing instrument, e.g. constitution; trust deed; memorandum and articles of association, both as a member and generally;
 - (g) The financial status of the organisation;
 - (h) Governance and decision-making arrangements, including the management of risk;
 - (i) Any code of conduct for members of the outside body;
 - (j) Any potential liabilities;
 - (k) Extent of any insurance cover for members of the outside body, especially the nature of Directors and Officers liability cover for appointment to the board of any company.
- 2.2. Having checked the above, Councillors and Officers should consider carefully whether they are willing to be appointed to participate formally in the management of the external organisation, e.g., as a director, trustee or voting member, or whether their role as a representative or Officer of the Council may be more effectively discharged as a non-voting member with observer status only. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation, Councillors and Officers are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.
- 2.3. Councillors and Officers are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

3. Application of the Council's Code of Conduct for Members

- 3.1. The Council's Code of Conduct for Members at PART 6 of the Constitution and the Council's Code of Conduct for Officers, place specific obligations on Councillors and Officers when acting in that capacity in their dealings with outside organisations. The Code will, in particular, apply where a Councillor or Officer is acting as a representative of the Council on an outside body.
- 3.2. Apart from the general duty to promote and support high standards of conduct, the following duties of the Code are particularly relevant in this context:
- (a) act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;
 - (b) Avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
 - (c) Make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;

- (d) Declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest;
 - (e) Comply with the statutory requirements on the registration and declaration of interests.
- 3.3. Councillors and Officers who have a direct or indirect disclosable pecuniary interest (Other Registrable Interests and / or Non-Registrable Interest) in any business at a meeting of the Council, e.g., award of a contract, must not participate in any discussion of the matter or, in the case of a Councillor, vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.
- 3.4. Councillors and Officers who serve on more than one body, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a Councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member, they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency, to include details of the interest in their register of interests.
- 3.5. The same principle will generally apply where Councillors are appointed to serve as school governors, but it is always necessary to have regard to the nature and extent of any conflict of interest in deciding whether to participate or vote. Where the governing body is considering a matter which is likely to have a material effect on the Councillor or a member of their family, it would be advisable to declare an interest and take no further part in the proceedings.
- 3.6. Councillors and Officers appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.

4. Predetermination and Bias

- 4.1. Aside from the Code of Conduct, under common law, Councillors must be careful to avoid any pre-determination or bias in their decision-making. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgement fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.
- 4.2. The Localism Act 2011 clarified the rules on predetermination. It makes it clear that a Councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A Councillor is not, for example, prevented from participating in discussion of an issue, or voting on it, if they have campaigned on the issue or made public statements about their approach to it.
- 4.3. The general position remains however, that, whatever their views, members must approach their decision-making with an open mind in the sense that they

must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

- 4.4. Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under common law, bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.
- 4.5. The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the Code of Conduct and particularly the provisions set out above.

5. Legal status, capacity, duties and liabilities

- 5.1. Where a Councillor or Officer is appointed to an external organisation by the council, the Councillor or Officer will be representing the interests of the Council. However, they will also have duties to the organisation. The extent of these duties will depend on the type of organisation and the nature of the position that the Councillor or Officer is appointed to.
- 5.2. If the Councillor or Officer is serving in a decision-making capacity, or has a position of management or control on the external organisation, they will owe duties to that organisation that are distinct and separate from their duties as Councillor or Officer.
- 5.3. In contrast, where the Councillor or Officer is appointed to an external organisation as an observer only and is not required to participate in the organisation's management or governance other than to attend and vote at annual or general meetings, it is likely that the Councillor or Officer will, for the most part, be acting as a representative of the Council and would not have the same duties in respect of the governance of the organisation referred to above.
- 5.4. The specific responsibilities of Councillors and Officers will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of Councillors and Officers in relation to various types of outside body, is summarised in the appendices to this note as follows:
 - Appendix A - Director of Limited Liability Company
 - Annex 1 – Summary - Cabinet, Shareholder Advisory Board and Shareholder Operations Board and Companies
 - Appendix B - Trustee of Trust or Charitable Trust
 - Appendix C - Member of Unincorporated Association
 - Appendix D - Member of Steering Group, Joint Committee or Partnership Body
- 5.5. The key point to note, is that where Councillors or Officers are carrying out their duties as a trustee, director, or management committee member, they may take

account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.

6. Liability, Insurance and Indemnity

- 6.1. Councillors and Officers can incur personal civil and criminal liability from formal participation in outside bodies. However, under section 265 of the Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), Councillors and Officers enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.
- 6.2. This immunity does not apply however, where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud where they exercise managerial responsibilities.
- 6.3. BCP Council has a wide insurance provision to protect its assets and liabilities. Within these provisions the Council has extended its cover to protect its elected and co-opted members of outside bodies when carrying out duties in connection with the business of the Council. Those afforded the protection are:
 - (a) Elected Members of the Council or co-opted members of any Committee or Sub-Committee;
 - (b) Members of committees, schemes or associations formed to assist in the activities of the Council.
- 6.4. Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.

Duties and Responsibilities of a Director of Limited Liability Company (both Teckal and Non-Teckal)

1. Directors Duties

- 1.1. Directors owe a number of duties to their company, which are set out in the *Companies Act 2006*. These duties are to:
 - (a) Act within powers (*section 171*) - see paragraph 2 '*Acting within powers - Consequences of exceeding authority*'.
 - (b) Promote the success of the company (*section 172*).
 - (c) Exercise independent judgement (*section 173*) - see paragraph 3 '*Duty to act for the company and risk of local authority becoming a shadow director*'.
 - (d) Exercise reasonable skill, care and diligence (*section 174*) – see paragraph 4 '*Requirement for appropriate level of skill and expertise*'.
 - (e) Avoid conflicts of interest (*section 175*) – see paragraph 5 '*Avoid conflicts of interest – Council vs Company*'.
 - (f) Not accept benefits from third parties (*section 176*).
 - (g) Declare interest in a proposed transaction or arrangement with the company (*section 177*).
- 1.2. Councillors and Officers appointed as directors should be aware of these duties, particularly those which could lead to:
 - (a) A conflict with their role as a Councillor or Officer (for example, the duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest).
 - (b) Personal liability for the debts of the company.

2. Acting within powers - Consequences of exceeding authority

- 2.1. Directors must ensure that they act within the company's constitution (its memorandum and articles of association) and must only exercise these powers for their proper purpose. If a director acts outside of their powers a company can still be bound by the unlawful actions of their Officers / Directors (unlike statutory corporations, such as local authorities). Third parties acting in good faith can rely on decisions made by directors acting outside their authority, but the company may recover any resulting loss from the director personally.

3. Duty to act for the company and risk of local authority becoming a shadow director

- 3.1. Councillors and Officers appointed to external corporations must ensure that they take decisions in accordance with their personal convictions; **they must not act on behalf of, or in promotion of, the local authority**. As a director,

the Councillor or Officer has a statutory duty to promote the success of the company and exercise independent judgement. If the Councillor is unable to do this without compromising their duty to the authority, they should resign their post. However, an Officer's duty to the authority is contractual, and so the authority can waive their contractual obligations if appropriate.

- 3.2. Furthermore, if the Councillor or Officer is a mere conduit for the local authority's viewpoint, the local authority risks being held to be a shadow director of the company. A shadow director is a person in accordance with whose directions or instructions the directors of a company are accustomed to act.
- 3.3. If the local authority is found to be a shadow director in an insolvency situation, it could be liable for the debts of the company where it knew, or ought to have concluded, that the company could not avoid insolvency but did not prevent it from continuing to trade (wrongful trading).

4. Requirement for appropriate level of skill and expertise

- 4.1. A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both:
 - (a) The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (the "objective" test).
 - (b) The general knowledge, skill and experience that the director actually has (the "subjective" test).
- 4.2. So, at a minimum, a director must display the knowledge, skill and experience set out in the objective test, but where a director has specialist knowledge, they must meet the higher subjective standard. Therefore, a Councillor or Officer should consider, along with the appointing local authority, whether they have the skills necessary to run a company; it is not enough that an individual has the time and enthusiasm. In addition, individuals with specialist skills will be expected to apply those skills to their role as director.

Liabilities arising from insolvency of company or association

- 4.3. The need to have the necessary expertise to manage the company's finances is particularly important if the company is struggling financially. A director who does not scrutinise and understand the company's accounts risks incurring personal liability to the company's creditors for wrongful trading under section 214 or Section 246ZB of the Insolvency Act 1986 if they continue to trade when they knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid becoming insolvent.
- 4.4. It is important to recognise that liability arises whether or not the director understood the company's financial position or intended any harm; if they should have known the company could not avoid insolvency, they were obliged to take every step to minimise its creditors' losses.

5. Avoid conflicts of interest – Council vs Company

- 5.1. A Councillor or Officer appointed as a director to a company will owe specific duties to the company in that capacity under both statute and common law. Councillors and Officers are under a duty to exercise independent judgement when they are making decisions on behalf of the council. However, as a director of an external organisation they will also have a duty to exercise independent judgement and to act in the best interests of the company to which they are appointed.
- 5.2. This means that if the Councillor or Officer finds themselves in a situation where the interests of the council arise, the Councillor or Officer must disclose that interest. If they simply act or vote in line with the Council's position, the Councillor or Officer would not be acting in the best interests of the company and would be in breach of their duties as a director and could incur personal liability for their actions. Where a potential or actual conflict of interest arises, the Councillor or Officer may have to resign from either the company or the council.
- 5.3. A summary regarding potential conflicts of interest for Councillors and Officers who are members of the Shareholder Advisory Board and the Shareholder Operations Board is set out in Annex 1 (Summary - Cabinet, Shareholder Advisory Board and Shareholder Operations Board and Companies) to this Protocol.

6. Other responsibilities

- 6.1. Directors must also be aware of how acts and decisions of other individuals may bind the company, for example:
 - (a) Company directors may have powers delegated to them by the company, but they also have ostensible authority to act on behalf of the company, and their actions will bind that company, so that a third party dealing in good faith with a company's director may rely on the actions of that director even if they were not actually authorised by the company.
 - (b) Employers have vicarious liability for the tortious acts of employees carried out in the course of their employment. This can include discrimination against one employee at the hands of another, as well as breaches of health and safety.

Summary - Cabinet, Shareholder Advisory Board and Shareholder Operations Board and Companies

1. General

- 1.1. The shareholder of a company owned by the Council is always BCP Council, not the members of the Cabinet or the Shareholder ADVISORY BOARD or the Shareholder Operations Board themselves, or any Council Directors appointed to represent the Council on the boards of these companies.

2. Cabinet

2.1. Purpose in relation to companies:

- 2.1.1 The Cabinet will make decisions in relation to a company of which the Council is a Shareholder in accordance with the governance arrangements for the Shareholder Advisory Board and the Shareholder Operations Board.

- 2.1.2 These are decisions that involve:

- (a) changes to company governance e.g. including amending a company's articles of association, or its shareholder agreement;
- (b) agreements to any amalgamation, merger, joint venture, profit sharing or similar arrangements; and
- (c) approving steps to wind up a company.

2.2. Conflicts:

- 2.2.1 A member of the Cabinet could also be a director of a company. However, in the context of the Council being a shareholder of various companies and members of the Cabinet also being Directors of various companies there is potential for conflicts to arise. So as to avoid a position of conflict, BCP Councillors will not be appointed as a director of any council company
- 2.2.2 Councillors who have a direct or indirect disclosable pecuniary interest (Other Registerable Interest and / or Non-Registerable Interest) in any business at a meeting of the Council, e.g. award of a contract, must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

3. Shareholder Advisory Board and Shareholder Operations Board

3.1. Purpose:

- 3.1.1 The Shareholder Advisory Board and the Shareholder Operations Board has been established by the Cabinet specifically to support the

Cabinet in its discharge of the shareholder functions of the Council in relation to those companies of which the Council is a shareholder. The Shareholder Advisory Board does not have day-to-day operational control over any of the companies of which the Council is a shareholder.

3.2. Conflicts:

- 3.2.1 In law, a shareholder of a company can also be a director of a company – this is often the case in small family-run companies. However, in the context of the Council being a shareholder of various companies and members of the Shareholder Advisory Board and the Shareholder Operations Board also being Directors of various companies there is potential for conflicts to arise.
- 3.2.2 Officers and Councillors who have a direct or indirect (Other Registerable Interest and /or Non-Registerable Interest) disclosable pecuniary interest in any business at a meeting of the Council, e.g. award of a contract, must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

4. Director

4.1. Purpose:

- 4.1.1 An Officer or Councillor who is appointed as a director of a company will be involved in all decisions regarding the day-to-day operation of that company. Directors owe a number of duties to their company which are set out in the Companies Act 2006:
 - (a) Act within powers
 - (b) Promote the success of the company
 - (c) Exercise independent judgement
 - (d) Exercise reasonable skill, care and diligence
 - (e) Avoid conflicts of interest
 - (f) Not accept benefits from third parties
 - (g) Declare interest in a proposed transaction or arrangement with the company

4.2. Conflicts:

- 4.2.1 Council decision making Where a member of Shareholder Advisory Board and or the Shareholder Operations Board and or the Cabinet is also a director of a company and the Cabinet via recommendation of the Shareholder Advisory Board is being asked to make a decision in relation to that company, e.g. award of a contract, the Councillor and or Officer should declare a direct or indirect disclosable pecuniary interest

(Other Registerable Interest and or Non-Registerable Interest) and must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution. This applies to both Councillors and Officers.

- 4.2.2 Company decision making Conversely if the director of a company finds themselves in a situation in relation to the company where the interests of the Council arise, they must disclose that interest. The director of the company has a duty to exercise independent judgement and to act in the best interests of the company to which they are appointed. If they simply act or vote in line with the council's position, they would not be acting in the best interests of the company and would be in breach of their duties as a director and could incur personal liability for their actions.

5. Simple checklist

If in doubt, consider the following questions:

1. Are you a member of the Cabinet and / or the Shareholder Advisory Board and / or the Shareholder Operations Board ?
2. Are you a director of the company in relation to which the Cabinet and / or the Shareholder Advisory Board and / or Operations Board is being asked to make a decision?

If the answer is 'yes' to both a potential conflict could arise and the member should declare this and not participate in any discussion of the matter or vote on it.

Duties and Responsibilities of a Trustee of Trust or Charitable Trust

Additional duties and responsibilities placed upon Trustees include making sure that the body acts in accordance with the overriding duty to all beneficiaries of the Trust. Beneficiaries may be people within BCP Council or a specific category of persons for whose benefit the Trust was originally established. The Trustee Act 2000 contains most of the duties upon the Trustees; the Act also includes a statutory duty of care which applies when a Trustee is:

- Exercising a general power of investment or any specific power of investment arising from the Trust;
- Making investments arising in line with the Standard Investment Criteria under Section 4 of the Act or taking independent advice on investments under Section 5;
- Exercising the power to acquire land or deal in land;
- Appointing agents, custodians or nominees or in reviewing their obligations;
- Compounding liabilities under Section 15 of the Trustee Act 1925;
- Insuring Trust property;
- Dealing with reversionary interests, valuations or audits.

The standard of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual, e.g. the standard of care will be higher for someone with an accounting qualification in relation to financial matters than someone without such a qualification.

Duties and responsibilities applicable to charities are even more extensive, as charitable Trustees have additional responsibilities under the Charities Acts.

Information on this can be found on the Charity Commission website, or by using the attached link:

<https://www.gov.uk/guidance/charity-commission-guidance>.

In many cases the Charity Commission needs to be consulted before a charity takes action or decides on a particular course of action involving charity property.

Duties and Responsibilities of a Member of Unincorporated Association

Unincorporated associations and partnerships are not separate legal entities which means that the individuals who are represented on the management committee are personally liable for all acts and omissions of the body. Each of the individuals are jointly and individually liable for what the organisation does. Partnerships and voluntary organisations often have this legal status, however, such associations and partnerships should still have a written constitution setting out the procedural rules which need to be followed and governing how it operates.

An unincorporated association may be charitable and may register as a charity, if this is the case then the duties and responsibilities set out in Appendix B must be considered.

Duties and Responsibilities of a Member of Steering Group, Joint Committee or Partnership Body

The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions, which are not Executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities and a Councillor may be appointed to such a joint committee. A Member of the Executive may not be a Member of any joint committee established to carry out the Council's scrutiny functions.

The Council's Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

The council may delegate non-Executive functions to another local authority, or in certain circumstances, the Executive of another local authority. The decision whether or not to accept such a delegation from another local authority shall be reserved to the meeting of Full Council.

The Access to Information rules in Part 5A of the Local Government Act 1972 will apply to joint committees established under this Appendix.

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