

# Summons to attend meeting of Full Council

AGM



**Date:** Thursday, 21 May 2020

**Time:** 2.00 pm

**Venue:** Virtual Meeting - Zoom Committee Meeting  
with Public Access via YouTube

[www.youtube.com/channel/UChYwQT6nK-mPU3K8bYsZ17g](http://www.youtube.com/channel/UChYwQT6nK-mPU3K8bYsZ17g)

**To: All Members of Council**

**Issued by:** Sam Wilcock, Democratic Services

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**Date:** Tuesday, 12 May 2020



# Agenda

## 1. Welcome, Introductions and Safety Information

## 2. A General Public Info Sheet - during Covid

(Pages 5 - 6)

## 3. Apologies for Absence

## 4. Election of Lord Mayor

## 5. Election of Deputy Lord Mayor

## 6. Minutes of the Previous Meeting

To agree the minutes of the previous meeting as a correct record.

(Pages 7 - 12)

## 7. Declarations of Interest

To note any declarations of interest from the Councillors. They are asked to indicate the relevant agenda item, the nature of the interest and in particular whether it is a **disclosable pecuniary interest**.

Any declarations of interest made at the meeting which is not on the register of interests should be notified to the Monitoring Officer for inclusion.

## 8. Lord Mayor's Business

To note any announcements from the Lord Mayor

## 9. Written public statements

Under the Council's constitution, there is no provision for public forum at the Annual Council meeting. However, in consultation with the Mayor and Party Group Leaders, the Lord Mayor has determined that written statements from members of the public will be accepted for this meeting on the following basis:



1. The wording of all written statements must be submitted by the deadline of midday the day before the meeting, Monday 20<sup>th</sup> May 2020. Please note that public questions are not permitted on this occasion. Statements should be sent to [democratic.services@bristol.gov.uk](mailto:democratic.services@bristol.gov.uk)
2. Statements for this meeting must be about the reports included on the agenda.
3. Details of all statements submitted will be sent to the Lord Mayor, Mayor and all Councillors as soon as possible after the above deadline.
4. Please note there will not be an opportunity at the meeting for the oral presentation of any statements.

## **10. Update from Youth Mayors**

A verbal update will be received from the Youth Mayors

- 11. Dates and times of Full Council meetings 2020-2021**  
(Pages 13 - 14)
- 12. Establishment of Committees 2020-2021**  
(Pages 15 - 21)
- 13. Allocation of Committee seats 2020-2021**  
(Pages 22 - 31)
- 14. Appointment of Chief Executive and Head of Paid Service**  
(Pages 32 - 35)
- 15. Constitution Update: Members Code of Conduct for Development Control Committees**  
(Pages 36 - 75)
- 16. Constitution Update: Members Code of Conduct for Licensing Committee and Public Safety and Protection Committee**  
(Pages 76 - 105)
- 17. Constitution Update: Virtual Meetings Procedure Rules**  
(Pages 106 - 114)



Signed

A handwritten signature in black ink, appearing to read 'T. Oliver'.

Proper Officer  
Tuesday, 12 May 2020



# Public Information Sheet

## Inspection of Papers - Local Government (Access to Information) Act 1985

You can find papers for all our meetings on our website at <https://www.bristol.gov.uk/council-meetings>

## Covid-19: changes to how we hold public meetings

Following changes to government rules, we will use video conferencing to hold all public meetings, including Cabinet, Full Council, regulatory meetings (where planning and licensing decisions are made) and scrutiny.

Councillors will use video conferencing to take part in the meetings and vote on agenda items and these will be streamed live on YouTube.

You can submit statements, questions and petitions ahead of the meetings in the same way as usual. We will send all statements to participating Councillors in advance and respond to all questions and petitions in writing.

You will not be able to present a public submission at the meeting at the current time.

Email [democratic.services@bristol.gov.uk](mailto:democratic.services@bristol.gov.uk) if you have any questions.

## Public Forum

Members of the public may make a written statement, ask a question or present a petition to most meetings. Your statement or question will be sent to the Committee. Please submit it to [democratic.services@bristol.gov.uk](mailto:democratic.services@bristol.gov.uk). The following requirements apply:

- The statement is received no later than **12.00 noon on the working day before the meeting** and is about a matter which is the responsibility of the committee concerned.
- The question is received no later than **5pm three clear working days before the meeting**.
- Any statement submitted should be no longer than one side of A4 paper. For copyright reasons, we are unable to reproduce or publish newspaper or magazine articles that may be attached to statements.

By participating in public forum business, we will assume that you have consented to your name and the details of your submission being recorded and circulated to the Committee and published within the minutes. Your statement or question will also be made available to the public at the meeting to which it relates and may be provided upon request in response to Freedom of Information Act requests in the future.

We will try to remove personal and identifiable information. However, because of time constraints we cannot guarantee this, and you may therefore wish to consider if your statement contains information that you would prefer not to be in the public domain. Public Forum statements will not be posted on

the council's website. Other committee papers may be placed on the council's website and information within them may be searchable on the internet.

### **During the meeting:**

- Public Forum is normally one of the first items on the agenda, although statements and petitions that relate to specific items on the agenda may be taken just before the item concerned.
- There will be no debate on statements or petitions. Public Forum will be circulated to the Committee members prior to the meeting and then noted at the meeting.
- Please note that only written submissions can be considered at this time.

For further information about procedure rules please refer to our Constitution <https://www.bristol.gov.uk/how-council-decisions-are-made/constitution>

The privacy notice for Democratic Services can be viewed at [www.bristol.gov.uk/about-our-website/privacy-and-processing-notice-for-resource-services](http://www.bristol.gov.uk/about-our-website/privacy-and-processing-notice-for-resource-services)

### Webcasting/ Recording of meetings

Members of the public attending meetings or taking part in Public forum are advised that all Full Council and Cabinet meetings and some other committee meetings are now streamed live or subsequently broadcast via the council's [webcasting pages](#). The whole of the meeting will be broadcast (except where there are confidential or exempt items).

### Other formats and languages and assistance for those with hearing impairment

You can get committee papers in other formats (e.g. large print, audio tape, braille etc) or in community languages by contacting the Democratic Services Officer. Please give as much notice as possible. We cannot guarantee re-formatting or translation of papers before the date of a particular meeting.



## Bristol City Council Minutes of the Full Council

17 March 2020 at 6.00 pm



### Members Present:-

**Councillors:** Mayor Marvin Rees, Donald Alexander, Barry Clark, Jos Clark, Eleanor Combley, Carla Denyer, Helen Godwin, Fi Hance, Claire Hiscott, Helen Holland, Gary Hopkins, Chris Jackson, Tim Kent, Sultan Khan, Matt Melias, Paula O'Rourke, Kevin Quartley, Steve Smith, Mhairi Threlfall, Jon Wellington and Rippington

### 1. Welcome, Introductions and Safety Information

The Lord Mayor welcomed all attendees to the meeting, and made a safety announcement in relation to the fire/emergency evacuation procedure.

The Lord Mayor announced that in light of the recent developments with regards to Covid-19, there were reduced numbers of Councillors present (whilst achieving quorum). Agenda item 8 update from the Youth Council, and agenda item 13 motions would be deferred. The procedure for public forum would also be altered and members of the public had been encouraged to watch the webcast.

The Mayor addressed full council with regards to the current situation in the City.

### 2. Apologies for Absence

Apologies were accepted for all Councillors not in attendance. These were Councillors Abraham, L Alexander, Beech, Bowden-Jones, Bradley, Bradshaw, Brain, Bolton, Brook, Breckels, Carey, Cheney, Clarke, Clough, Craig, C Davies, M Davies, Dudd, Eddy, English, Fodor, Goggin, Gollop, Goulandris, Hickman, Jama, Johnson, Jones, Keen Kirk, Lake, Lovell, Massey, Mead, Morris, Negus, Pearce, Phipps, Pickersgill, Radford, Sergeant, Shah, P Smith, Stevens, Thomas, Tincknell, Weston, Whittle, Windows and Wright.

### 3. Declarations of Interest

None received.



#### 4. Minutes of the Previous Meeting

On the motion of the Lord Mayor, seconded by Councillor Kent, it was

#### RESOLVED:

**That the minutes of the meeting of the Full Council held on the 25 February 2020 be confirmed as correct record and signed by the Lord Mayor.**

#### 5. Lord Mayor's Business

There was none.

#### 6. Public Forum (Public Petitions, Statements and Questions)

##### Public petitions:

The Full Council received and noted the following petition which were referred to the Mayor for his consideration/information.

Ref No	Name	Title
PP01	Susan Strickland	Ongoing parking issues in Honeysuckle Lane and Pennyroyal Grove, Fishponds

##### Public statements:

The Full Council received and noted the following statements which were also referred to the Mayor for his consideration/information.

Ref No	Name	Title
PS01	Christine Biggs & Katrina Billings, Bristol Clean Air Alliance	Clean Air Zone
PS02	John Paynter	The Methodist Church Way
PS03	Lee Elliott	Bristol Arts and Culture
PS04	Nicholas Tarran	Lift The Ban
PS05	Donna Comley	Parking Charges at Vassalls Park
PS06	XR Bristol	Joint Executive Committee's Joint Local Transport Plan 4
PS07	David Mowat	Objection to the adoption of IHRA definition of antisemitism
PS08	Stuart Main	Proposed Car Parking Charges at Oldbury Court Estate
PS09	Lucy Harper, Fiona Prescott	ISO ref Non Conformance Report
PS10	Betty Colman	Parking Charges at Oldbury Court Estate
PS11	Patrick Birch	Proposed car parking charges at Oldbury Court Estate
PS12	Steve Cottrell	Proposed Car Parking Charges at Oldbury Court Estate





PS13	Chris Young	Proposed car Parking Charges at Oldbury Court Estate
PS14	Paul Larkin	Proposed car Parking Charges at Oldbury Court Estate
PS15	Kevin Stack	Proposed car Parking Charges at Oldbury Court Estate
PS16	Tony Jones	Joint Local Transport Plan
PS17	Shona Jemphrey	Bristol Buses
PS18	Jim Mayger	JLTP
PS19	Room 13 Hareclive, Hartcliffe, BS13	Golden Motion
PS20	Caro Hope	IHRA
PS21	Bristol Palestine Solidarity Campaign	IHRA
PS22	Mary Page	Covid 19, Council Pay Policy Statement and the Administration's liability on Bristol Energy bailout.
PS23	Julie Boston, FOSBR	Libraries
PS24	David Redgwell	South west transport network and Severnside
PS25	N Keller	IHRA

### Public Questions:

The Full Council noted that the following questions had been submitted. On this occasion, it was agreed that written responses would be sent to all questions and supplementary questions were not invited.

Ref No	Name	Title
PQ01	Andrew Varney	Pedestrians at Household Waste Recycling Centres
PQ02	Andrew Varney	Road Signs to the M4 Motorway
PQ03	Debra Newrick	Bicycle hangers
PQ04	Debra Newrick	Bicycle hangers
PQ05	Anthony Cardew	Hinton Road Traffic
PQ06	Anthony Cardew	Hinton Road Traffic

## 7. Petitions Notified by Councillors

The Full Council received and noted the following petitions:

Ref No	Name	Title	Signatures
CP01	Cllr Tim Kent	Shortwood Road Speeding, 90 signatures	90
CP02	Cllr Kevin Quartley	South Bristol Link Road	223
CP03	Cllr Brenda Massey/ Cllr Helen Godwin	reinstatement of the number 76 bus route to Lidl (Monks Park Ave/Southmead Road junction)	435

Written responses would be provided by the Mayor or relevant Cabinet Member.



## **8. Youth Mayor's / Youth Council end of year progress report**

The item was deferred.

## **9. Independent Remuneration Panel**

The Full Council received the report and recommendations of the Independent Remuneration Panel.

The Lord Mayor moved the report.

Councillor Combley seconded the report.

There was no debate and it was:

### **RESOLVED:**

**That Full Council considered the recommendations from the Independent Remuneration Panel regarding Members' allowances (as set out in Appendix 1) and approved the scheme as outlined.**

## **10. Pay Policy Statement 2020 -2021**

The Full Council considered a report which proposed adoption of the Pay Policy Statement for the year 2020-2021.

Councillor O'Rourke moved the report and the recommendations contained therein. Councillor Wellington seconded the report.

There was no debate and it was:

### **RESOLVED:**

**That Full Council approved the Pay Policy Statement for 2020-2021**

## **11. Adopting International Holocaust Remembrance Alliance definition of Antisemitism (Equality and Inclusion Policy update)**

The Full Council considered a report asking Council to approve an update to Bristol City Council's Equality and Inclusions Policy 2018-2023 which included adoption of the International Holocaust Remembrance Alliance's working definition of Antisemitism.

The Mayor moved the report.

Councillor Hiscott seconded the report.



There was a debate and it was:

**RESOLVED:**

**Full Council adopted the updated Equality and Inclusion Policy 2018 – 2023 as part of the council’s Policy Framework, including the adoption of the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism**

**12. Constitution Update: Terms of Reference**

The Full Council considered the report.

Councillor O’Rourke moved the report and the recommendations contained therein.

Councillor Wellington seconded the report.

There was no debate and it was:

**RESOLVED:**

**That Council adopted the revised terms of reference for the Human Resources Committee.**

**13. Constitution Update: Members Code of Conduct**

The Full Council considered the report.

Councillor Jackson moved the report and the recommendations contained therein.

Councillor Hance seconded the report.

There was no debate and it was:

**RESOLVED:**

**That Council adopted the revised Member Code of Conduct to come into force in May 2020**

**14. Motions**

The item was deferred.

Meeting ended at 6.40 pm



CHAIR \_\_\_\_\_



# Full Council

21 May 2020



**Report of:** Tim O’Gara, Director – Legal & Democratic Services

**Title:** **Dates and Times of Full Council meetings 2020-21**

**Ward:** Citywide

## **Recommendation**

To approve the dates and times of Full Council meetings in 2020-2021.

## **Summary**

To approve the dates and times of Full Council meetings in 2020-2021

## **The significant issues in the report are:**

Not applicable.



**Policy**

1. Not applicable

**Consultation**

2. **Internal**  
Party Group Whips  
The Lord Mayor
3. **External**  
Not applicable

**Context**

4. Not applicable

**Proposal**

5. The proposed Full Council meeting times / dates are:
  - 6pm, Tuesday 7 July 2020
  - 6pm, Tuesday 8 September 20120
  - 6pm, Tuesday 10 November 2020
  - 2pm, Tuesday 8 December 2020
  - 2pm, Tuesday 12 January 2021
  - 2pm, Tuesday 23 February 2021 (budget Council meeting)
  - 2pm, Wednesday 3 March 2021 (reserve, additional budget meeting, if required)
  - 6pm, Tuesday 16<sup>th</sup> March 2021

**Other Options Considered**

Not applicable.

**Risk Assessment**

Not applicable.

**Public Sector Equality Duties**

Not applicable.

**Legal and Resource Implications**

Not applicable.

**Appendices:**

None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:** None

# Full Council

21 May 2020



**Report of:** Tim O’Gara, Director – Legal and Democratic Services

**Title:** Establishment of Committees 2020-21

**Ward:** Citywide

## Recommendation

1. To approve the composition of Committees for the 2020-21 municipal year (full recommendations are set out in detail at the end of the report).
2. To appoint Chairs to the Committees as proposed.

## Summary

As per above recommendation.

## The significant issues in the report are:

As set out in the main report.



## Policy

1. The Full Council must appoint at least one Overview and Scrutiny Committee and such other committees as it considers appropriate to deal with the matters which are neither reserved to the Full Council nor are executive functions.
2. Full Council has the option to appoint Chairs and Vice Chairs to Committee/Commissions.

## Consultation

3. **Internal**  
Party Group Whips
4. **External**  
Not applicable

## Context

5. See 1. above.

## Proposal: Establishment of committees

### a. Arrangements for Overview and Scrutiny:

6. The following Overview and Scrutiny bodies are proposed for establishment by Full Council in 2020-21:
  - Overview and Scrutiny Management Board
  - People Scrutiny Commission (Health Sub Committee of the People Scrutiny Commission)
  - Growth and Regeneration Scrutiny Commission
  - Communities Scrutiny Commission
  - Resources Scrutiny Commission

As the Overview and Scrutiny Management Board oversees the scrutiny work programme, its membership includes the Chairs of the Commissions.

The Scrutiny Commissions are not planning to meet at the current time although a number of Tasks Groups will be established to consider pertinent issues, which will report back to the Overview and Scrutiny Management Board.

7. Joint bodies: the Full Council is asked to note that the following joint bodies (meetings of which also involve representatives of other relevant authorities) will be continuing:
  - Joint Health Scrutiny Committee (meets as and when required)
  - Joint Health Overview and Scrutiny Committee for the purpose of jointly scrutinising the Bristol, North Somerset and South Gloucestershire Sustainability and Transformation Partnerships (STP)
  - West of England Combined Authority Overview and Scrutiny Committee (“The WECA Overview and Scrutiny Committee”)



- Joint Overview and Scrutiny Arrangement comprising of the Constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council (“The Joint Overview and Scrutiny Arrangement”).
- West of England Combined Authority Audit Committee (“The WECA Audit Committee”)

#### **b. Regulatory Committees:**

8. The Full Council is recommended to establish four Regulatory Committees as follows:
- Development Control Committee A
  - Development Control Committee B
  - Public Safety and Protection Committee
  - Public Rights of Way and Greens Committee

#### **c. Appeals Committee**

9. The Full Council is asked to establish an Appeals Committee.

#### **d. Other Non-executive Committees:**

10. The Full Council is asked to consider the appointment of other non-executive committees.
11. It is proposed that the Full Council should approve the establishment of the following committees:
- Audit Committee
  - Human Resources Committee
  - Selection Committee
  - Area Committees 1 to 6

#### **f. Statutory Committees**

12. The **Licensing Committee** is established as a standing committee and does not have to be re-appointed. Any vacancies must be filled by the Full Council – this task is non-delegable, i.e. only Full Council can decide who will serve on the committee. Members continue to serve on the Committee until they either resign or are removed by the Full Council. The appointment of Members is a licensing function and as such equalities law applies to it, and the Full Council should fill vacancies having due regard to equalities tests. The Full Council will be asked to fill any current vacancies on the Licensing Committee in a further report to this meeting.
13. The **Health and Wellbeing Board** is a statutory function under Section 194 of the Health and Social Care Act 2012. This Board is continuing and therefore the annual re-establishment is not required.

### **Other Options Considered**

Not applicable.

### **Risk Assessment**

Not applicable.

### **Public Sector Equality Duties**

Not applicable.

### **Legal and Resource Implications**

#### **Legal**

As per paragraph 1. above, the Full Council must appoint at least one Overview and Scrutiny Committee and such other committees as it considers appropriate to deal with the matters which are neither reserved to the Full Council nor are executive functions.

(Legal advice provided by Tim O’Gara, Director – Legal and Democratic Services)

#### **Financial**

##### **(a) Revenue**

Not applicable

##### **(b) Capital**

Not applicable

#### **Land**

Not applicable

#### **Human Resources**

Not applicable

### **RECOMMENDATIONS:**

- 1. That the following committees be established;**
  - a. Overview and Scrutiny bodies:**
    - **Overview and Scrutiny Management Board**
    - **People Scrutiny Commission (Health Sub Committee of the People Scrutiny Commission)**
    - **Growth and Regeneration Scrutiny Commission**

- **Communities Scrutiny Commission**
- **Resources Scrutiny Commission**

**Joint bodies:**

- **Joint Health Scrutiny Committee**
- **Joint Health Overview and Scrutiny Committee for the purpose of jointly scrutinising the Bristol, North Somerset and South Gloucestershire Sustainability and Transformation Partnerships (STP)**
- **West of England Combined Authority Overview and Scrutiny Committee (“The WECA Overview and Scrutiny Committee”)**
- **Joint Overview and Scrutiny Arrangement comprising of the Constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council (“The Joint Overview and Scrutiny Arrangement”)**
- **West of England Combined Authority Audit Committee (“The WECA Overview and Scrutiny Committee”)**

**b. Regulatory Committees:**

- **Development Control Committee A**
- **Development Control Committee B**
- **Public Safety and Protection Committee**
- **Public Rights of Way and Greens Committee**

**c. Appeals Committee**

**d. Other (non-executive) Committees:**

- **Audit Committee**
- **Human Resources Committee**
- **Selection Committee**
- **Area Committees 1 to 6**

**e. Statutory Committees:**

- **To note the position in relation to the Licensing Committee.**
- **To note that the Health and Wellbeing Board does not need to be formally re-established as it remains extant.**

**2. That the following Chairs and Vice Chairs be appointed as outlined in Appendix B;**

**Appendices:**

Appendix A – List of Area Committees

Appendix B – List of Chairs and Vice Chairs

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:** None

## APPENDIX A

### Area Committees (Community Infrastructure Levy (CIL) Committees)

There is an Area CIL/s.106 Committee for each of the following 6 Areas (each to be known as an “Area Committee”):

- Avonmouth and Lawrence Weston, Westbury-on-Trym and Henleaze, Stoke Bishop, Clifton, Clifton Down, Hotwells and Harbourside (Area 1);
- Henbury and Brentry, Southmead, Horfield, Bishopston and Ashley Down, Redland and Cotham (Area 2);
- Lockleaze, Eastville, Frome Vale and Hillfields (Area 3);
- Ashley, Central, Lawrence Hill, Easton, St George West, St George Central and St George Troopers Hill (Area 4);
- Bedminster, Southville, Windmill Hill, Knowle, Brislington East and Brislington West (Area 5);
- Bishopsworth, Hartcliffe and Withywood, Filwood, Hengrove and Whitchurch Park and Stockwood (Area 6).

The councillors elected to serve those wards are members of the corresponding Area Committee.

To the Councillors in each Area Committee the Mayor has delegated executive decisions in relation to the following:

- The expenditure of the local element of CIL monies raised within the area
- Devolved s.106 monies where there is a decision to made in relation to what and where the monies should be spent (as opposed to when the funds have already been earmarked for a specific project as part of the agreement)

**APPENDIX B**

<b>Committee</b>	<b>Chair</b>	<b>Vice Chair</b>
Overview and Scrutiny Management Board	Cllr Geoff Gollop	Cllr Celia Phipps
Resources Scrutiny Commission	Cllr Stephen Clarke	Cllr Mark Brain
Communities Scrutiny Commission	Cllr Anthony Negus	Cllr Jo Sergeant
People Scrutiny Commission	Cllr Claire Hiscott	Cllr Celia Phipps
Health Sub Committee (of the People Scrutiny Commission)	Cllr Brenda Massey	Cllr Celia Phipps
Growth & Regeneration Scrutiny Commission	Cllr Paula O'Rourke	Cllr Fabian Breckels
Development Control Committee A	Cllr Don Alexander	Cllr Chris Windows
Development Control Committee B	Cllr Tom Brook	Cllr Richard Eddy
Public Safety & Protection Committee	Cllr Ruth Pickersgill	Cllr Chris Davies
Public Rights of Way and Greens Committee	Cllr Jon Wellington	Cllr Peter Abraham
Licensing Committee	Cllr Afzal Shah	Cllr Harriet Clough
Human Resources Committee	Cllr Jon Wellington	Cllr Paula O'Rourke
Audit Committee	Cllr Mark Brain	Cllr Clive Stevens

# Full Council

21 May 2020



**Report of:** Tim O’Gara, Director – Legal and Democratic Services

**Title:** **Allocation of Committee Seats and Appointment of Members to Serve on Committees**

**Ward:** Citywide

## **Recommendation**

To review and approve the allocation of seats on committees in accordance with the statutory requirements concerning political balance and to approve the appointment of Members (and substitutes) to serve on committees (full recommendations set out at the end of this report).

## **Summary**

As per above recommendation.

## **The significant issues in the report are:**

As set out in the main report.



## Policy

1. Not applicable

## Consultation

2. **Internal**  
Party Group Whips
3. **External**  
Not applicable

## Context

4. See proposal below.

## Background / Proposal

5. Under Section 15 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) regulations, the Full Council has a duty to review the representation of different political groups at its annual meeting in respect of bodies to which the section applies (for example, the section applies to the Council's ordinary committees and Scrutiny Commissions). The section does not apply to the statutory Licensing Committee or the Health and Wellbeing Board and so the political balance rules are not applied to these. Section 15 of the Act provides that, in performing this duty, the Council has a duty to make only such determinations as give effect **so far as reasonably practicable** to the following principles:
  - a. That not all the seats on the body are allocated to the same political group.
  - b. That the majority of the seats on the body are allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership.
  - c. Subject to a. and b. above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of the authority as is borne by the number of Members of that group to the membership of the authority; and
  - d. Subject to a. to c. above, that the number of seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the numbers of that group to the membership of the authority.
6. The current councillor membership of political groups represented on the City Council is set out below and the names of the councillors in each group are set out in Appendix A to this report:

Labour group	36 Members
Conservative group	14 Members
Green group	11 Members
Liberal Democrat group	9 Members

7. For the purposes of calculating the entitlement of each political group to seats on committees, it is proposed that the following be included:

- Development Control Committee A
- Development Control Committee B
- Overview and Scrutiny Management Board
- People Scrutiny Commission
- Growth and Regeneration Scrutiny Commission
- Communities Scrutiny Commission
- Resources Scrutiny Commission
- Public Safety and Protection Committee
- Public Rights of Way and Greens Committee
- Audit Committee
- Human Resources Committee
- Selection Committee

8. Alternative arrangements for appointments to these committees can be approved provided no Member of the Council votes against.

9. Subject to the Full Council appointing the committees as per agenda item 11, and agreeing the sizes of committees described below, the total number of seats on these committees available is **114**.

10. The number of Council Members for each political group expressed as a percentage of the total Councillor membership of political groups on the City Council (70) is as follows:

Labour	36 Members (% of 70) = 51.43 %
Conservative	14 Members (% of 70) = 20 %
Green	11 Members (% of 70) = 15.71 %
Liberal Democrat	9 Members (% of 70) = 12.86 %

- Following discussion with the Party Group Whips, the following committee sizes are proposed:

	LAB	CON	GREEN	LD
<b>11 Member Committees:</b>				
Development Control Committee A	6	2	2	1
Development Control Committee B	6	2	2	1
Overview and Scrutiny Management Board	6	2	2	1
People Scrutiny Commission	6	2	2	1
Growth and Regeneration Scrutiny Commission	6	2	2	1
Communities Scrutiny Commission	6	2	2	1



Resources Scrutiny Commission	6	2	2	1
<b>9 Member Committee:</b>				
Public Safety and Protection Committee	5	2	1	1
<b>7 Member Committees:</b>				
Public Rights of Way and Greens Committee	4	1	1	1
Audit Committee	4	1	1	1
Human Resources Committee	4	1	1	1
Selection Committee	4	1	1	1
<b>TOTAL = 114 seats, breaking down as</b>	63	20	19	12
	<b>LAB</b>	<b>CON</b>	<b>GREEN</b>	<b>LD</b>
The % which this distribution gives each party:	55.26%	17.54%	16.7%	10.53%
As compared with the entitlement %	51.43%	20%	15.71%	12.86%

11. These totals reflect, as far as is reasonably practicable, the aggregate entitlement of the political groups to committee seats.

**Appointments to which political balance do not apply:**

**12. Licensing Committee:**

- The Licensing Committee is established under Section 6 of the Licensing Act 2003, and is a standing committee. Any vacancies must be filled by the Full Council – this task is non-delegable, i.e. only Full Council can decide who will serve on the Committee.
- Members continue to serve on the Committee until they either resign or are removed by the Full Council.
- The appointment of Members is a licensing function and, as such, equalities law applies to it, and the Full Council should fill vacancies having due regard to equalities tests and considerations.
- The Council must have a licensing committee of between 10-15 members. As one of the largest licensing authorities in the country, Bristol has established a 15 Member Committee.
- The list of Members proposed to serve on the committee for 2020-2021 is as follows:
  1. Councillor Abraham
  2. Councillor Brook
  3. Councillor B Clark
  4. Councillor Clough
  5. Councillor Combley
  6. Councillor C Davies
  7. Councillor Eddy
  8. Councillor Goggin
  9. Councillor Hance

10. Councillor Jama
11. Councillor Massey
12. Councillor O'Rourke
13. Councillor Shah
14. Councillor Windows
15. Councillor Whittle

- The Full Council is asked to enquire if there have been any resignations from the Committee since the date of publication of this report, and having done so, to invite nominations to fill any vacancies. In confirming appointments to the Committee, the Full Council is asked to take full account of equalities duties and considerations, and to note that the political balance rules do not apply.
- Any vacancies that subsequently arise will need to be referred to the next meeting of the Full Council to ensure they are filled promptly, and to ensure that the Council retains the 15 Member Committee it has previously resolved to establish.

**13. Appeals Committee:** The Full Council is asked to determine the membership of the Appeals Committee. It is proposed that, as in previous years, membership of the Appeals Committee should comprise any 3 Members of the Council subject to them having first received the necessary training and not having been involved in the original decision which is the subject of an appeal.

**14. Joint Scrutiny and other bodies:** The following is proposed:

- **Joint Health Scrutiny Committee** (3 members from Bristol, one from each of the largest 3 political groups).
- **Joint Health Overview and Scrutiny Committee for the purpose of jointly scrutinising the Bristol, North Somerset and South Gloucestershire Sustainability and Transformation Partnership** 7 members from Bristol (4 Labour; 1 Conservative; 1 Green; 1 Liberal Democrat).
- **West of England Combined Authority Overview and Scrutiny Committee ("The WECA Overview and Scrutiny Committee")**; 6 members from Bristol (3 Labour; 1 Conservative, 1 Green, 1 Liberal Democrat)
- **Joint Overview and Scrutiny Arrangement** comprising of the Constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council ("The Joint Overview and Scrutiny Arrangement") 6 members from Bristol (3 Labour; 1 Conservative, 1 Green, 1 Liberal Democrat)
- **West of England Combined Authority Audit** 6 members from Bristol (3 Labour; 1 Conservative, 1 Green, 1 Liberal Democrat)

**15. Health and Wellbeing Board:** The membership of the Health and Wellbeing Board is prescribed in section 194 of the 2012 Act, as follows:

- a. At least one councillor from the authority nominated by the elected Mayor. The elected Mayor may themselves be a member of the board instead of or in addition to the person(s) they nominate.
- b. The director of adult social services for the local authority.
- c. The director of children's services for the local authority.
- d. The director of public health for the local authority.

- e. A representative of the local Healthwatch organisation for the area of the local authority.
- f. A representative of each relevant clinical commissioning group.
- g. Such other persons, or representatives of such other persons, as the local authority thinks appropriate.

### **Substitutes**

- 16.** In addition to deciding the allocation of seats to political groups, the Full Council is also required to decide substitution arrangements.

### **Other Options Considered**

Not applicable.

### **Risk Assessment**

Not applicable.

### **Public Sector Equality Duties**

Not applicable.

### **Legal and Resource Implications**

#### **Legal**

As indicated in the report, in determining the allocation of committee seats and the appointment of Members to serve on Committees, the Full Council must comply with the requirements of Section 15 of the Local Government and Housing Act 1989 and the Local Government (Committee and Political Groups) regulations.

(Legal advice provided by Tim O’Gara , Director – Legal and Democratic Services)

#### **Financial**

##### **(a) Revenue**

Not applicable.

##### **(b) Capital**

Not applicable.

#### **Land**

Not applicable.

#### **Personnel**

Not applicable.

### **RECOMMENDATION:**

**Full Council is recommended to:**

- 1. Approve the allocation of committee seats as set out above.**
- 2. Enquire if there have been any resignations from the Licensing Committee since the date of publication of this report, and having done so invite nominations to fill all of the vacancies on the Committee. In confirming appointments to the Committee, the Full Council is asked to take full account of equalities duties and considerations, and to note that the political balance rules do not apply.**
- 3. Agree that all Members of Council be appointed to serve on an Appeals Committee comprising of any 3 Members of Council, subject to them having first received the necessary training and not having been involved in the original decision which is the subject of an appeal.**
- 4. Agree that the Council be represented (as per paragraph 14) on the following joint bodies:**
  - **Joint Health Scrutiny Committee**
  - **Joint Health Overview and Scrutiny Committee for the purpose of jointly scrutinising the Bristol, North Somerset and South Gloucestershire Sustainability and Transformation Partnership**
  - **West of England Combined Authority Overview and Scrutiny Committee**
  - **Joint Overview and Scrutiny Arrangement comprising of the Constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council (“The Joint Overview and Scrutiny Arrangement”)**
  - **West of England Combined Authority Audit**
- 5. To note the position in relation to the membership of the Health and Wellbeing Board as per paragraph 15 of the report.**
- 6. To agree that named members will be provided for the Committee memberships by the party group whips (to be sent to the Monitoring Officer). If named substitutes are not also provided, then any councillor of the relevant group may attend a meeting as a substitute, other than in the case of:**
  - **a Development Control Committee, where the substitute must be a member of another Development Control Committee (and be appropriately trained).**
  - **any scrutiny commission, where the substitute may not be a member of the executive.**

**Appendices:**

Appendix A – Councillor membership of political groups

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:** None

**APPENDIX A**

**Councillor membership of political groups**

**Labour Group (36)**

Councillor Donald Alexander

Councillor Nicola Beech

Councillor Nicola Bowden-Jones

Councillor Harriet Bradley

Councillor Mark Bradshaw

Councillor Mark Brain

Councillor Fabian Breckels

Councillor Tom Brook

Councillor Craig Cheney

Councillor Barry Clark

Councillor Asher Craig

Councillor Mike Davies

Councillor Kye Dudd

Councillor Helen Godwin

Councillor Paul Goggin

Councillor Margaret Hickman

Councillor Helen Holland

Councillor Chris Jackson

Councillor Hibaq Jama

Councillor Carole Johnson

Councillor Anna Keen

Councillor Gill Kirk

Councillor Jeff Lovell

Councillor Brenda Massey

Councillor Olly Mead

Councillor Steve Pearce

Councillor Celia Phipps

Councillor Ruth Pickersgill

Councillor Tim Rippington

Councillor Jo Sergeant

Councillor Afzal Shah

Councillor Paul Smith

Councillor Mhairi Threlfall

Councillor Estella Tincknell

Councillor Jon Wellington

Councillor Lucy Whittle

**Conservative Group (14)**

Councillor Peter Abraham

Councillor Lesley Alexander

Councillor Richard Eddy

Councillor Geoff Gollop

Councillor John Goulandris

Councillor Claire Hiscott

Councillor Steve Jones

Councillor Matt Melias

Councillor Graham Morris

Councillor Kevin Quartley

Councillor Liz Radford

Councillor Steve Smith

Councillor Mark Weston

Councillor Chris Windows

**Green Group (11)**

Councillor Charlie Bolton

Councillor Stephen Clarke

Councillor Eleanor Combley

Councillor Carla Denyer

Councillor Jude English

Councillor Martin Fodor

Councillor Fi Hance

Councillor Cleo Lake

Councillor Paula O'Rourke

Councillor Clive Stevens

Councillor Jerome Thomas

**Liberal Democrat Group (9)**

Councillor Tony Carey

Councillor Jos Clark

Councillor Harriet Clough

Councillor Chris Davies

Councillor Gary Hopkins

Councillor Tim Kent

Councillor Sultan Khan

Councillor Anthony Negus

Councillor Mark Wright

# Full Council

21<sup>st</sup> May 2020



**Report of:** Selection Committee

**Title:** Appointment of Chief Executive and Head of Paid Service

**Ward:** n/a

## Recommendation

That Mike Jackson be appointed Chief Executive and Head of Paid Service with effect from 22<sup>nd</sup> May 2020 on a permanent contract.

## Summary

The report seeks the agreement of the Full Council to appoint the candidate nominated by the Selection Committee.

## The significant issues in the report are:

- The Council's Constitution requires that the Full Council approves the appointment of the Head of Paid Service before an offer is made to the nominated candidate.
- The pay for the role is set by the Full Council as part of the Pay Policy Statement.
- The terms and conditions for the role are set by the Human Resources Committee.





## **Policy**

1. The Selection Committee is responsible for recommending the appointment of the Head of Paid Service to the Full Council.
2. The pay of the Chief Executive and all Chief Officers is set by the Full Council through the Pay Policy Statement.
3. The terms and conditions of the Chief Executive and all Chief Officers are set by the Human Resources Committee

## **Consultation**

4. **Internal**  
The “Executive Objections Procedure” (Annex 1 to the Officer Employment Rules within the Council’s Constitution) has been followed.
5. **External**  
Not applicable.

## **Context**

6. The Selection Committee met and interviewed the candidate on Thursday 7<sup>th</sup> May 2020. A competency based interview took place. In attendance was a representative of the Local Government Association.

## **Proposal**

7. That Mike Jackson be appointed Chief Executive and Head of Paid Service with effect from 22nd May 2020.

## **Other Options Considered**

8. None.

## **Risk Assessment**

9. The Council is required to have a Head of Paid Service

## **Public Sector Equality Duties**

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
  - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under

the Equality Act 2010.

- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
    - tackle prejudice; and
    - promote understanding.
- 8b) An equality impact assessment has not been undertaken in relation to this proposal because it concerns an individual.

### **Legal and Resource Implications**

#### **Legal**

Contained in report

**Legal advice provided by Tim O’Gara, Director: Legal and Democratic Services**

#### **Financial**

(a) Revenue

Budget is available to meet all revenue costs associated with this post

(b) Capital

No direct capital implications

**Finance advice provided by Denise Murray, Director: Finance**

#### **Land**

Not applicable.

#### **Personnel**

Contained in report

**Personnel advice provided by John Walsh, Director: Workforce and Change**

### **Appendices:**

None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None.



# Full Council

21 May 2020

**Report of:** Monitoring Officer

**Title:** Member Code of Conduct for Development Control Committees

**Ward:** Citywide

## Recommendation

That Full Council adopts the revised Member Code of Conduct for Development Control Committees.

### Summary

This report proposes a revised Member Code of Conduct for adoption by Full Council

### The significant issues in the report are:

The significant issues are set out in paragraphs 4 – 7 of the report and the detail of the revised Member Code of Conduct is set out in the Appendix to the report.



1. The Council has a duty to keep its constitution under review. This includes all relevant codes and protocols.

### Consultation

#### 2. Internal

The Mayor and Party Group Leaders were advised that the Member Code of Conduct for Development Control Committees was under review at their meeting on 18 November 2019.

A Workshop was held with Members of the Value and Ethics Sub-Committee on 24 February 2020.

The updated Code was considered by the Audit Committee on 16 March 2020 where it was endorsed and recommended to Full Council for adoption.

#### 3. External

Not applicable

### Context

4. The Council has a duty to promote and maintain high standards of conduct by its members and co-opted members. To achieve that duty, the Council must adopt Codes of Conduct dealing with the conduct that is expected of members and co-opted members of the authority.
5. The Code of Conduct is part of the Council's Constitution, which is kept under review by the Council's Monitoring Officer.

### Proposal

6. Full Council is asked to consider the revised Member Code of Conduct for Development Control Committees and, subject to any proposed amendments, adopt the new Code to come into force following the Annual Council meeting on 21<sup>st</sup> May 2020.
7. The principal changes to the Good Practice Protocol for Planning are:
  - The removal of reference to a specific case that was contained in an addendum to the Code
  - Amendments and clarification to paragraph concerning the training of members detailing when training shall take place and requiring a record of training to be maintained.
  - Changes to appendix 1 of the Code concerning the situation where the decision of the Committee is to overturn officer recommendations
  - The addition of a new appendix 2 detailing the debate and decision process.

### Other Options Considered

8. No other options have been considered.

### Risk Assessment

9. The Council has a duty to keep its constitution under review. This includes all relevant codes and protocols, of which the Planning Code of Conduct is an example.

### **Public Sector Equality Duties**

Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

### **Legal and Resource Implications**

#### **Legal**

Council must promote and maintain high standards of conduct by its members and co-opted members and must adopt and keep under review Practice Protocol for Planning to deal with the conduct that is expected of members of the authority when they are sitting on the Planning Committees and exercising quasi-judicial functions. Similar considerations apply to Regulatory committees. The updated protocols will enable Members to be clear of their duties in this context.

**(Legal advice provided by Nancy Rollason, Head of Legal Services)**

#### **Financial**

**(a) Revenue**

Not applicable

**(b) Capital**

Not applicable

**Land**

Not applicable

**Personnel**

Not applicable

**Appendices:**

Appendix 1 – Code of Conduct for Planning

Appendix 2 – Revised Good Practice Protocol for Planning

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None

# **PART 5D**

**BRISTOL CITY COUNCIL**

**CODE OF CONDUCT FOR MEMBERS AND OFFICERS -  
PLANNING MATTERS**



## **ADOPTED CODE OF CONDUCT FOR MEMBERS AND OFFICERS – PLANNING MATTERS**

### **1. INTRODUCTION**

- 1.1 This code has been prepared and adopted for the guidance of Officers and Councillors in their dealings with planning matters.
- 1.2 **The aim of this code** is to ensure that, in the planning process, there will be no grounds for suggesting that a planning decision has been biased, partial or not well founded on planning considerations and to inform potential developers and members of the general public of the standards adopted by the City Council and the performance of its planning function.
- 1.3 **The aim of the planning process** is to control development in the public interest.
- 1.4 **When this code applies** – to all members of the development control committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at development control committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.5 Planning decisions made by Councillors can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are: -
- The key purpose of planning is to deliver sustainable development which effectively balances economic, social and environmental interests and takes relevant local circumstances into account.
  - Your overriding duty as a Councillor is to all residents of the City of Bristol and in relation to planning issues to help ensure that the council's planning policies are achieved.
  - Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.
  - Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to

decide what view to take on any question which councillors have to decide.

- Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.
- The Code applies to all decisions of the Council on planning related matters. This includes Members involvement in any planning application, whether or not it is reported to a committee, all applications determined by any committee or by Full Council acting as a local planning authority.
- When acting in your capacity as a Councillor you must have regard to the Council's adopted Code of Conduct.

1.6 If you have any doubts regarding whether this code of conduct for members or officers applies to their particular circumstances then you should take advice at the earliest possible opportunity from the Director: Legal and Democratic Services or from a member of his staff. Any such advice should be sought well before any meeting of the local planning authority takes place.

## 2. THE MEMBERS' CODE OF CONDUCT

2.1 The Members' Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code, and particularly the requirement to properly declare all interests: -

- **Do** comply with the requirements of the adopted Code of Conduct first
- **Do** then apply the rules in this Planning Code of Good Practice.

2.2 **If you do not** follow and apply the code then you may put

- The Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration and
- Yourself at risk of sanction if there has been a failure to comply with the adopted Members' Code of Conduct

### 3. DEVELOPMENT PROPOSALS AND DECLARATION OF INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT

When considering planning matters Members may find that they need to

- Declare interests in accordance with the requirements of the adopted Code of Conduct or
- Indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination)

The existence and nature of any interest should be disclosed in accordance with this Code at any development control committee, any informal meetings or discussions with officers and any other Members.

Members should preferably disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter.

Members should notify the Director: Legal and Democratic Services as monitoring officer in writing of your interest and ensure that such notification should be no later than submission of that application and ensure that a proper record of the interest is noted at any meeting

#### **Where you have a Disclosable Pecuniary Interest (DPI's):**

- **Do Not** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
- **Do not** get involved with the processing of the application and direct any queries or technical matters to the relevant officer
- **Do not** seek or accept preferential treatment or place yourself in such a position so as members of the public would think you are receiving preferential treatment because of your position as a Councillor. An example would be where a member has an interest in a property and uses his/her position as Councillor to discuss a planning application with officers or members when ordinary members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests
- **Do** note that there is no requirement to leave the room whilst the item is being discussed.

#### 3.1 PRE-DETERMINATION IN THE PLANNING PROCESS

The allowance made for Councillors to be predisposed to a particular view is a practical recognition of

- (a) The role played by party politics in Local Government
- (b) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role

- (c) The structure of local government which ultimately requires the same Councillors to make decisions

It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on planning matters

Section 25 of the Localism Act 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, where the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision.

The provisions in the Localism Act do not involve a change in the law. It puts the common law position of bias or pre-determination on a statutory basis.

The Act provides that a decision-maker is not be taken to have had (or to have appeared to have had) a closed mind when making the decision just because

- (i) they had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (ii) the matter was relevant to the decision

With this provision the Government expect councillors to be able to publicise their views on issues, indicate their voting intentions and to engage fully with their local communities without this affecting their participation in the council's formal decision making. In addition, councillors should be able to engage with planning applicants to educate themselves about their proposals.

Thus, if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.

However, councillors will still need to be open minded at the point of decision in the sense of listening to all of the arguments, and weighing them against their preferred outcome, before actually voting.

The difference is that the fact that councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.

## **Examples:**

In a situation where a member said something like "over my dead body" in respect of voting a particular way on an issue, the view must be that whilst the provision on predetermination in the Localism Act might be useful in giving councillors confidence about making their views on particular issues known, it has not changed the legal position that if a member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.

Equally, if a member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.

## **Important points to bear in mind:**

- If you give an indication of your own viewpoint, ensure that you indicate that you will take all relevant considerations into account and that the decision will be based firmly on planning grounds but that they will ensure views are fully heard and taken into account by the Council
- It is a good idea to record your involvement.

## **In Practice:**

1. A Councillor may campaign for or against a planning application, and still vote at planning committee, so long as they go into the meeting with an open mind to hear all the facts and evidence. This can be demonstrated by the Committee Chair asking the Councillor at the beginning of the meeting to confirm whether or not they still have an open mind on a proposal.
2. A Councillor quoted in a newspaper having said, "Over my dead body will that planning application be approved. I will never support it under any circumstances" could be said to have pre-determined the decision. These extreme statements should still be avoided.

It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

## **4. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

- 4.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.

4.2 The Council encourages member involvement provided members roles in such discussions are clearly understood by members, officers, developers and the public. In particular members of development control committees need to be aware of the distinction between the giving and receiving information and engaging in negotiations. Without this protocol member involvement may inadvertently open a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out in paragraph 5 are relevant.

- **Do** take advice from the Monitoring Officer if you are invited to attend meetings with applicants, developers or groups of objectors if you are a member of Development Control Committee and therefore likely to be part of the decision-making process. You will then be in a position to make a decision about your attendance having taken proper count of the issues relating to pre-determination.
- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Do not** agree to any formal meeting with applicants, developers or groups of objectors. Where you feel that a formal meeting would be useful in clarifying the issues, such presentation or discussion with an applicant, developer or objector should be part of a structured arrangement organised by officers. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the Planning Authority
- **Do** be aware that a presentation is a form of lobbying and if you express a view, you will need to carefully consider if you have pre-determined the matter prior to the vote
- **Do** otherwise:
  - Follow the rules on lobbying;
  - Report to the Development Services Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them and ensure that this is recorded on the planning file.

## 5. LOBBYING OF MEMBERS

5.1 It is acknowledged that lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity

and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as un-represented applicants/landowners and community action groups.

- **Do** remember that your overriding duty is to the whole community and not just the people in your own particular ward
- **Do** explain to those lobbying or attempting to lobby you that whilst you can listen to what is being said it prejudices your impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.
- **Do not** accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible.

## 5.2 Members **must** enter hospitality in accordance with the rules on gifts and hospitality

- **Do** copy or pass on any lobbying correspondence you receive to the Development Services Manager or one of the planning team's area managers at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice.
- **Do** immediately refer any offers to the Development Services Manager or one of the planning team's area managers made to you of planning gain or a constraint of development through a proposed s106 obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.
- **Do** note that you will not have pre-determined a matter or breached this Code if:
  - You have listened or have received views from residents or other interested parties;
  - You have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and you have made it clear that you are keeping an open mind;
  - You have sought information through appropriate channels; or
  - You are being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided

that you explain your actions at the beginning of the meeting or item and make it clear that, having expressed the opinion or ward/local view, that you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 6. LOBBYING BY DEVELOPMENT CONTROL COMMITTEE MEMBERS

6.1 The Local Government Association report recognises that a Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances

- **Do** join general interest, resident or amenity groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals. Examples of such groups are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members **must**, however, disclose any interest in accordance with the adopted code of conduct when that group has made representations on a particular matter and such members should make it clear to that group and to the Development Control Committee that you have reserved judgment and the independence to make up your own mind on each and every proposal.
- **Do not** excessively lobby fellow members regarding your concerns or views and nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.
- **Do not** decide or not discuss at any political group meeting how to vote on a planning matter or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

## 7. SITE VISITS BY MEMBERS

7.1 Sites inspection by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision as outlined below. Any Member of the Development Control Committee may request a site visit and the reasons for the request.

- **Do** try to attend site visits organised by the Council where the relevant development control committee has resolved that a visit is required. If you do not attend a formally arranged site



visit, you will be unable to participate in the debate or vote on the relevant item when it is formally considered for decisions by the Committee. However, please note that this does not apply to site visits arranged informally by officers with the agreement of the Chair

- **Do not** request a site visit unless you feel it is strictly necessary and where:
  - Particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - There are significant policy or precedent implications and site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat the site visit only as an opportunity of seeking information and to observe the site.
- **Do** ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection.
- **Do not** hear representations from any other party at the site visit. If you are approached by the applicant or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- **Do not** express opinions or views to anyone at a site visit.
- **Do** not enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias. The only exception to this being:
  - That you feel it is essential for you to visit the site other than as part of an official site visit; and
  - You have spoken to the Development Services Manager or an Area Planning Manager of your intention to do so and why (which will be recorded on the file) and
  - You can ensure that you will comply with these good practice rules on site visits
- Occasionally officers will arrange informal site visits prior to a matter being considered at a development control committee. Whilst members should make every effort to attend such informal site visits, a member's non attendance at such informal

visits would not of itself prevent that member from taking part in the decision making process

## **8. THE DECISION MAKING PROCESS**

The Local Government Association report on Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters, advises that a decision on a planning application cannot be made at the committee meeting until all of the available information is to hand and has been duly considered, and any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups. All applications considered by Development Control Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the view of the officer the matter is finely balanced the report will say so. The recommendations put forward by officers and the decision by members are separate parts of the same process, which should be justified by the report and debate respectively.

### **8.1 MEMBERS RELATIONSHIP WITH OFFICERS**

**Do not** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Development Services Manager or the relevant area-planning manager, and such views may be incorporated into any committee report. If you wish to speak to an officer regarding any proposal then you should speak to the case officer as that officer would know the current position regarding a matter. Alternatively, you can contact the relevant Area Planning Manager.

**Do** recognise and respect that officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. You should therefore appreciate that officers' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.

**Do** consider the Council's protocol for member/officer relationships, which governs the working relationship you have with officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.

## 8.2 PUBLIC SPEAKING AT MEETINGS BY MEMBERS

**Do not** allow members of the public to communicate with you during the committee proceedings (orally or in writing) other than through the scheme for public speaking.

**Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 8.3 DECISION MAKING BY MEMBERS

**Do** come to a meeting with an open mind on a matter and do demonstrate that you are open-minded.

**Do** comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to consider new information or there is insufficient information before you then you should request that further information and, if necessary, defer the application.

**Do** not vote or take part in a discussion at a meeting unless you have been present for the entire meeting or for the whole of the matter in question and this includes the public speaking and the officers' introduction to the matter. If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.

**Do** have recorded the reasons for Committee's decision to defer any proposal.

**Do** make sure that if you are proposing, seconding or supporting a decision **contrary to** officer recommendation or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons, like all reasons in such matters, **must** be given prior to the vote and be recorded. Members should also be aware that you might have to justify their decision by giving evidence in the event of any appeal or challenge.

**Do** ensure that the reasons you give for a decision **must** be your reasons. You cannot ask an officer to give the reasons for you. An officer may assist in the drafting of your reasons. See guidance at Appendix 1.

**Do** remember that development control committees are important hearings. You should, therefore, act and dress accordingly. i.e. you

give a matter due consideration and should not talk between yourselves or use mobile telephones or other mobile devices when a matter is being considered.

## 9. TRAINING OF MEMBERS

All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute members in accordance with the Council's Constitution shall be trained in planning procedures prior to serving on the Committee.

- **Do** not take part in the decision making process at committee meetings unless you have attended the mandatory planning training prescribed by the Council's Constitution.
- **Do** attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan. The training will be devised to assist you in carrying out your role properly and effectively.

## 10. THE ROLE OF OFFICERS IN PLANNING MATTERS

10.1 Officers **must** when making decisions on applications:

- Act fairly and openly at all times
- Consider each and every application with an open mind
- Consider all the material planning considerations attaching the appropriate weight to each one
- Avoid any inappropriate contact with applicants, members and any other interested parties
- Ensure that the reasons for any decision are clearly recorded
- Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure) (England) Order 2010 (SI 010/2184), regarding reasons for approval and refusal.

10.2 When reporting to a committee on a planning matter officers **will**:

- Provide professional and impartial advice at all times
- Ensure that all the information necessary for a decision by Members is made available to those members
- Ensure that a report includes the substance of all the objections and the views of the consultees
- Produce a clear, accurate and objective written analysis of the Issues
- Make a clear recommendation.

- 10.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that matter's history.  
Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by members.
- 10.4 Any material planning information received after the writing of the report and up to midday of the day of the committee meeting will be presented orally by officers or be included on an amendment sheet.
- 10.5 The Development Services Manager or relevant Area Planning Manager may, after consulting the Chair of the relevant development control committee, withdraw any item from the agenda of that committee before that item is discussed by that committee if the circumstances of an application have changed after the report has been prepared.
- 10.6 Officers have a duty to carry out the decisions of members even when Members decide a matter against officer recommendations.

## **11. DISCUSSIONS REGARDING PLANNING APPLICATIONS**

- 11.1 Officers should have regard to the relevant parts of this code regarding members' involvement in pre application or post submission discussions with applicants, supporters or objectors.
- 11.2 In particular all officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected members in a committee or in specified circumstances by the Development Services Manager or by a duly authorised officer of his or her department.
- 11.3 An officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

## **12. OFFICERS' DISCLOSURES OF INTERESTS**

- 12.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

## **13. HOSPITALITY – OFFICERS**

- 13.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officers **must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

## **14. ACTION TO BE TAKEN BY OFFICERS REGARDING DECISIONS TAKEN CONTRARY TO PROFESSIONAL ADVICE**

14.1 In matters where members have refused an application against an Officer recommendation for approval:

- Officers will give their full support to members and any external witnesses in the preparation of the evidence for any planning inquiry
- Officers will only give evidence themselves in the exceptional circumstances where their code of professional conduct has not been breached or where a hearing is to be held, with no cross examination and in this later example the officer concerned has not been involved with formulating the original recommendation
- Officers will give their full support to Member decisions that are appealed under the written representations procedure

## **15. SANCTIONS**

15.1 The purpose of this Code is to provide guidance to Members in relation to the performance of the Councils planning function. The application of and adherence to the Code is intended to build public confidence in the Councils planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.

15.2 A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Committee. Beyond the normal democratic process a number of specific consequences can be identified

### **(a) The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress, which may take the form of compensation.

### **(b) Appeals to the Secretary of State**

An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is

shown that the Councils conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

**(c) Judicial review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

**(d) Powers of the Secretary of State**

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

**(e) District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Councils accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

15.3 These are in addition to possible sanctions against individual Members for breach of the Code of Conduct which could include

- **To Report on findings to Full Council i.e. "naming and shaming".**
- **To Recommend to a Group Leader that the member concerned be removed from any committee or sub-committee.**

- **To recommend, In relation to any members of the executive that the member concerned be removed from the Executive.**
- **To recommend the Monitoring Officer to arrange appropriate training for the member concerned.**
- **To recommend removal of any member concerned from any outside body appointments.**
- **To require the withdrawal of Council facilities e.g. use of computer or internet.**
- **To exclude a member from the Council's offices or other premises except for the purpose of attending formal meetings.**



## ADDENDUM

R (on the application of Kevin Paul Lewis) v Persimmon Homes Teesside Ltd [2008] EWCA Civ 746 (Court of Appeal) recognises *“that Councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies. Members of a Planning Committee would be entitled and indeed expected to have and to have expressed views on planning issues”* Pill LJ at paragraph 69

*“...there is no escaping the fact that a decision-maker in the planning context is not acting in a judicial or quasi-judicial role but in a situation of democratic accountability. He or she will be subject to the full range of judicial review, but in terms of the concepts of independence and impartiality, which are at the root of the constitutional doctrine of bias, whether under the European Convention of Human Rights or at common law, there can be no pretence that such democratically accountable decision makers are intended to be independent and impartial just as if they were judges or quasi-judges. They will have political allegiances, and their politics will involve policies and these will be known.”* Rix LJ at paragraph 94.

## APPENDIX 1

### OVERTURN FROM OFFICER RECOMMENDATION OF REFUSAL TO APPROVAL

1. Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.
2. At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all members are clear as to the basis for their vote.
3. The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions.
  - a. That Delegated Authority is resolved to be given to officers to prepare conditions and (where necessary) section 106 obligations and issue the decision notice **OR**
  - b. Delegated authority is given to officers to draft conditions to be considered by the next available Development Control Committee **OR**
  - c. The Committee approves the delegation to draft conditions in consultation with the Chair of the Committee.

## **OVERTURN FROM OFFICER RECOMMENDATION OF APPROVAL TO REFUSAL**

1. The Member moving the motion for refusal must clearly state the reasons for refusal as part of the debate. These reasons must be planning reasons.
2. The Planning Officer to advise on whether or not these are relevant planning refusal reasons prior to the vote.
3. The Planning Officer can (if required) summarise the reasons for refusal before the vote is taken to ensure that all members are clear as to the basis for their vote
4. On being put to the vote, the member moving the motion should re-state the reasons for refusal
5. If the vote is successful the reasons given by Committee shall form the basis of the refusal notice issued.

**DRAFT**  
**PART 5D**

**BRISTOL CITY COUNCIL**

**GOOD PRACTICE PROTOCOL FOR PLANNING**

## 1. Introduction

- 1.1 **The aim of this code** is to ensure that, in the planning process, planning decisions are not biased, are well founded on planning considerations, and to inform potential developers and members of the general public of the standards adopted by the City Council and the performance of its planning function.
- 1.2 **The aim of the planning system**, as set out in the National Planning Policy Framework, is to contribute to the achievement of sustainable development and has the three overarching objectives of economic, social and environmental.
- 1.3 **When this code applies** – to all members of the development control committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at development control committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.4 The process of arriving at decisions on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard to are: -
  - a) The key purpose of planning is to achieve sustainable development which effectively balances economic, social and environmental interests and takes relevant local circumstances into account.
  - b) The overriding duty as a Councillor is to all residents of the City of Bristol and in relation to planning issues to help ensure that the council's planning policies are achieved.
  - c) The role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.
  - d) Whilst Members may be strongly influenced by the views of others and of their party it is their sole responsibility to independently decide what view to take on any planning issue which councillors have to decide upon.
  - e) Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act requires members to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. They should ensure that all decisions they make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.

- f) The Code applies to all decisions of the Council on planning related matters. This includes Members' involvement in any planning application, whether or not it is reported to a committee and all applications determined by any committee.
- 1.5 When acting in your capacity as a Councillor, Members must also have regard to the Council's Member Code of Conduct.
- 1.6 Any concerns regarding whether this code of conduct applies to a particular circumstance should be raised at the earliest possible opportunity with the Director Legal and Democratic Services. Any advice should be sought well before any meeting of the local planning authority takes place.

## **2. The Member Code of Conduct**

- 2.1 The Member Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter Members should have regard to the Code, and particularly the requirement to properly declare all interests. Members should:
  - a) Comply with the requirements of the adopted Member Code of Conduct first
  - b) Then apply the rules in this Good Practice Protocol for Planning
- 2.2 **If Members do not** follow and apply the code then they may put
  - a) The Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration and
  - b) Themselves at risk of sanction if there has been a failure to comply with the Member Code of Conduct

## **3. Development Proposals and Declaration of Interests Under The Member Code of Conduct**

- 3.1 When considering planning matters Members may find that they need to
  - a) Declare interests in accordance with the requirements of the adopted Code of Conduct or
  - b) Indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination)

- 3.2 The existence and nature of any interest should be disclosed in accordance with this Code at any development control committee, any informal meetings or discussions with officers and any other Members.
- 3.3 Members should disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter.
- 3.4 Members should notify the Director - Legal and Democratic Services as monitoring officer in writing of their interest to ensure that a proper record of the interest is noted at any meeting
- 3.5 Where a Member has a Disclosable Pecuniary Interest (DPI) or a Prejudicial Interest they should ensure that they:**
- a) **Do not** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
  - b) **Do not** get involved with the processing of the application and direct any queries or technical matters to the relevant officer
  - c) **Do not** seek or accept preferential treatment or place themselves in such a position so that members of the public would think they are receiving preferential treatment because of their position as a Councillor. An example would be where a member has an interest in a property and uses their position as Councillor to discuss a planning application with officers or members when ordinary members of the public would not have the same opportunity to do so. A member in this position may need to identify another local member who is prepared to represent local interests
  - d) **Leave the room** whilst the item is being discussed.

#### **4. Pre-Determination in the Planning Process**

- 4.1 Allowance made for Councillors to be predisposed to a particular view and this is a practical recognition of:
- a) The role played by party politics in Local Government
  - b) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
  - c) The structure of local government which ultimately requires the same Councillors to make decisions
- 4.2 It is therefore particularly important for elected Members to have a clear understanding about the implications of expressing strong opinions or views on planning matters
- 4.3 Section 25 of the Localism Act 2011 introduced provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue

about the validity of a decision, where the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision.

- 4.4 The Act provides that a decision-maker is not be taken to have had (or to have appeared to have had) a closed mind when making the decision just because
- a) they had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
  - b) the matter was relevant to the decision
- 4.5 On this basis it is expected that councillors will be able to publicise their views on issues, indicate their likely voting intentions and to engage fully with their local communities without this affecting their participation in the council's formal decision making. In addition, councillors should be able to engage with planning applicants to educate themselves about their proposals.
- 4.6 So if a Member has campaigned on an issue or made public statements about their approach to an item of council business, they will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.
- 4.7 The key point is that Members still need to be and seen to be open minded at the point that the decision is taken in the sense of listening to all of the arguments, and weighing them against their preferred outcome, before actually voting.
- 4.8 The difference is that the fact that councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.
- 4.9 For example, in a situation where a member said something like "over my dead body" in respect of voting a particular way on an issue, the view must be that whilst the provision on predetermination in the Localism Act might be useful in giving councillors confidence about making their views on particular issues known, it has not changed the legal position that if a member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.
- 4.10 Equally, if a member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.
- 4.11 An important point to bear in mind is that if you give an indication of your own viewpoint, ensure that you indicate that you will take all relevant considerations into account and that the decision will be based firmly on planning grounds but that they will ensure views are fully heard and taken into account by the Council. It is also a good idea to record your involvement.



- 4.12 In practice, a Councillor may campaign for or against a planning application, and still vote at planning committee, so long as they go into the meeting with an open mind to hear all the facts and evidence. This can be demonstrated by the Committee Chair asking the Councillor at the beginning of the meeting to confirm whether or not they still have an open mind on a proposal.
- 4.13 A Councillor quoted in a newspaper having said, "Over my dead body will that planning application be approved. I will never support it under any circumstances" could be said to have pre-determined the decision. These extreme statements should still be avoided.
- 4.14 It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

## **5. Contact with Applicants, Developers and Objectors**

- 5.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.
- 5.2 Members can be involved, provided their roles in discussions are clearly understood at the outset. In particular members of development control committees need to be aware of the distinction between the giving and receiving information and engaging in negotiations. Member involvement may inadvertently open up a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out.
- 5.3 Points to note:
- a) Members should take advice from the Monitoring Officer if they are invited to attend meetings with applicants, developers or groups of objectors if they are likely to be part of the decision-making process. This will enable Members to make an informed decision on attending a meeting and any issues relating to pre-determination.
  - b) Members should refer those who approach them for planning, procedural or technical advice to officers.
  - c) Members should not agree to any formal meeting with applicants, developers or groups of objectors. Where a formal meeting would be useful in clarifying the issues, this should be part of a structured arrangement organised by officers. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the

application file and the record of the meeting is disclosed when the application is considered by the Committee.

- d) Members should remember that the presentation is not part of the formal process of debate and determination of any subsequent application, as this will be carried out by the appropriate Committee of the Local Planning Authority
- e) Members should be aware that a presentation is a form of lobbying and if they express a view, they will need to carefully consider if they have pre-determined the matter prior to the vote.
- f) Members should follow the rules on lobbying and report to the Head of Development Management any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and Member involvement in them and ensure that this is recorded on the planning file.

## 6. Lobbying of Members

6.1 Lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents, public relations consultants, as well as un-represented applicants / landowners and community action groups.

6.2 Members should:

- a) Remember that their overriding duty is to the whole community and not just the people in their own particular ward
- b) Explain to those lobbying or attempting to lobby them that whilst they can listen to what is being said it may prejudice their impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.
- c) **Not** accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible.

6.3 Members **must** enter hospitality in accordance with the rules on gifts and hospitality and should:

- a) Copy or pass on any lobbying correspondence received to the Head of Development Management or one of the planning team managers at the earliest opportunity.

- b) Immediately refer to the Head of Development Management or one of the planning team's area managers any offers made of planning gain or a constraint of development through a proposed s106 obligation or otherwise.
- c) Inform the Monitoring Officer where there has been undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.
- d) Note that a matter will not have been pre-determined of the code breached if:
  - i. Members have listened or have received views from residents or other interested parties;
  - ii. Members have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and they have made it clear that they are keeping an open mind;
  - iii. Members have sought information through appropriate channels; or
  - iv. Members are representing opinion or speaking at the meeting as a Ward/Local Member, provided that this is clear at the beginning of the meeting or item and that, having expressed the opinion or ward/local view, that they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

## 7. Lobbying by Development Control Committee Members

- 7.1 A Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances the member:
- a) Is able to join general interest, resident or amenity groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals. Examples are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members **must**, however, disclose any interest in accordance with the code of conduct when that group has made representations on a particular matter and such members should make it clear to that group and to the Development Control Committee that they have reserved judgment and the independence to make up their own mind on each and every proposal.

- b) **Should not** excessively lobby fellow members regarding their concerns or views nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.
- c) **Should** not discuss at any political group meeting how to vote on a planning matter or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

## 8. Site Visits by Members

8.1 Any Member of the Development Control Committee may request a site visit. Members should:

- a) Try to attend site visits organised by the Council where the relevant development control committee has resolved that a visit is required. If the member does not attend a formal site visit, they will be unable to participate in the debate or vote on the relevant item when it is formally considered for decision by the Committee. This does not apply to site visits arranged informally by officers with the agreement of the Chair.
- b) **Not** request a site visit unless they feel it is strictly necessary and where:
  - i. Particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - ii. There are significant policy or precedent implications and site factors need to be carefully addressed.
- c) Ensure that any information gained from the site visit is reported back to the Committee, so that all Members have the same information
- d) Ensure that the site visit is only used an opportunity of seeking information and to observe the site.
- e) Ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection.
- f) **Not** hear representations from any other party at the site visit. If approached by the applicant or a third party, the member should advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- g) **Not** express opinions or views to anyone at a site visit.

- h) Not enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias. The only exception to this being:
  - i. If it is essential for to visit the site other than as part of an official site visit; and
  - ii. The member has spoken to the Head of Development Management or a Planning Manager of your intention to do so and why (which will be recorded on the file)

## **9. The Decision Making Process**

- 9.1 A decision on a planning application cannot be made at the committee meeting until all of the available information is to hand and has been duly considered.
- 9.2 Any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote.
- 9.3 Any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups.
- 9.4 All applications considered by Development Control Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations.
- 9.5 If the recommendations are contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated. The recommendations put forward by officers and the decision by members are separate parts of the same process,

## **10. Members Relationship with Officers**

- 10.1 The Council's protocol for member/officer relationships governs the working relationship between Officers and members and the principle of mutual respect and courtesy should be observed at all times.
- 10.2 Members should not put pressure on officers to put forward a particular recommendation. If Members wish to speak to an officer regarding any proposal then they should speak to the case officer or the relevant Planning Manager.
- 10.3 Officers must act in accordance with the Council's Code of Conduct for Officers and their own professional codes of conduct. Officers' views, opinions and recommendations will be based on their overriding obligation of professional

independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.

## **11. Public Speaking at Meetings by Members**

- 11.1 Members must not allow members of the public to communicate with them during the committee proceedings (orally or in writing, including via social media) other than through the scheme for public speaking.
- 11.2 Members must ensure that they comply with the Council's procedures in respect of public speaking.

## **12. Decision Making by Members**

- 12.1 Members should come to a meeting with an open mind on a matter and demonstrate this through their behaviour at the meeting .
- 12.2 Members should comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 12.3 Members should come to a decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If there is insufficient time to consider new information or there is insufficient information to enable a decision to be taken further information should be requested and, if necessary, the application should be deferred.
- 12.4 Members should not vote or take part in a discussion at a meeting unless they have been present for the entire meeting or for the whole of the matter in question and this includes the public speaking and the officers' introduction to the matter. If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.
- 12.5 The reasons for the Committee's decision to defer any proposal should be recorded
- 12.6 If a Member is proposing, seconding or supporting a decision **contrary to** officer recommendation or the development plan they should clearly identify the planning reasons leading to this conclusion/decision. These reasons, **must** be given prior to the vote and be recorded.
- 12.7 Any reasons given by a member for a decision **must** be their reasons. They cannot ask an officer to give the reasons for them but an officer may assist in the drafting of reasons. See guidance at Appendix 1.

### 13. Training of Members

- 13.1 All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute members in accordance with the Council's Constitution must be trained in planning procedures before serving on the Committee and making any decisions.
- 13.2 Member training is offered annually but in any event Committee Members must attend mandatory re-training every 4 years to co-incide with the Council's electoral cycle.
- 13.3 It is good practice to attend any other specialised training sessions provided, to extend knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan.
- 13.4 A training record will be maintained in respect of all training received.

### 14. The Role of Officers In Planning Matters

#### Decision making function:

- 14.1 Officers **must**:
- a) Act fairly and openly at all times
  - b) Consider each and every application with an open mind
  - c) Consider all the material planning considerations attaching the appropriate weight to each one
  - d) Avoid any inappropriate contact with applicants, members and any other interested parties
  - e) Ensure that the reasons for any decision are clearly recorded
  - f) Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure) (England) Order 2010 (SI 010/2184), regarding reasons for approval and refusal.

#### Reporting function

- 14.2 When reporting to a committee on a planning matter officers **will**:
- a) Provide professional and impartial advice at all times
  - b) Ensure that all the information necessary for a decision by Members is made available to those members
  - c) Ensure that a report includes the substance of all the objections and the views of the consultees
  - d) Produce a clear, accurate and objective written analysis of the Issues
  - e) Make a clear recommendation.

- 14.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that application's history. Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by members.
- 14.4 Any material planning information received after the writing of the report and up to midday of the day before the date of the committee meeting will be presented verbally by officers or be included on an amendment sheet.
- 14.5 The Head of Development Management or relevant Planning Manager may, after consulting the Chair of the relevant development control committee, withdraw any item from the agenda of that committee before that item is discussed by that committee if the circumstances of an application have changed after the report has been prepared.
- 14.6 Officers have a duty to carry out the decisions of members even when Members decide a matter against officer recommendations.

## **15. Discussions Regarding Planning Applications**

- 15.1 Officers should have regard to the relevant parts of this code regarding members' involvement in pre application or post submission discussions with applicants, supporters or objectors.
- 15.2 In particular all officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected members in a committee or in specified circumstances by the Head of Development Management or by a duly authorised officer of that department.
- 15.3 An officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

## **16. Officers' Disclosures of Interests**

- 16.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

## **17. Hospitality – Officers**

- 17.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officers



**must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

## **18. Action to be taken by Officers Regarding Decisions taken Contrary to Professional Advice**

18.1 In matters where members have refused an application against an Officer recommendation for approval:

- a) Officers will give their full support to members and any external witnesses appointed on behalf of the Council in the preparation of the evidence for any planning inquiry
- b) Officers will only give evidence themselves in the exceptional circumstances where their code of professional conduct has not been breached or where a hearing is to be held, with no cross examination and where the officer concerned has not been involved with formulating the original recommendation
- c) Officers will give their full support to Member decisions that are appealed under the written representations procedure

## **19. Sanctions**

19.1 A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members.

### **a) The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the merits of a particular planning decision they may agree to investigate a planning complaint in relation to the way in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures they will recommend redress, which may take the form of compensation.

### **b) Appeals to the Secretary of State**

An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

### **c) Judicial review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being suspended and subsequently quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

**d) Powers of the Secretary of State**

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

**e) District Auditor**

Each of the above courses of action could result in significant costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Councils accounts by the wilful misconduct of any person they are required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

**19.3 Possible sanctions against individual Members for breach of the Code of Conduct which could include:**

- a) Investigation and Report on findings to Full Council i.e. “naming and shaming”.
- b) Recommendation to a Group Leader that the member concerned be removed from any committee or sub-committee.
- c) In relation to any members of the executive recommendation that the member concerned be removed from the Executive.
- d) Recommendation to arrange appropriate training for the member concerned.
- e) Recommendation to remove a member concerned from any outside body appointments.
- f) The withdrawal of Council facilities e.g. use of computer or internet.
- g) Exclusion of a member from the Council’s offices or other premises except for the purpose of attending formal meetings.

## **Appendix 1: Committee Making Decisions Contrary to the Officer Recommendation**

### **Overturn from Officer Recommendation of Approval to Refusal**

1. Normally, in making a decision on any planning application before the DC Committee, the Chair will move a motion in accordance with the officer recommendation (to test this is what the Committee want to do) or seek another Member to do so.
2. If that motion is not seconded, or if the vote on the motion is not carried, the Chair will move a motion to defer a decision (allowing more time for Members to propose grounds for refusal if needed) and request that officers bring back a report to the next meeting of the Committee with detailed advice on these grounds, supporting Members to make a final decision.
3. The Committee would then consider the report of potential reasons for refusal and the original report before making a final decision on the application.
4. If the Chair's motion in 2 is not seconded or not carried the Chair will seek an alternative motion from the Committee.
5. The full Committee debate and decision process is illustrated by the diagram in Appendix 2.

### **Overturn from Officer Recommendation of Refusal to Approval**

1. Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.
2. At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all members are clear as to the basis for their vote.
3. The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions.

That Delegated Authority is resolved to be given to officers to prepare conditions and (where necessary) section 106 obligations and issue the decision notice **OR**

Delegated authority is given to officers to draft conditions to be considered by the next available Development Control Committee **OR**

The Committee approves the delegation to draft conditions in consultation with the Chair of the Committee.

# Full Council

21 May 2020



**Report of:** Monitoring Officer

**Title:** Member Code of Conduct for Licensing Committee and PSP Committee

**Ward:** Citywide

## Recommendation

That Full Council adopts the revised Code of Conduct for Licensing Committee and the new Code of Conduct PSP Committee.

## Summary

This report proposes Codes of Conduct for adoption by Full Council

## The significant issues in the report are:

The significant issues are set out in paragraphs 4 – 9 of the report and the detail of the revised Member Code of Conduct is set out in the Appendix to the report.



1. The Council has a duty to keep its constitution under review. This includes all relevant codes and protocols.

### Consultation

#### 2. Internal

The Mayor and Party Group Leaders were advised that the Member Codes were under review at their meeting on 18 November 2019.

A Workshop was held with Members of the Value and Ethics Sub-Committee on 24 February 2020.

The updated Code was considered by the Audit Committee on 16 March 2020 where it was endorsed and recommended to Full Council for adoption.

#### 3. External

Not applicable

### Context

4. The Council has a duty to promote and maintain high standards of conduct by its members and co-opted members. To achieve that duty, the Council must adopt Codes of Conduct dealing with the conduct that is expected of members and co-opted members of the authority.
5. The Code of Conduct is part of the Council’s Constitution, which is kept under review by the Council’s Monitoring Officer.

### Proposal

6. Full Council is asked to consider the revised Member Code of Conduct for Members in relation to Hearings under the Licensing Act 2003 (LA03 Code) and a new Code of Conduct for Members in relation to Public Safety and Protection Hearings (PSP Code) and, subject to any proposed amendments, adopt the new Code to come into force following the Annual Council meeting on 21<sup>st</sup> May 2020.
7. The Licensing Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005. The Licensing Committee will also consider applications for sexual entertainment venues under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) but will not do so in its capacity as statutory licensing committee.
8. The principal changes to the LA03 Code are:
  - The removal of the detailed reference to the Richardson decision on prejudicial interests. This is because the case law has been put on a statutory footing by the Localism Act 2011 so a simplified version of the codified test now appears in the new draft.
  - The removal of reference to the “vicinity” test and “interested parties” since that terminology has long been repealed.
  - Additional guidance on the conduct of meetings, including site visits.

- Members should be trained before serving on the Licensing Committee.
- Avoidance of duplicating the rules that are recited in the General Member Code of Conduct.
- The addition of a new appendix 2 detailing the debate and decision process.

9. The new Code of Conduct for PSP Committee has been drafted along similar lines to those set out in the revised LA03 Code.

### **Other Options Considered**

10. No other options have been considered.

### **Risk Assessment**

11. The Council has a duty to keep its constitution under review. This includes all relevant codes and protocols, of which the LA03 Code and the PSP Code are examples.

### **Public Sector Equality Duties**

Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

## Legal and Resource Implications

### Legal

Council must promote and maintain high standards of conduct by its members and co-opted members and must adopt and keep under review Practice Protocols to deal with the conduct that is expected of members of the authority when they are sitting on the Licensing Sub-Committees and exercising quasi-judicial functions. Similar considerations apply to Regulatory committees. The updated protocols will enable Members to be clear of their duties in this context.

**(Legal advice provided by Nancy Rollason, Head of Legal Services)**

### Financial

#### (a) Revenue

Not applicable

#### (b) Capital

Not applicable

### Land

Not applicable

### Personnel

Not applicable

### Appendices:

Appendix 1 – Code of Conduct for Members – Licensing Act 2003

Appendix 2 – Revised Code of Conduct for Members – Licensing Act 2003

Appendix 3 – New Code of Conduct for Public Safety Committee

### LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

#### Background Papers:

None

# **PART 5E**

**THE ROLE OF ELECTED MEMBERS  
IN RELATION TO  
LICENSING COMMITTEE HEARINGS  
UNDER THE LICENSING ACT 2003**



## 1. Introduction

- 1.1 The Council's Licensing Committee comprises 15 elected Members and that committee has established sub-committees comprising any three of those elected Members. The sub committees meet to determine licence applications where there are objections and/or relevant representations. Should the applicant or those who have made representations/objections be dissatisfied with the decision of the Licensing Committee there is the right of appeal to the Magistrates Court.
- 1.2 Whilst all local authority actions are subject to the rules regarding probity, as embodied in the Council's Code of Conduct for Members, the Licensing Committee (like the Development Control Committee) will need to be especially diligent in this respect. In the "New Council Constitutions: Guidance Pack/Modular Constitutions for English Local Authorities" paragraph 13.08 states:

### **"Decision making by Council bodies acting as Tribunals**

Many of the licensing and enforcement functions of ordinary Committees will entail them acting in a quasi judicial capacity the Council, a Councillor or an officer acting as a tribunal or in a quasi judicial manner will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights."

- 1.3 The Council's Code of Conduct for elected members sets out the rules regarding probity of councillors in Bristol City Council. This guidance does not replace the Code but is supplementary to it. It seeks to focus on the particular issues Licensing Committee Members may face in ensuring that they comply with the Code.

For example, a Member must not, in his official capacity, or any other circumstances, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute (paragraph 4 of the Council's Code of Conduct). Members of the Licensing Committee must make many of their decisions in accordance with the rules of natural justice, which includes an obligation not to act with bias or where there is an appearance of bias (the test for appearance of bias being that there exists a "real possibility" of bias in the particular circumstances). A Member who accepted hospitality from an applicant for a licence to supply alcohol and/or provide regulated entertainment could well thereby give rise to an appearance that they are likely to be biased in favour of the applicant. This may be so even though the value of the hospitality is less than the £25 which would trigger an entry into the Authority's hospitality register. The quashing of a decision on the application on this basis could reasonably be regarded as bringing in the Councillor's office or the Authority into disrepute. Therefore,

whilst the receipt of hospitality under the value of £25 would not be declarable in the register under the terms of the Code, this guidance, which is approved by the Authority's Standards Committee, discourages the acceptance by Licensing Committee members of any gift or hospitality from applicants or others involved in applications under the Act by even where those gifts are of nominal value.

- 1.4 The guidance is primarily aimed at Members of the Licensing Committee itself, however various parts of it (such as the Section on Councillors as interested parties) are relevant to all Bristol City Councillors.

## **2. The Councillor as an "interested party"**

- 2.1 Councillors should understand this guidance in the context of the decision making processes established under the Licensing Act 2003 and Councillors are reminded that a briefing note on the Act formed part of a report to Full Council on 10 February 2004. This can be viewed via the Council's web pages.
- 2.2 In particular, Councillors should be aware that under the Act only certain persons and bodies are given the right to make representations on applications etc. and those representations will only be relevant representations (and therefore capable of being considered) if they relate to the effect that granting the application for licence or variation etc. would have on the promotion of one or more of the four licensing objectives.
- 2.3 As far as individuals are concerned, only persons whose residence or business is in "the vicinity of" the premises concerned may make relevant representations and those representations must be made within a defined period.
- 2.4 The Licensing Authority has no discretion whatsoever to accept late representations or to receive representations from individuals who do not satisfy the residence or business criteria.
- 2.5 Whether or not a person meets the test of being in the vicinity of the premises concerned is a question of fact. In some Councils efforts have been made to define this by reference to a certain distance (for example 100 metres from the applicant site) whereas in Bristol the test of vicinity has been applied by reference to the potential for the individual concerned to be effected by the application and in particular where it appears that individual's rights under Article 8 of the European Convention on Human Rights (respect to private and family life) may be engaged.
- 2.6 There are therefore numerous applications in respect of which a Councillor would be entitled to make representations.

- 2.7 A Councillor wishing to establish if she would be entitled to make a representation in her own right can seek guidance from a member of the Licensing Act team at Princess House.
- 2.8 At the time of publication of this guidance, the Courts have not been called upon to rule on the issue of personal/prejudicial interests of Councillors who qualify as interested parties under the Act. It is reasonable to proceed on the basis that a Member who would be entitled to make representations might reasonably be regarded as being affected to a greater extent than other Council tax payers, rate payers or inhabitants of the Authority's area by a decision upon the application (cf. paragraph of the Council's code of conduct).
- 2.9 If a Member exercises a right to make representation then paragraph 10 of the Code of Conduct, which addresses the issue of when a personal interest is a prejudicial interest, should be considered as this action could be argued to give rise to an interest "which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest".
- 2.10 Whether a Member who was entitled to make representations in their own right but who did not do so would be judged as having a prejudicial interest in the matter is a difficult question, but, pending any case law which makes the law clear, Councillors who have a statutory right to make relevant representations should exercise caution and take great care not to conduct themselves in a manner which may subsequently be viewed as being in breach of the Code.
- 2.11 In this context, Members are reminded of the judgement of the Court in the case of Paul Richardson (2) Wendy Orm – v – (1) North Yorkshire County Council (2) The First Secretary of State and Brown and Potter Limited (interested party) (2003). In that case, Councillor Richardson was one of six householders likely to be effected by an application for planning permission to develop land near to premises which he owned. He made objections to the application. The Court found that he had a personal interest which was prejudicial by virtue of the proximity of his premises to the development. Accordingly he had to withdraw from the room or chamber where the meeting was held and he could not seek improperly to influence the decision about that matter. The Court ruled that he was not allowed to remain in order to read out a statement and made clear that the balance the legislature has struck in this regard is in favour of public confidence in the decision making process over and above the individual rights enjoyed by Councillors. Councillor Richardson could not remain at the meeting on his own behalf and nor could he remain as a representative of others in his ward.
- 2.12 It follows that:-
1. A Councillor with a personal interest must declare it;

2. Where that personal interest is a prejudicial interest the Councillor must not remain in the room when the matter is being considered at the meeting. Thus a Councillor with a prejudicial interest in a Licensing Act application, etc.:
  - (i) cannot serve on the Committee which is making the decision;
  - (ii) cannot attend the meeting sitting in the public gallery;
  - (iii) cannot act at the meeting as a representative of other interested parties;
  - (iv) cannot exercise the right non councillors would enjoy to participate in the hearing as a party with the right to address the Committee on equal terms with other parties.

This does not mean a Councillor cannot make relevant representations where s/he qualifies to be an interested party, but that Councillor's representations would either have to be received in writing or a representative could appear on his behalf.

Councillors who do not have a personal interest which is prejudicial can attend meetings where asked to be the representative of one of the parties, for example one of their constituents.

(it should be made clear that there are key differences in the new Gambling Act which although similar in process to the Licensing Act 2003 does provide for greater involvement in the decision making process.)

3. A Councillor with a personal interest which is not prejudicial, who attends a meeting of the Authority at which the matter is considered, must disclose to that meeting the existence and nature of that interest at the commencement of the consideration, or when the interest becomes apparent (paragraph 9(1) of the Council's Code of Conduct for Members). In the context of decision making to which the rules of natural justice apply, it is possible that a personal interest, even though not a prejudicial interest, could debar the Councillor in participating as a Member of a Committee or Sub-Committee on the basis that he could not act judicially (for example that his participation would give rise to an appearance of bias - this is more fully explained in paragraph 4 below); Committee Members are reminded that the Head of Legal Services and his team will provide advice on request in a particular case. In order to ensure that full details can be obtained and adequately considered and that the advice can be proffered in a timely manner, Councillors should, wherever possible, seek this guidance in advance of the meeting concerned.
4. Following the Richardson case, it is clear that even if a particular Member does not recognise that he has a personal interest which is prejudicial and which should prompt him to leave the room where the

matter is being considered, the Committee itself can require that Member to be excluded. The Committee may need to take this step in order to protect the integrity of the decision making process and to avoid the Council's decision being liable to be quashed. A Councillor asked to withdraw on this basis, having had a fair opportunity to make a contrary case, should comply with any request from the Committee that they leave the room and should do so in a dignified manner. Where the Member is an interested party the Committee should consider that Member's rights to be represented and how that can be facilitated.

5. A Councillor who is involved in an application as an interested party should take care not to abuse his position as an elected member to gain access to more information than would be available to an ordinary member of the public.

### **3. Constituents**

- 3.1 Lobbying of Members by their constituents is legitimate as is the practice of a Member who does not have a prejudicial interest acting as the representative of a constituent at a hearing if requested to do so.  
However if a member of the Licensing Committee is approached by persons wishing to persuade them to make a decision one way or another on a pending application then the Member should politely explain that they cannot discuss the issue as it may be construed as an unlawful pre determination of the matter. The person should be referred to the Licensing Officers who will provide suitable guidance in the circumstances of the particular case.
- 3.2 Where a Member, who is a serving member of the Licensing Committee, is asked to represent a constituent s/he can not act as both a representative and a decision maker.
- 3.3 In assisting their constituents, Members should take care not to pressurise officers of the Licensing Authority or any of the Responsible Authorities to exercise their professional judgement in a particular way and of course any conduct towards officers which amounts to bullying is entirely inappropriate. If Members have concerns they should raise them through appropriate channels, such as an individual's line manager or through the established scrutiny processes.

### **4. The appearance of bias**

- 4.1 Decision making which may be described variously as being quasi judicial/being a hearing to which the rules of natural justice apply/being a decision to which to which Article 6 of the European Convention on Human Rights (the right to a fair trial) applies requires the decision maker to be able to

act judicially. This includes a requirement to act without actual bias or without the “appearance of bias”. It is obvious what constitutes actual bias.

- 4.2 The appearance of bias arises where a fair minded observer informed of the facts and having regard to circumstances of the particular case would conclude that there was a real possibility (sometimes referred to as “real danger”) of apparent bias effecting the Local Authority’s decision. This can appear in many guises and has been subject of much judicial consideration, sometimes concerning Judges and sometimes concerning other tribunals including some council committees determining applications. In the case of *Locabail (UK) Limited – v – Bayfield Properties Limited* [2000] QB451 Lord Bingham observed that it would be dangerous and futile to attempt to define or list the factors which may or may not give rise to this appearance of bias. He said (in the context of considering when Judges in court should recuse themselves – i.e. stand down):-

“Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor at any rate ordinarily, could an objection be soundly based on the judge’s social or educational or service or employment background or history, nor that of any member of the judge’s family; or previous political association; or Masonic association; or previous judicial decision; or extra curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in the case before him; or membership of the same inn, circuit, local law society or chambers... by contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of the individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such a person’s evidence with an open mind on any later occasion; or if, on any question at issue on the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind; or if, for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgement to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of the party or witness to be unreliable, would not without more found a sustainable objection. In most case, we think, the answer, one way or the other, will be obvious. If, in any case there is real ground for doubt, that doubt

should be resolved in favour of recusal. We repeat, every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.”

4.3 In that context, Licensing Committee Members are guided as follows:-

(a) **Gifts**

Members should be very cautious about accepting gifts or hospitality. Paragraph 17 of the Council’s Code of Conduct for Members requires that Councillors, within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality.

It will readily be appreciated that gifts or hospitality from an applicant, even of a lower value than that which would trigger notification under paragraph 17, may give rise to the appearance of bias. The Standards Committee therefore considers that no gift or hospitality should be accepted by Members of the Licensing Committee where this may be connected to an application or other issue that body is likely to be required to consider and adjudicate upon.

(b) **“Dual Hatted” Members**

Under paragraph 10(2) of the Council’s Code of Conduct, Councillors who have a personal interest which is prejudicial have a discretion to regard themselves as not having a prejudicial interest in a matter if that matter relates to certain defined bodies or functions, for example if the matter relates to another relevant authority of which he is a member or another public authority in which he holds a position of general control or management or to which he has been appointed or nominated by the Council by its representatives.

In such situations the Member needs to disclose his/her interest but can participate in the decision making process. The Standards Board has previously commented that “... you should not sit on decision making bodies, such as Planning and Licensing Committees, when they decide applications from an Authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b) of the National Model Code of Conduct, a reasonable member of the public would think that your judgement was likely to be prejudiced. In addition, a legal challenge could be made against the Authority’s decision making process if you participate in these circumstances,” (“lobby groups, dual hatted members and the Code of Conduct – Guidance for Members”, Standards Board for England September 2004 page 15).

The Standards Board has also stated “regulatory matters such as planning and licensing, are particularly sensitive... in our view you should adopt a particularly cautious approach to planning and licensing matters “(Ibid, page 6).

The Standards Committee does not consider that Members should exercise discretion to disregard a prejudicial interest where they are “dual hatted”; in order to ensure the integrity of the decision making process as a whole the Committee considers the Member should excuse themselves from sitting on a Committee convened to determine that matter.

**(c) Personal interests which are not prejudicial**

A Councillor who has a personal interest which is not prejudicial need usually only declare that interest and is not required to withdraw from the room where the matter is under consideration or indeed to stand down from taking part in the decision making process. However, it will be appreciated from the words of Lord Bingham quoted above, that some personal interests, whilst not prejudicial under the Code, can give rise to a real possibility of bias and as such the affected Member should not participate in making a decision on that matter.

**(d) Site visits**

It is considered that the need for site visits will only occasionally arise. It is conceivable that a site visit which is not conducted in accordance with published and fair rules and procedures could prompt allegations of pre-determination/bias on the part of the decision maker. The Standards Committee therefore recommends that, on those rare occasions where a site visit is judged necessary, the procedure governing the conduct of the site visit be published with notice of the hearing. If it appears site visits may be regularly required then, when it next reviews its licensing procedure rules, the Licensing Committee should put in place a specific procedure for the conduct of site visits which is transparent, so as to ensure the maintenance of the independence and impartiality of the Members who will be deciding the matter under consideration.

**(e) Conduct at Meetings**

Members of the Licensing Committee or its sub-committees who are considering applications which may effect an individual’s livelihood and/or the private and family life of residents etc. should take special care to ensure not only that justice is done but that it is seen to be done. To this end Councillors should conduct themselves at all times in an appropriate manner. They must remain alert and focussed on the business of the meeting and, importantly, they must appear to be alert and focussed on the business of the meeting during hearings. Councillors should not sleep, or appear to be asleep,



consume food or drink, use telephones or allow other interruptions to the business in hand.

Councillors should not be over familiar with officers and other individuals who regularly appear before the Committee. Whilst the hearings are to be conducted as a discussion rather than as a formal debate, this does not lessen the importance of the role of the Chair in providing a firm steer. On the contrary, the role of the Chair in leading the discussion that is required under the Regulations is extremely important and Councillors should, like the parties to the meeting, be led in the discussion by the Committee Chair so that the discussion remains focussed on relevant issues and proceeds in an orderly fashion with all relevant points being explored fully around the table.

The Chair and his/her colleagues must under no circumstances engage in unwarranted joviality or make comments and asides which are not directly relevant to the matter under consideration. It may be considered that such conduct will serve to put applicants and members of the public at their ease, but there is always a risk that the opposite effect will be produced and that the Applicant and other parties will feel that they are not being taken seriously. The Chair should therefore aim to foster a relaxed but nonetheless businesslike atmosphere in the hearing.

Whilst it is permissible for Members to make clear that they have relevant local knowledge (for example, the Chair may say “we all know the premises and their vicinity very well”) it is not appropriate for Members to engage in personal anecdotes which are not directly relevant to the business before the meeting; members should focus on their duty to have regard to the representations made by other persons and bodies and to consider guidance and policy. It is unlikely anecdotes will have any relevance to the business of the meeting and recounting them can give the appearance that the Committee is not taking the matter as seriously as the parties expect them to, or that the member is predisposed towards the interests of one party over another in advance of hearing from them all.

**(f) Use of Party Whip**

The Council’s Statement of Licensing Policy makes plain that there should be no party whip in respect of any quasi judicial business of the Licensing Committee and its sub-committees. It is recommended that this fact be recorded at the outset of every hearing as a matter of course.

**5. Participation of Ward Members in Sub-Committees which are convened to consider applications in the Member’s own Ward**

5.1 All Councillors are required to act in the public interest and this will prevail over the interests of individual constituents in their Ward. Therefore a well informed observer would not consider that there was a real possibility of bias arising when Ward Members are participants in a Committee making

decisions in respect of premises or individuals in their Ward. However, the volume of applications and the number of potential parties appearing before Committee Members is such that there is a higher risk in this area of the Council's work of a Member inadvertently serving on a Committee when they should have stepped down for example because they have provided assistance to one of the parties at an earlier stage. For this reason the Standards Committee considers that it would be good administrative practice in the context of this legislation to generally select Members to serve on Committees which will be dealing with matters in other areas of the City.

**CLEAN DRAFT**

**PART 5E**

**CODE OF CONDUCT FOR MEMBERS**

**IN RELATION TO LICENSING COMMITTEE**

**HEARINGS UNDER THE LICENSING ACT 2003**

## **1. Introduction**

- 1.1 This Code of Conduct must be read in conjunction with the Member Code of Conduct, the Protocol on Member / Officer Relations, any other codes and protocols approved by the Full Council and the Licensing Committee Procedure Rules.
- 1.2 The Council's Licensing Committee comprises 15 elected Members and that committee has established sub-committees comprising any three of those elected Members. The sub-committees meet to determine licence applications where there are objections and/or relevant representations. Should the applicant or those who have made representations/objections be dissatisfied with the decision of the Licensing Committee there is the right of appeal to the Magistrates Court.
- 1.3 The Licensing Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005. The Licensing Committee will also consider applications for sexual entertainment venues under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) but will not do so in its capacity as statutory licensing committee.
- 1.4 Whilst all local authority actions are subject to the rules regarding probity, as embodied in the Council's Code of Conduct for Members, the Licensing Committee (like the Development Control Committee) will need to be especially diligent in this respect. The licensing function of the Committee entails it acting in a quasi-judicial capacity so it must follow a fair and proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.
- 1.5 Members must not, in their official capacity, or any other circumstances, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute). Members of the Licensing Committee must make all of their decisions in accordance with the rules of natural justice, which includes an obligation not to act with bias or where there is an appearance of bias (the test for appearance of bias being that there exists a "real possibility" of bias in the particular circumstances). A Member who accepted hospitality from an applicant for a licence to supply alcohol and/or provide regulated entertainment could well thereby give rise to an appearance that they are likely to be biased in favour of the applicant. This may be so even though the value of the hospitality is less than the £25 which would trigger an entry into the Authority's hospitality register. If a decision has been made which has shown bias to a party then this decision could be quashed. Any bias whether influencing a decision or not can bring the Councillor's office or the Authority into disrepute. Therefore whilst the receipt of hospitality under the value of £25 would not be declarable in the register this Code discourages the acceptance by Licensing Committee members of any gift or hospitality from applicants or others involved in applications under the Act, even where those gifts are of nominal value.

1.6 This Code is primarily aimed at Members of the Licensing Committee itself, however various parts of it (such as the Section on Councillors making representations on licensing applications) are relevant to all Bristol City Councillors.

## **2. The Councillor making a representation on a Licensing Application**

2.1 Councillors should understand this guidance in the context of the decision making processes established under the Licensing Act 2003. In particular, Councillors should be aware that under the Act there is now a right for any person to make representations on applications etc. and those representations will only be relevant representations (and therefore capable of being considered) if they relate to the effect that granting the application for licence or variation etc. would have on the promotion of one or more of the four licensing objectives. The four licensing objectives are the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

2.2 As far as individuals are concerned, any person may make a representation and has a right to be heard so long as that representation is relevant to one or more of the four licensing objectives. There is no longer a requirement that only persons whose residence or business is in “the vicinity of” the premises concerned may make relevant representations.

2.3 All representations must be made within a defined period. The Licensing Authority has no discretion whatsoever to accept late representations.

2.4 There are therefore numerous applications in respect of which a Councillor would be entitled to make representations.

2.5 A Councillor wishing to establish if she would be entitled to make a representation in her own right can seek guidance from a member of the Licensing team.

2.6 If a Member exercises a right to make representation then paragraph 4 of the Code of Conduct, which addresses the issue of when a personal interest is a prejudicial interest, should be considered as this action could be argued to give rise to an interest “which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member’s judgement of the public interest”. Consequently, Councillors who have a statutory right to make relevant representations should exercise caution and take great care not to conduct themselves in a manner which may subsequently be viewed as being in breach of the Code. Further advice in respect of interests can be sought from the monitoring officer.

2.7 Councillor who is involved in an application as an interested party should take care not to abuse his position as an elected member to gain access to more information than would be available to an ordinary member of the public.

### **3. Constituents and Lobbying**

- 3.1. Lobbying of Members by their constituents is legitimate as is the practice of a Member who does not have a prejudicial interest acting as the representative of a constituent at a hearing if requested to do so. However, if a member of the Licensing Committee is approached by persons wishing to persuade them to make a decision one way or another on a pending application then the Member should politely explain that they cannot discuss the issue as it may be construed as an unlawful pre-determination of the matter. The person should be referred to the Licensing Officers who will provide suitable guidance in the circumstances of the particular case.
- 3.2. Where a Member, who is a serving member of the Licensing Committee, is asked to represent a constituent s/he cannot act as both a representative and a decision maker.
- 3.3. In assisting their constituents, Members should take care not to pressurise officers of the Licensing Authority or any of the Responsible Authorities to exercise their professional judgement in a particular way and of course any conduct towards officers which amounts to bullying is entirely inappropriate. If Members have concerns they should raise them through appropriate channels, such as an individual's line manager or through the established scrutiny processes.

### **4. The appearance of bias and pre-determination**

- 4.1. Decision making which may be described variously as being quasi judicial/being a hearing to which the rules of natural justice apply/being a decision to which to which Article 6 of the European Convention on Human Rights (the right to a fair trial) applies, requires the decision maker to be able to act judicially. This includes a requirement to act without actual bias or without the "appearance of bias". It is obvious what constitutes actual bias.
- 4.2. The appearance of bias arises where a fair minded observer informed of the facts and having regard to circumstances of the particular case would conclude that there was a real possibility (sometimes referred to as "real danger") of apparent bias effecting the Local Authority's decision.
- 4.3. Section 25 of the Localism Act 2011 introduced a codified test for dealing with issues of bias and pre-determination where the decision maker had "or appeared to have had" a closed mind when making the decision.
- 4.4. Section 25 of the Localism Act 2011 provides that:

"a decision maker is not to be taken to have had, or to have appeared to have had a closed mind when making the decision because:

  - a) The decision maker had previously done anything that directly or individually indicated what view the decision maker took, or would or might take, in relation to a matter, and;

b) The matter was relevant to the decision.”

- 4.5. The key point is that at the time the member considers the application they must have an open mind and appear to have an open mind when determining the application.
- 4.6. It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on licensing matters.
- 4.7. A Councillor may be involved in discussions about a licensing application before the matter comes before the Licensing Committee. Such involvement need not on its own debar a Councillor from participating in the decision making process when the application comes before committee for determination, provided that the Councillor has not already decided how they will vote on the matter. Councillors should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the Councillor considers this is not possible, the Councillor should withdraw from consideration of that application.

## **5. Procedure and Conduct at Meetings**

- 5.1. Members of the Licensing Committee or its sub-committees who are considering applications which may affect an individual’s livelihood and/or the private and family life of residents etc. should take special care to ensure not only that justice is done but that it is seen to be done. To this end Councillors should conduct themselves at all times in an appropriate manner. They must remain alert and focussed on the business of the meeting and, importantly, they must appear to be alert and focussed on the business of the meeting during hearings. Councillors should not sleep, or appear to be asleep, consume food or drink, use electrical devices for any purpose not connected to the committee or allow other interruptions to the business in hand.
- 5.2. Councillors should not be over familiar with officers and other individuals who regularly appear before the Committee. Whilst the hearings are to be conducted as a discussion rather than as a formal debate, this does not lessen the importance of the role of the Chair in providing a firm steer. On the contrary, the role of the Chair in leading the discussion that is required under the Regulations is extremely important and Councillors should, like the parties to the meeting, be led in the discussion by the Committee Chair so that the discussion remains focussed on relevant issues and proceeds in an orderly fashion with all relevant points being explored fully around the table.
- 5.3. The Chair and his/her colleagues must under no circumstances engage in unwarranted joviality or make comments and asides which are not directly relevant to the matter under consideration. It may be considered that such conduct will serve to put applicants and members of the public at their ease, but there is always a risk that the opposite effect will be produced and that the Applicant and other

parties will feel that they are not being taken seriously. The Chair should therefore aim to foster a relaxed but nonetheless business like atmosphere in the hearing.

- 5.4. Whilst it is permissible for Members to make clear that they have relevant local knowledge (for example, the Chair may say “we all know the premises and their vicinity very well”) it is not appropriate for Members to engage in personal anecdotes which are not directly relevant to the business before the meeting; members should focus on their duty to have regard to the representations made by other persons and bodies and to consider guidance and policy. It is unlikely anecdotes will have any relevance to the business of the meeting and recounting them can give the appearance that the Committee is not taking the matter as seriously as the parties expect them to, or that the member is predisposed towards the interests of one party over another in advance of hearing from them all.

#### Fairness

- 5.5. When the Licensing Committee is considering an application, all parties will be given an opportunity to put their case before the Committee in accordance with the Regulations governing such hearings and the Licensing Committee Procedure Rules. If a party does not attend, the Licensing Committee may proceed in his or her absence in accordance with the Regulations.
- 5.6. All Members of the Licensing Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of a particular application has started, that Member shall play no part in the decision making process for that particular application. Where an application is adjourned part heard, it shall be heard by the same Members, save for in exceptional circumstances.

#### Prejudicial and Disclosable Pecuniary Interests and the Prevention of Bias

- 5.7. The rules about prejudicial interests and disclosable pecuniary interests as set out in the Member Code of Conduct shall be firmly applied.
- 5.8. Members are also referred to the guidance about bias and pre-determination in paragraph 4 above.

#### Decision Making Process

- 5.9. When the Members of Licensing Committee move into private session to deliberate and reach a decision, they should be accompanied only by the Democratic Services Officer, Legal Advisor and Licensing Policy Advisor, all of who shall take no substantive part in the debate nor in the decision making process. Only Members of the Committee can take part in the decision making process.



## Site Visits

- 5.10. It is considered the need for site visits will only occasionally arise. While it is proper for the Committee to do this, care must be taken not to undermine the integrity of the licensing process. The following guidelines will help to prevent this: -
- a) Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should refer the person concerned onto officers
  - b) There should be no discussion of individual applications (including those that have been determined) or of the application under consideration
  - c) At the site visit, there should be no one-to-one discussions between Members and others
  - d) Officers should always be in attendance at site visits.
  - e) Officers should keep a note of who attended the visits, what occurred and an outline of any discussions

## **6. Participation of Ward Members in Sub-Committees which are convened to consider applications in the Member's own Ward**

- 6.1. All Councillors are required to act in the public interest and this will prevail over the interests of individual constituents in their Ward. Therefore a well-informed observer would not consider that there was a real possibility of bias arising when Ward Members are participants in a Committee making decisions in respect of premises or individuals in their Ward. However, the volume of applications and the number of potential parties appearing before Committee Members is such that there is a higher risk in this area of the Council's work of a Member inadvertently serving on a Committee when they should have stepped down for example because they have provided assistance to one of the parties at an earlier stage. For this reason it would be good administrative practice in the context of this legislation to generally select Members to serve on Committees which will be dealing with matters in other areas of the City.

## **7. Training of Members**

- 7.1. All Members serving on the Licensing Committee and/or who have any decision making role on licensing matters including substitute members in accordance with the Council's Constitution shall be trained in licensing procedures prior to serving on the Committee. All Members serving on the Licensing Committee must attend further training on licensing procedures within each four year period although annual refresher training is recommended.

- 7.2. Members must not take part in the decision making process at committee meetings unless they have attended mandatory licensing training which will generally be provided in-house.
- 7.3. Members should attend any other specialised training sessions provided, since these will be designed to extend their knowledge of licensing law and procedures. All training will be devised to assist Members in carrying out their role properly and effectively.
- 7.4. A training record will be maintained in respect of all training received.

**NEW PART 5F**

**CODE OF CONDUCT FOR MEMBERS**

**IN RELATION TO**

**PUBLIC SAFETY AND PROTECTION**

**COMMITTEE HEARINGS**

## 1. Introduction

- 1.1 This Code of Conduct must be read in conjunction with the Member Code of Conduct, the Protocol on Member / Officer Relations, any other codes and protocols approved by the Full Council.
- 1.2 The sub committees meet to determine applications for licences relating to the Hackney Carriage and Private Hire Trade or to review licences where officers have concerns relating to the fit and proper standing of those persons to hold a licence. Such decisions will be in conjunction with the relevant Bristol City Council Policies relating to licensed vehicles, including the [Council's policy on the Relevance of Criminal Behaviour of Private Hire and Hackney Carriage Drivers](#).
- 1.3 The Public Safety and Protection Committee also considers applications for Street Trading licences and consents and has further powers and duties under the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) including animals, food safety and Health Act 2006 in relating to smoking.
- 1.4 The Public Safety and Protection Committee determines applications under the Town Police Clauses Act 1847 and the Local Government Miscellaneous Provisions act 1976 (as amended) for licences in connection with the taxi trade and also under Schedule 4 of The Local Government (Miscellaneous Provisions) Act 1982 (as amended) for street Trading Licences and consents.
- 1.5 Whilst all local authority actions are subject to the rules regarding probity, as embodied in the Council's Code of Conduct for Members, the Public Safety and Protection Committee will need to be especially diligent in this respect.
- 1.6 The Public Safety and Protection function of the Committees entails it acting in a quasi-judicial capacity so it must follow a fair and proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.
- 1.7 Members must not, in their official capacity, or any other circumstances, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. Members of the Public Safety and Protection Committee must make their decisions in accordance with the rules of natural justice, which includes an obligation not to act with bias or where there is an appearance of bias (the test for appearance of bias being that there exists a "real possibility" of bias in the particular circumstances).
- 1.8 A Member who accepted a free taxi ride from an applicant for a licence in connection with the taxi trade or free goods from a street trader whose application was before the committee could give rise to an appearance that they are likely to be biased in favour of the applicant. This may be so even though the value of the hospitality is less than the £25 which would trigger an entry into the Authority's hospitality register. If a decision has been made which has shown bias to a party then this decision could be quashed. Any bias whether influencing a decision or not

can bring the Councillor's office and the Local Authority into disrepute. Therefore, whilst the receipt of hospitality under the value of £25 would not be declarable in the register, this Code discourages the acceptance by Public Safety and Protection Committee members of any gift or hospitality from applicants or others involved in applications for licences or consent s within the remit of the committee, even where those gifts are of nominal value.

- 1.9 This Code is primarily aimed at Members of the Public Safety and Protection Committee and substitute; however various parts of it (such as the Section on Councillors supporting applicants) are relevant to all Bristol City Councillors.

## **2. The Councillor supporting a complaint on an Application**

- 2.1 The complaint may be from the personal experience of the Councillor or otherwise they may be representing one or more of their constituents who have raised concerns, for example, with the behaviour of a licenced driver.
- 2.2 A Councillor wishing to establish if they would be entitled to make a representation in their own right can seek guidance from a member of the Licensing team.
- 2.3 If a Member either makes a complaint or supports another's complaint then paragraph 4 of the Code of Conduct, which addresses the issue of when a personal interest is a prejudicial interest, should be considered as this action could be argued to give rise to an interest "which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest". Councillors should exercise caution and take great care not to conduct themselves in a manner which may subsequently be viewed as being in breach of the Code. Further advice in respect of interests can be sought from the monitoring officer.
- 2.4 A Councillor who is involved in an application as an interested party should take care not to abuse his position as an elected member to gain access to more information than would be available to an ordinary member of the public.

## **3. Constituents and Lobbying**

- 3.1 Lobbying of Members by their constituents is legitimate as is the practice of a Member who does not have a prejudicial interest acting as the representative of a constituent at a hearing if requested to do so .However, if a member of the Public Safety and Protection Committee is approached by persons wishing to persuade them to make a decision one way or another on a pending application then the Member should politely explain that they cannot discuss the issue as it may be construed as an unlawful pre-determination of the matter. The person should be referred to the Licensing Office who will provide suitable guidance in the circumstances of the particular case.

- 3.2 Where a Member, who is a serving member of the Public Safety and Protection Committee is asked to represent a constituent they cannot act as both a representative and a decision maker.
- 3.3 In assisting their constituents, Members should take care not to pressurise officers of the Licensing Authority or any other Authorities to exercise their professional judgement in a particular way and of course any conduct towards officers which amounts to bullying is entirely inappropriate. If Members have concerns they should raise them through appropriate channels, such as an individual's line manager or through the established scrutiny processes.

#### **4. The appearance of bias and pre-determination**

- 4.1. Decision making which may be described variously as being quasi-judicial/being a hearing to which the rules of natural justice apply/being a decision to which to which Article 6 of the European Convention on Human Rights (the right to a fair trial) applies, requires the decision maker to be able to act judicially. This includes a requirement to act without actual bias or without the "appearance of bias". It is obvious what constitutes actual bias.
- 4.2. The appearance of bias arises where a fair minded observer informed of the facts and having regard to circumstances of the particular case would conclude that there was a real possibility (sometimes referred to as "real danger") of apparent bias effecting the Local Authority's decision.
- 4.3. Section 25 of the Localism Act 2011 introduced a codified test for dealing with issues of bias and pre-determination where the decision maker had "or appeared to have had" a closed mind when making the decision.
- 4.4. Section 25 of the Localism Act 2011 provides that:  
"a decision maker is not to be taken to have had, or to have appeared to have had a closed mind when making the decision because:
  - a) The decision maker had previously done anything that directly or in directly indicated what view the decision maker took, or would or might take, in relation to a matter, and;
  - b) The matter was relevant to the decision."
- 4.5. The key point is that at the time the member considers the application they must have an open mind and appear to have an open mind when determining the application.
- 4.6. It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on licensing matters.
- 4.7. A Councillor may be involved in discussions about a taxi or street trading application before the matter comes before the PSP Committee. Such involvement need not on

its own debar a Councillor from participating in the decision making process when the application comes before committee for determination, providing that the Councillor has not already decided how they will vote on the matter. Councillors should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the Councillor considers this is not possible, the Councillor should withdraw from consideration of that application.

## **5. Procedure and conduct at meetings.**

- 5.1. Members of the Public Safety and Protection Committee or its sub-committees who are considering applications which may affect an individual's livelihood and/or the private and family life of residents etc. should take special care to ensure not only that justice is done but that it is seen to be done. To this end Councillors should conduct themselves at all times in an appropriate manner. They must remain alert and focussed on the business of the meeting and, importantly, they must appear to be alert and focussed on the business of the meeting during hearings. Councillors should not sleep, or appear to be asleep, consume food or drink, use electrical devices for any purpose not connected to the committee or allow other interruptions to the business in hand
- 5.2. Councillors should not be over familiar with officers and other individuals who regularly appear before the Committee. Whilst the hearings are to be conducted as a discussion rather than as a formal debate, this does not lessen the importance of the role of the Chair in providing a firm steer. On the contrary, the role of the Chair in leading the discussion that is required under the Regulations is extremely important and Councillors should, like the parties to the meeting, be led in the discussion by the Committee Chair so that the discussion remains focussed on relevant issues and proceeds in an orderly fashion with all relevant points being explored fully around the table.
- 5.3. The Chair and his/her colleagues must under no circumstances engage in unwarranted joviality or make comments and asides which are not directly relevant to the matter under consideration. It may be considered that such conduct will serve to put applicants and members of the public at their ease, but there is always a risk that the opposite effect will be produced and that the Applicant and other parties will feel that they are not being taken seriously. The Chair should therefore aim to foster a relaxed but nonetheless business like atmosphere in the hearing.
- 5.4. Whilst it is permissible for Members to make clear that they have relevant local knowledge (for example, the Chair may say "we all know the premises and their vicinity very well") it is not appropriate for Members to engage in personal anecdotes which are not directly relevant to the business before the meeting; members should focus on their duty to have regard to the representations made by other persons and bodies and to consider guidance and policy. It is unlikely anecdotes will have any relevance to the business of the meeting and recounting them can give the appearance that the Committee is not taking the matter as

seriously as the parties expect them to, or that the member is predisposed towards the interests of one party over another in advance of hearing from them all.

#### Fairness

- 5.5. When the Public Safety and Protection Committee is considering an application, all parties will be given an opportunity to put their case before the Committee. If a party does not attend, the Public Safety and Protection Committee may proceed in their absence providing it is in the public interest to do so.
- 5.6. All Members of the Public Safety and Protection Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of a particular application has started, that Member shall play no part in the decision making process for that particular application. Where an application is adjourned part heard, it shall be heard by the same Members, save for in exceptional circumstances.

#### Prejudicial and Disclosable Pecuniary Interests and the Prevention of Bias

- 5.7. The rules about prejudicial interests and disclosable pecuniary interests as set out in the Member Code of Conduct shall be firmly applied.
- 5.8. Members are also referred to the guidance about bias and pre-determination above.

#### Decision Making Process

- 5.9. When the Members of the Public Safety and Protection Committee move into private session to deliberate and reach a decision, they should be accompanied only by the Democratic Services Officer, Policy Officer and Legal Advisor, who shall take no substantive part in the debate nor in the decision making process. Only Members of the Committee can take part in the decision making process.

#### Site Visits

- 5.10. It is considered the need for site visits will only occasionally arise. While it is proper for the Committee to do this, care must be taken not to undermine the integrity of the hearing process. The following guidelines will help to prevent this: -
  - a) Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should refer the person concerned onto officers
  - b) There should be no discussion of individual applications (including those that have been determined) or of the application under consideration



- c) At the site visit, there should be no one-to-one discussions between Members and others
- d) Officers should always be in attendance at site visits.
- e) Officers should keep a note of who attended the visits, what occurred and an outline of any discussions

## **6 Participation of Ward Member in Sub-Committees which are convened to consider applications in the Member's own Ward**

- 6.1. All Councillors are required to act in the public interest and this will prevail over the interests of individual constituents in their Ward. Therefore a well informed observer would not consider that there was a real possibility of bias arising when Ward Members are participants in a Committee making decisions in respect of premises or individuals in their Ward. However, the volume of applications and the number of potential parties appearing before Committee Members is such that there is a higher risk in this area of the Council's work of a Member inadvertently serving on a Committee when they should have stepped down for example because they have provided assistance to one of the parties at an earlier stage. For this reason it would be good administrative practice in the context of this legislation to generally select Members to serve on Committees which will be dealing with matters in other areas of the City.

## **7. Training of members**

- 7.1. All Members serving on the Public Safety and Protection Committee and/or who have any decision making role on licensing matters including substitute members in accordance with the Council's Constitution shall be trained in relevant procedures prior to serving on the Committee.
- 7.2. Members must not take part in the decision making process at committee meetings unless they have attended mandatory training which will generally be provided in-house.
- 7.3. Members should attend any other specialised training sessions provided, since these will be designed to extend their knowledge of law and procedures for the matters dealt with by the committee. All training will be devised to assist Members in carrying out their role properly and effectively.
- 7.4. A training record will be maintained in respect of all training received.

# Annual Council

21 May 2020



**Report of:** Monitoring Officer

**Title:** Council Constitution – Virtual Meeting Procedure Rules

**Ward:** Citywide

## Recommendation

That Annual Council adopt the Virtual Meeting Procedure Rules in Appendix 1 of this report.

## Summary

This report asks Annual Council to adopt the Virtual Meeting Procedure Rules as part of the Council's Constitution to enable the Council to conduct virtual meetings.

## The significant issues in the report are:

The Virtual Meeting Procedure Rules are set out in Appendix 1 of this report. These rules enable the Council to hold virtual meetings of Council, Cabinet and Committees of the Council and for the management of those meetings and the attendance of members of the public at those meetings.

## Policy

1. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4 April 2020 and apply to all local authority meetings held before 7 May 2021. The Virtual Meeting Procedure Rules are based on these Regulations.

## Consultation

2. **Internal**  
Mayor and Party Group Leaders – 4 May 2020  
Whips – 6 May 2020
3. **External**  
Not applicable

## Context

4. The ability of the Council to hold public meetings has changed in light of the Covid-19 pandemic. In April 2020, the Council published an initial version of the Virtual Meeting Procedure Rules to enable virtual meetings to be held. This was done pursuant to the powers in the Article 17.02(c) of the Council's Constitution for the Monitoring Officer to make changes to the Council's Constitution to reflect changes in legislation. Virtual meetings have been held since 22 April 2020.

## Proposal

5. The proposals in this report build on the initial version of the Virtual Meeting Procedure Rules, incorporating further provisions relating to public participation in virtual meetings. The main provisions in the rules are as follows:
  - Virtual meetings will take place using video conference facilities and observers will view the meeting via live stream on YouTube.
  - Members of the public are able to submit statements, questions and petitions to a virtual meeting. It should be noted that any statements, questions or petitions submitted will be published on the Council's website.
  - The Chair of a virtual meeting shall determine, in consultation with the Proper Officer, whether members of the public shall be permitted to attend a virtual meeting in order to make a statement, ask a question or present a petition.
  - The provisions for public attendance at a virtual meeting will be outlined on the agenda for each meeting.
  - Members of the public wishing to attend a virtual meeting need to give at least two clear working days' notice to the appropriate officers.

## Other Options Considered

6. The proposals in this report are made to reflect changes in legislation therefore, no other options have been considered.

## Risk Assessment

7. The Council has a duty to keep its Constitution under review and to update its rules of procedure to reflect changes in legislation. The Virtual Meeting Procedure Rules ensure transparency in the Council’s decision making processes as they will enable the Council to continue to conduct Council business in public during the Covid-19 pandemic. The updated rules will also facilitate public participation in Council meetings to maintain democratic engagement in the Council’s decision making processes.

## Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons’ disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
    - tackle prejudice; and
    - promote understanding.

## Legal and Resource Implications

### Legal

The Virtual Meeting Procedure Rules implement the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4 April 2020. These rules were initially made under the delegation to the Monitoring Officer in Article 17.02(c) of the Council’s

Constitution to make changes to the Council’s Constitution to reflect changes in legislation. They have now been updated and are reported to Annual Council for formal approval.

**(Legal advice provided by Nancy Rollason, Head of Legal)**

**Financial**

**(a) Revenue**

Not applicable

**(b) Capital**

Not applicable

**Land**

Not applicable

**Personnel**

Not applicable

**Appendices:**

Virtual Meeting Procedure Rules

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None

# **VIRTUAL MEETINGS PROCEDURE RULES (VMPR)**

These rules have been made by the Monitoring Officer in accordance with Article 17.02(c) of the Council's Constitution in order to implement The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (the 'Regulations') and will remain in force until those Regulations are repealed.

## **VMPR1**

### **VIRTUAL MEETINGS**

#### **VMPR1.1**

##### **Virtual meetings generally**

A virtual meeting is a meeting of the Council, Cabinet, Committee or Sub-committee of the Council held by remote access and where remote attendance by Members of the Council is by way of video conferencing.

#### **VMPR1.2**

##### **Holding virtual meetings**

The Council, Cabinet and all Committees of the Council may hold all such virtual meetings that are deemed necessary and where such meetings are held these rules of procedure shall apply.

## **VMPR2**

### **AMENDMENTS TO EXISTING PROCEDURE RULES**

Where the Council holds a virtual meeting, the existing provisions in the Council Procedure Rules, Committee Procedure Rules, Executive Procedure Rules, Access to Information Procedure Rules and Licensing Committee Procedure Rules listed in the table at Annex 1 of these rules shall be suspended or amended in respect of that meeting. For the avoidance of doubt, where there is any inconsistency between these rules and existing provisions in the Council's Constitution, these rules shall take precedence.

## **VMPR3**

### **NOTICE OF MEETINGS**

#### **VMPR3.1**

##### **Calling urgent virtual meetings**

The Proper Officer may, following consultation with the Chair of the Overview and Scrutiny Management Board, call an urgent virtual meeting without notice. The reasons for calling an urgent virtual meeting shall be clearly stated at the beginning of the urgent virtual meeting.

## **VMPR3.2**

### **Moving or cancelling virtual meetings**

The Proper Officer may, following consultation with the Chair of the relevant virtual meeting move or cancel a virtual meeting without notice.

## **VMPR4**

### **ACCESS TO VIRTUAL MEETINGS**

#### **VMPR4.1**

##### **Members of the Council**

Members of the Council will attend virtual meetings through teleconferencing facilities.

#### **VMPR4.2**

##### **Press and members of the public**

Virtual meetings will be live webcast and broadcast on YouTube. The press and members of the public will be able to access virtual meetings through the live webcast. Links to meetings will be available through the [Council website](#).

#### **VMPR4.3**

##### **Exclusion of press and members of the public – exempt information**

The press and members of the public will not be able to access meetings considering exempt information and those meetings will not be webcast.

## **VMPR5**

### **PUBLIC PARTICIPATION**

#### **VMPR5.1**

##### **Public participation - generally**

Members of the public will be able to participate in all virtual meetings in the following ways:

- (a) Public statements, questions and petitions can be submitted in advance of the meeting and will be published on the Council's website.
- (b) Public statements will be made available to all members of the virtual meeting, however members of the public will not be able to present their statement in the virtual meeting.
- (c) Public questions will receive a written response. No supplementary questions will be permitted.
- (d) Public petitions will be received by the chair of the meeting without debate and sent to the relevant executive member, committee or council officer for a response.

## **VMPR5.2**

### **Public participation – attendance at virtual meetings**

Notwithstanding VMPR5.1, the Chair of any virtual meeting may, in consultation with the Proper Officer, permit any of the following additional forms of public participation in a virtual meeting:

- (a) the ability for a member of the public to attend a virtual meeting to ask up to two questions about any matters on the agenda for that virtual meeting. A member of the public may ask up to two supplementary questions;
- (b) the ability for a member of the public to attend a virtual meeting to make a statement about any matter on the agenda for that virtual meeting;
- (c) the ability for a member of the public to attend a virtual meeting to present a petition.

## **VMPR5.3**

### **Public participation – further provisions**

Where VMPR5.2 applies, the following procedure shall be followed.

- (a) the agenda for any virtual meeting will state whether members of the public are able to attend the virtual meeting;
- (b) a member of the public will only be entitled to attend a virtual meeting to exercise the rights in VMPR5.2 and for no other purpose;
- (c) where a member of the public intends to attend a virtual meeting to exercise the rights in VMPR5.2, they shall give at least two clear working days notice to the Council's Democratic Engagement Service of their intention to do so;
- (d) any member of the public attending a virtual meeting shall comply with all such instructions about attendance at a virtual meeting as provided to them by the Council's Democratic Engagement Service;
- (e) the Chair of any virtual meeting may, in consultation with the Proper Officer, determine the maximum number of members of the public who may attend a virtual meeting or that a member of the public shall not be permitted to attend a virtual meeting or that they shall be excluded from a virtual meeting.

## **VMPR6**

### **VOTING**

Voting at virtual meetings shall take place through the voting system within the video conference or by a show of hands or by a roll call at Full Council.

## **VMPR7**

### **REVIEW**

These rules will be kept under regular review and updated as necessary by the Monitoring Officer under Article 17.02(c) of the Council's Constitution.



## Annex 1

Provision		Amendment/suspension
<b>Council Procedure Rules (CPR)</b>		
<b>CPR2.1(1)</b>	Requirement that Full Council hold seven ordinary meetings annually	Suspended
<b>CPR10</b>	Petitions, questions and statements	VMPR5 shall take precedence in the event of any inconsistency.
<b>CPR13.2</b>	Right to require motion or amendment in writing	'handed' replaced by 'emailed'
<b>CPR15.1(b)</b>	Motion to rescind a previous decision	'placed in writing' replaced by 'emailed'
<b>CPR19.1/2</b>	Standing to speak	Suspended
<b>Access to Information Procedure Rules (APR)</b>		
<b>APR6(iii)</b>	Supply of copies	'on payment of a charge for postage and any other costs' removed
<b>APR9</b>	Summary of the rights of the public	'at City Hall, College Green, Bristol BS1 5TR' replaced by 'on the Council's website'
<b>Executive Procedure Rules (EPR)</b>		
<b>EPR4</b>	Public forum (questions and statements)	VMPR5 shall take precedence in the event of any inconsistency.
<b>EPR5</b>	Questions from councillors and the public	VMPR5 shall take precedence in the event of any inconsistency.
<b>Committee Procedure Rules (CMR)</b>		
<b>CMR9</b>	Petitions, questions and statements	VMPR5 shall take precedence in the event of any inconsistency.
<b>CMR9.3(a)</b>	Notice of questions	'by delivering it in writing or' removed
<b>CMR9.6</b>	Record of questions	after the word 'inspection' insert 'and make available on the Council's website'
<b>CMR11.2</b>	Right to require motion or amendment in writing	'handed' replaced by 'emailed'
<b>CMR12.1(b)</b>	Motion to rescind a previous decision	'placed in writing' replaced by 'emailed'
<b>Licensing Committee Procedure Rules (LCR)</b>		
<b>LRC6</b>	Notice of and summons to meetings	'at the council's principal office' replaced by 'on the Council's website'
<b>CMR9</b>	Petitions, questions and statements	VMPR5 shall take precedence in the event of any inconsistency.

<b>LCR9.1(a)</b>	Petitions, questions and statements	'in writing or' removed
<b>LCR9.4(a)</b>	Notice of questions	'in writing or' removed
<b>LCR11.2</b>	Right to require motion or amendment in writing	'handed' replaced by 'emailed'

The table is intended to capture both the existing rules which are inconsistent with the Regulations for purpose of clarity and ease of reference and those that are being amended at the Council's discretion in order to facilitate virtual meetings. It should be noted that any rules that have not been referenced in this table, but that are nonetheless inconsistent with the Regulations will be disapplied by virtue of Regulation 5(5).