

Part 5

Codes and Protocols

Councillors' Code of Conduct

Eastleigh Borough Council

Joint Statement

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

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

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

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

General principles of councillor conduct

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

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

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

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.
- In undertaking my role:
- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest

- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

Code of Conduct for Councillors

1. Application

This Code of Conduct applies to you whenever you are acting in your capacity as a Councillor or are giving the impression of acting in your capacity as a Councillor of Eastleigh Borough Council, including –

- at formal meetings of the Council, its committees, sub-committees, its Cabinet and Cabinet committees
- when acting as a representative of the authority
- in taking any decision as councillor
- in discharging your functions as a ward councillor
- at site visits

2. General Conduct

You must –

- 2.1 provide leadership to the authority and communities within its area, by personal example
- 2.2 treat other councillors and members of the public with respect
- 2.3 not bully or harass any person
- 2.4 promote equalities and not discriminate unlawfully against any person
- 2.5 recognise that staff (other than political assistants) are employed by and serve the whole authority and not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the Authority
- 2.6 respect the confidentiality of information which you receive as a Councillor –
 - 2.6.1 not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and
 - 2.6.2 not obstructing third parties' legal rights of access to information
- 2.7 not conduct yourself in a manner which is likely to bring the Authority into disrepute
- 2.8 use your position as a Councillor in the public interest and not for personal advantage
- 2.9 accord with the authority's reasonable rules on the use of public resources for private and political purposes
- 2.10 exercise your own independent judgement, taking decisions for good and substantial reasons –
 - 2.10.1 attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups
 - 2.10.2 paying due regard to the advice of staff, and in particular to the advice of the statutory officers, namely the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer and

- 2.10.3 stating the reasons for your decisions where those reasons are not otherwise apparent
- 2.11 account for your actions, particularly by supporting the authority's scrutiny function
- 2.12 ensure that the authority acts within the law.

3. Disclosable Pecuniary Interests

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

You need to register your interests so that the public, authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. You are personally responsible for deciding whether or not you should disclose an interest in a meeting.

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

You must –

- 3.1 comply with the statutory requirements to register your disclosable pecuniary interests and you must disclose, leave the room and not participate in respect of any matter in which you have a disclosable pecuniary interest
- 3.2 before the end of 28 days beginning with the day on which you become a councillor or co-opted councillor of the authority, notify the Monitoring Officer, in writing, of any disclosable pecuniary interests
- 3.3 ensure that your register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any changes in respect of your disclosable pecuniary interests
- 3.4 make verbal declaration of the existence of any disclosable pecuniary interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent
- 3.5 “Meeting” means any meeting organised by or on behalf of the authority, including –
 - 3.5.1 any meeting of the Council, or a committee or sub-committee of Council
 - 3.5.2 in taking a decision as a ward councillor or as a member of any body of the Council; and
 - 3.5.3 at any site visit to do with business of the authority

4. Other Interests

- 4.1 In addition to the requirements of Paragraph 3, if you attend a meeting at which any item of business is to be considered and you are aware that you have a non-disclosable pecuniary interest or non-pecuniary interest in that item, you must make verbal declaration of the existence of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent

- 4.2 You have a non-disclosable pecuniary interest or non-pecuniary interest in an item of business of your authority where –
- 4.2.1 a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or of a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority’s administrative area, or
 - 4.2.2 it relates to or is likely to affect any interests listed in the Table in the Appendix A to this Code, but in respect of a member of your family (other than a “relevant person”) or a person with whom you have a close association and that interest is not a disclosable pecuniary interest

5. Gifts and Hospitality

- 5.1 You must not accept gifts or hospitality, irrespective of estimated value, which could give rise to a real or substantive personal gain or a reasonable suspicion of influence to show favour from persons seeking to acquire, develop or do business with the authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.
- 5.2 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the authority.
- 5.3 You must, within 28 days of receipt of an offer, notify the Monitoring Officer any significant gift or hospitality that has been offered and acceptance refused.
- 5.4 The Monitoring Officer will place your notification on a public register of gifts and hospitality.
- 5.5 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose.

Appendix L (Part 5 – Codes and Protocols)

Within 28 days of becoming a councillor or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”.

You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

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

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

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.
4. Non-participation in case of disclosable pecuniary interest
 - 4.1 Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
 - 4.2 Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it
5. Disclosure of Other Registerable Interests
 - 5.1 Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the

room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

6. Disclosure of Non-Registerable Interests

- 6.1 Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
- 6.2 Where a matter arises at a meeting which affects –
- a. your own financial interest or well-being;
 - b. a financial interest or well-being of a relative, close associate; or
 - c. a body included in those you need to disclose under Other Registrable Interests as set out in Table 2 , you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied
- 6.3 Where a matter affects your financial interest or well-being: a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and; b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
- 6.4 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

Table 1

Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a councillor has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a councillor, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

For this purpose;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

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

Table 2

Other Registrable Interests

You have a personal interest in any business of your authority where it relates or is likely to affect:

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

Staff Code of Conduct

This is contained on the Council's intranet and includes sections on:

- *Standards and Code of Ethics*
- *Disclosure of Information and Confidentiality*
- *Political Neutrality*
- *Relationships (with family or close personal contacts, with Councillors, the Local Community and Service Users and Contractors)*
- *Declaration of Interests*
- *Outside Commitments and activities*
- *Outside Hobbies and Interests, Course/Exhibition Attendance*
- *Customer care/Standard of Dress and Appearance/Conduct to other*
- *Equality/Diversity*
- *Bringing the Council into Disrepute*
- *Purchasing and Use of Financial Resources*
- *Convictions during the course of Employment*
- *Hospitality, Gifts and Sponsorships*
- *Intellectual Property*
- *Information Technology and Data Security*
- *Contact with the Media*
- *Trade Union Representatives*
- *Social Networking*

PROTOCOL ON COUNCILLOR/STAFF RELATIONS

The Distinctive Roles of Councillors and Staff

Put simply, Councillors are responsible for determining policy, staff are responsible and accountable for implementing policy and managing the organisation

Staff Role

Given these roles, staff are expected to work within and pursue Council policies. Equally, Councillors should not interfere with Executive matters that are properly the responsibility of staff

Councillors have a complex role and are required to act simultaneously in four capacities: -

- as **Politicians** - in this capacity Councillors will normally belong to a political grouping represented on the Council and will express political values and support the policies of the group to which they belong
- as **Representatives** - in this capacity Councillors interpret and express the wishes of the electorate and seek to account for service priorities, allocation of resources and ultimate performance
- as **Community Leaders** - Councillors have a role in shaping and carrying forward new initiatives and proposals to enhance the quality of life in the Borough
- as **Council/Committee Members** - in this capacity Councillors have personal, individual, and collective responsibility for the Council organisation and its activities. They are responsible for ensuring that adequate management arrangements are in place; to develop and take decisions on the use of the Council's physical, financial and human resources, and to concern themselves with the performance, development, continuity and overall well-being of the organisation.

Staff of the Council have, in broad terms, the following main roles: -

- They are the **Managers** or employees of the services for which the Council has appointed them. They are accountable for the efficiency and effectiveness of those services and for proper professional practice in discharging their responsibilities.
- They are the professional advisors to the Council, its Committees and Councillors in respect of their areas of responsibility.
- They may initiate policy proposals as well as being implementers of agreed policy.

- They ensure that the Council always acts in a lawful manner.

The Distinctive Roles of Councillors and Staff - Political Neutrality of Staff

Any request for staff to attend group meetings should be made through the Chief Executive. If staff attend and make information available to the majority party group, the same opportunity would be given to the minority party groups.

Discussions between Staff and Councillors on policy issues are quite proper. In particular Corporate Leadership Meetings are held periodically at which Management Team meets senior administration Councillors to discuss substantive matters. Those meetings have no Executive decision powers beyond those matters specifically delegated to the staff concerned.

Staff will often wish to seek political guidance in framing policy proposals. But when Staff write committee reports for Councillor decision, they have a duty to give the advice dictated by their professional expertise. Councillors should not, therefore, seek to influence unduly the content of reports to committee, and party political group meetings have no right to rewrite staff reports or instruct on their content.

Staff must be able to report as they see fit, although Councillors are equally entitled to reject proposals and recommendations which are put to them.

Nothing in the above proposals removes the right for Councillors to request individual briefings.

Relationship with Staff - Contacts with Staff

Councillors are elected to represent the interests of their constituents, but they should not seek special treatment for any individual. When dealing with council staff, they must declare any special relationships with constituents.

Councillors should not put pressure on a staff

member on matters which have been delegated for staff decision. This might lead staff to make decisions that:

- are not objective and cannot be accounted for
- favour unfairly one member of the public over another.

Councillors should avoid bringing undue influence to bear on a staff member to take any action which is:

- against procedure or policy
- a breach of the disciplinary code for employees
- in conflict with standing orders or financial regulations.

Staff have a duty to report to the Chief Executive any attempt to exert improper influence. The Chief Executive, or nominated deputy, will investigate any such report.

Chairs of Committees

Management Team, Local Area Managers and Service Heads are expected to work closely with committee chairs (and, of course, vice-chairs) and to meet regularly with them. However, Council decisions are not made by the chair alone but by the committee.

The Chair should not seek to influence staff to reduce the options or withhold information which they should properly report to a committee.

Minutes of Meetings

Minutes of meetings are an impartial record of the decisions made and Councillors should not attempt to influence the contents therein except as regards to accuracy.

Involvement of Ward Councillors

Whenever a public meeting is organised by the Council to consider a local issue, all the councillors representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward councillors

should be notified before the exercise.

Ceremonial Events

The Mayor, or in their absence the Deputy Mayor will be the appropriate person to lead Council ceremonial events which are not specifically associated with a particular committee and to represent the Council by invitation at ceremonial events of other organisations which are not specifically associated with a particular committee.

Cabinet Members, Chairs of Committees or where they are not available Vice-Chairs are the appropriate candidates for ceremonial events within the scope of their portfolio/committees. Where neither the Chair nor Vice-Chair of a Committee are available then any other member may be nominated by the Chair or Vice-Chair.

Local Councillors should always be informed of, and where possible, invited to ceremonial events taking place within their own Wards.

Any councillor taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasions for party political advantage bearing in mind that the councillor is representing the Council as a whole.

Public Relations and Press Releases

The Council's Public Relations Unit services the Council as a whole and must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party. Council press releases are drafted by staff and will often contain quotations (within the limits of the Local Government Act 1986) from appropriate Councillors and from the Mayor and Deputy Mayor of the Council about ceremonial events. Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Councillors to indicate their party political affiliation.

Manager is responsible for ensuring that councillors' enquiries are dealt with promptly and accurately in their Unit.

A list of the contacts or the other arrangements that apply in each Unit is given in Appendix B, Appointment of proper and designated officers. Where a member of staff with specific responsibility for Councillors' enquiries is listed this is usually the person they should contact first although they are always entitled to contact a more senior staff member if they so wish.

Councillors' enquiries will normally be responded to within 5 working days. If enquiries require a longer period for response, then the Councillor will be informed when a response can be made.

In addition, if an enquiry is very time consuming, the staff member may discuss the enquiry's impact on other work with a member of Corporate Leadership Board.

Relationships with Staff - Personal Relationships

The national code of conduct states:

Mutual respect between Councillors and staff is essential to good local government. Close personal familiarity between individual Councillors and staff members can damage this relationship and prove embarrassing to other Councillors and staff members.

It is not enough to avoid actual impropriety. Individuals should at all times avoid any occasion for suspicion and any appearance of improper conduct.

Councillors must declare to the Monitoring Officer any relationship with a staff member which might be seen as influencing their work as a Councillor. This includes any family, business or domestic relationships. Staff, too, have a duty to declare any such relationship to their manager.

Councillors must not sit on the Council committee responsible for the Unit for which an employee does significant work to whom they are:

- married
- the partner
- otherwise closely related such as sisters, brothers, parents and grand parents

or where a Councillor's relationship with the staff member would jeopardise the work of the Council.

Access to Information - Members of Committee or Sub-Committee

As a Council member, a Councillor has all of the rights available to members of the public to inspect reports, minutes and background papers appearing on the public part of any Council committee or sub-committee agenda.

However, detailed background papers not usually available to the public would only be available to a Council member who sits on the relevant committee which considered the reports and providing it is not deemed to be confidential.

Members also have additional rights as a Councillor. They are legally entitled to information that they need in order to carry out their work as a Councillor. But they are not entitled to confidential information which is not directly relevant to their role as Councillor or information which relates to a particular person or a commercially sensitive matter.

Councillors should not request confidential information in order to use it for a purpose not legitimate for their role as a councillor, because they are in a position of trust. The motive for requesting confidential information is, therefore relevant, and councillors should be prepared to disclose the reason for their request.

If, for example, councillors are pursuing an issue on behalf of a constituent, this would be a legitimate reason and should be made known to the staff from whom the information is sought. Councillors must not abuse this trust by disclosing information that is confidential or exempt from disclosure to the public. If this occurs and the Council suffers a loss, there may be a personal penalty.

This is particularly relevant to information which is commercially sensitive, related to a tendering process or personal information relating to staff or members of the public.

In addition to Committee reports and background papers Councillors are entitled to see any papers the Council has which properly relate to the work of a committee or sub-committee that they are on.

However, because an issue has been considered by a committee, this does not mean

that the Councillor may see all the papers that relate to it.

If the papers contain exempt or confidential information the Councillor will need to demonstrate "a need to know" and give reasons why they need to see the papers in order to perform properly their duties as a Councillor and this need must not be outweighed by any public interest requiring nondisclosure. Councillors must not ask for information on a matter on which they would have to declare an interest.

If a Councillor is refused access to documents which they feel they have the right to see, the dispute will be determined by the Chief Executive.

Access to Information - Councillors not a member of a committee or sub-committee

A Councillor will have the right to see some information on committee agendas which is exempt from disclosure to the public, on a "need to know" basis.

Councillors are entitled to see exempt information about:

- the financial or business affairs of a particular person who is the subject of a committee report (provided it is relevant to that particular report)
- proposed costs of acquiring property (or good or services)
- the identity of a person (or group) tendering for a contract with the Council.

However, Councillors have no automatic right of access to information about:

- any particular employee of the Council
- applicants for employment with the Council
- recipients of financial assistance from the Council
- applicants for such assistance
- recipients of any Council service
- applicants for any such service
- items proposed during negotiations over a contract for property, goods or services
- negotiations or consultations with the Council's trades unions
- legal proceedings taken or defended by the authority where the Council interest could be compromised
- any action to be taken to prevent,

- investigate or prosecute a crime
- the identity of a protected informant

However, if the Councillor can establish that in order to carry out their duties as a Councillor, they need information to which they would not normally have access, then the Chief Executive may agree to provide access.

If a Councillor attends a committee meeting on which they do not serve as a member, they should leave at any time when matters are discussed which relate to an individual person or a commercially sensitive matter. But, if they establish their "need to know" about this matter, they would be entitled to remain at the discretion of the meeting.

Political Party Workers:

Councillors may at times be assisted by political party workers. There is no objection to this, but no non-elected party worker has any entitlement to:

- information to which members have access in their role as Councillors
- use Council facilities provided for the use of Councillors

The principles which apply to use of facilities provided for councillors (and the staff employed to assist them) apply equally to all Council property and facilities; and all Council employees.

Use of Council Facilities

Councillors must use any Council facilities provided for them in their role as Councillor strictly for that purpose and no other. For example, Councillors must not use rooms in the Civic Offices or any of the Council's paper, computers, photocopiers, or printers for any personal, business-related or party-political matter, nor on behalf of any community groups of which they are a member, unless arrangement or payment has been agreed for the service with the Monitoring Officer.

Advice from Council Staff

Staff can only be asked to provide advice to Councillors on matters which clearly relate to those matters which arise from being an elected Councillor.

Date: 11 November 2021 (Revision 3)

LOCAL CODE OF CONDUCT FOR COUNCILLORS AND STAFF DEALING WITH PLANNING MATTERS

INTRODUCTION

This code has been adopted to ensure that all planning matters are handled with the highest integrity, openness and consistency by all concerned. It applies to everybody involved in operating the planning system at Eastleigh Borough Council.

It is essential that the Borough Council always acts in a way which is clearly seen to be fair and impartial. This relies upon a shared understanding of the respective roles of Councillors and staff, and upon trust between them. The following quotation from the Local Government Association helps to illustrate the point: -

"The role of an elected councillor on a planning committee involves a balance between representing the needs and interests of individual constituents and the community, with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, as the Nolan Committee in its report acknowledges, can give rise to great tensions."

(Source: Probity in Planning 2019 - Annex A).

It is also quite proper for Councillors to provide a voice for what might be a silent or inarticulate minority.

Councillors and staff who have any dealings with planning matters are required to read this Code thoroughly and to put it into practice. The Code will be reviewed annually, and comments are invited on any alterations which would raise the standards of the Code. If there are any such points or any part of the Code which is unclear please contact either the Executive Head of Planning and Economy or the Legal Services Manager as soon as possible. They will be pleased to help you.

1.0 GENERAL ROLE AND CONDUCT OF COUNCILLORS AND STAFF

- 1.1 Legislation emphasises the overriding requirement that the public are entitled to expect the highest standards of conduct and probity by all persons holding public office. There are a number of statutory provisions and codes setting standards which must be followed if the public perception of the integrity of public service, particularly town and country planning, is to be maintained and improved. Councillors are reminded that they are required to comply with the statutory provisions on the disclosure of pecuniary interests, the National Code of Local Government Conduct, this Council's Standing Orders and Scheme of Management and Delegation.
- 1.2 Whilst this Local Code deals primarily with planning applications, its principles apply with equal vigour to consideration of Local Plans, Development Briefs, Planning enforcement cases and all other planning matters. An *overriding* principle is that when local authorities are dealing with planning matters, they should only take into account material planning considerations.

- 1.3 Section 54A of the Town and Country Planning Act 1990 established a planned system whereby all planning applications are determined by primary reference to the Development Plan. Thus, if the Development Plan is material to the application, then the statutory requirement is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. This means the totality of the Plan rather than selective application.
- 1.4 Staff involved in the assessment and determination of Planning matters must also act in accordance with the Council's Standing Orders and Scheme of Management and Delegation and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct. Particular attention is drawn to Clause 3 "... (Staff) shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions ...".
- 1.5 This Local Code is supplemental to the provisions referred to above and provides further specific advice and guidance for Councillors and staff involved in planning matters. A key principle is that Councillors should represent their constituents as a body and vote in the interests of the Borough as a whole. Locally based considerations should never prejudice the interests of the wider community as a whole. Councillors should take account of all views expressed; they should not be biased towards any person, company, group or locality, nor put themselves in a position where they appear to be so.
- 1.6 A further key principle is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is based upon valid planning reasons which can be substantiated. (Source: NPPF1 - Annex 1).
- 1.7 Councillors and staff should not accept gifts, nor should they accept hospitality. However, if a degree of hospitality is truly unavoidable, it should be kept to the minimum and its receipt declared as soon as possible. Councillors should send written notice to the Monitoring Officer. Staff should notify their Operational Manager or Functional Lead. In all cases the Council's Code of Conduct on hospitality should be followed and details must be entered in the appropriate record book.
- 1.8 Staff must always act impartially and seek permission from the appropriate senior staff for any private work or interest which they wish to take up. The Council will review regularly the outside activities declared by its staff and the restrictions placed upon such activities by the Council.
- 1.9 Any allegations of illegal activity in relation to the planning process (including corruption or fraud), should be reported urgently to the Chief Executive.
- 1.10 The Chief Executive, in consultation with the Chief Internal Auditor (on behalf of the Chief Financial Officer) and the Monitoring Officer, will decide on the appropriate form of investigation, whether by the Chief Internal Auditor or otherwise and including reference to the police.

2.0 DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 Councillors should observe strictly the guidance on declaring pecuniary and non-pecuniary interests as set out in: -
- (i) the statutory provision on the Disclosure of Pecuniary Interests,
 - (ii) the National Code of Local Government Conduct,
 - (iii) the Guidance for Good Practice on Councillors' Interests, published by the Commission for Local Administration.
- 2.2 The register of Councillors' Interests maintained under the Local Government and Housing Act 1989 will be updated annually. Where any changes occur to Councillors' interests, whether by way of addition or deletion, they should be notified by the councillor concerned to the Monitoring Officer as soon as they occur.
- 2.3 All Councillors participate in development control decision-making through the five local area committees. However, initial decision-making during preparation of the Local Plan and other major planning policies is limited to those Councillors who sit on the Policy and Review Committee. It is this Committee which allocates significant areas for development and other uses. Thus, Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on this Committee. Any Councillors, who are in this category, should also avoid membership of the relevant Working Groups. Although not decision-making forums, these Working Groups are particularly influential in land-use policy formulation.
- 2.4 Guidance on non-pecuniary interests is contained in the National Code of Local Government Conduct and in the Ombudsman's guidance. The guiding rule is that a Councillor should not use their position to further a private or personal interest, rather than the general public interest; or give grounds for such suspicion. The test for deciding whether a non-pecuniary interest should be declared is -whether a member of the public, knowing all the facts would reasonably think that the Councillor might be influenced by it. If so, the interest must be declared. Subject to the limited exceptions set out in the Code, the Councillor should take no further part in the relevant proceedings. The responsibility for declaring an interest lies with the individual Councillor who should seek advice from the Monitoring Officer if necessary.
- 2.5 Training is held after Council elections to give guidance to new Councillors on the declaration of interests and any other issues in the National Code. All Councillors will also receive annual refresher training in relation to the practical operation of this Local Code.
- 2.6 The Council has arranged an annual programme of training on town and country planning for all Councillors to keep up-to-date in their knowledge of legislation, policies, procedures and decision-making. Councillors are expected to attend this training.

3.0 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS, STAFF AND THE COUNCIL

- 3.1 If Councillors or staff submit their own development proposal or development in which they have an interest to the Council, or act as an agent for such a proposal, they should take no part in its assessment and the decision-making. The Council's Monitoring Officer should be informed by the Councillors or staff of all such proposals as soon as they are submitted. Members of staff who have not been involved in the processing of a planning matter, or in the formulation of the recommendation, have the same rights to participate in the decision-making process as members of the public.
- 3.2 Proposals submitted by Councillors and staff should be reported to the Area Committees or Joint Area Committee as written agenda items and not dealt with by staff under delegated powers.
- 3.3 Proposals for the Council's own development (or development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with guidance given in Planning Practice Guidance. This requirement also applies to private applications in respect of Council-owned land (such as a private application prior to a Council land sale being agreed or negotiated). The planning decisions must be made strictly on planning merits and without any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

4.0 LOBBYING OF AND BY COUNCILLORS AND ATTENDANCE AT PUBLIC MEETINGS BY STAFF AND COUNCILLORS

- 4.1 When Councillors undertake their constituency roles, it seems inevitable that they will be subject to lobbying by interested parties and the public on planning matters and specific planning applications. When Councillors are lobbied, they need to exercise great care to maintain the Council's and indeed the Councillor's own, integrity and the public perception of the town and country planning process.
- 4.2 Councillors who find themselves being lobbied should take active steps to explain that, whilst they can listen to what is said, it would prejudice their impartiality if they expressed a conclusive point of view or any fixed intention to vote one way or another.
- 4.3 Councillors involved in the determination of planning matters should listen to all points of view about planning proposals and refer persons who require planning or procedural advice to planning staff. Councillors should not indicate (or give the impression of) conclusive support or opposition to a proposal or declare their voting intention before the meeting at which a decision is to be taken. To do so without all relevant information and views, would be unfair, prejudicial and may amount to maladministration.
- 4.4 Taking account of the need to take decisions impartially, Councillors must weigh up all the material considerations reported at each Committee meeting. They should not be biased (or appear to be biased) towards any person, company, group or locality. Councillors who commit themselves firmly to a

particular view on a planning issue, prior to its consideration at a Committee, must decide whether the public (or other interested body) would believe that they have prejudiced their position and were incapable of weighing up all the material considerations. If the Councillor feels that the public would believe they had come to a conclusive view on the planning matter or application before the Committee meeting, then they should consider not taking part in the debate and not voting on the issue (refer to paragraph 7.4).

- 4.5 If planning applications are considered by a succession of Committees or meetings of different organisations attended by Councillors, each consideration will require the Councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
- 4.6 Where the Monitoring Officer believes that a Councillor has prejudiced their position by expressing a conclusive view on a planning matter or application before its determination by the Committee, the Monitoring Officer will advise them that it would be inappropriate for that Councillor to take part in the debate, or vote on the application.
- 4.7 Whilst Councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committees when all available information is to hand and has been considered. Individual councillors should reach their own conclusions on an application or other planning matter rather than follow the lead of another councillor. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote. Decisions can only be taken after full consideration of the Committee report and information and discussion at the Committee meeting.
- 4.8 Councillors should exercise great care when expressing their firm support for, or opposition to, a proposal in their ward before it has been fully considered by the relevant Committee. Such actions can easily be misunderstood by parties to the application and by the general public. In this regard, Councillors should not lobby other Councillors to act for them, or act as an agent for other Councillors, or put pressure on staff for a particular recommendation.
- 4.9 Staff who are wholly or partly involved in the assessment or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their Service Manager. To do so could lead to allegations of prejudice or bias to a particular point of view. If accidentally put in such a position, staff should only provide information and give no view on the merits or otherwise of the proposal.
- 4.10 When attending public meetings Councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.
- 4.11 If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will in turn advise the appropriate staff (usually the Chief Executive and the Executive Head of Housing and Development).

5.0 PRE-APPLICATION DISCUSSIONS - PRESENTATIONS

- 5.1 Planning staff should always be in attendance at pre-application discussions (and pre-decision discussions) with applicants and agents on important planning issues. It should always be made clear by planning staff at the outset of discussions that they will not bind the Council to make a particular decision, and that any views expressed are their provisional professional opinions.
- 5.2 Advice given by staff advising on planning matters will be consistent and based upon the Development Plan (Minerals and Waste and Local Plan) and other material considerations. Every effort should be made to ensure that there are no significant differences of interpretation of planning policies or the range or weight of other material considerations between planning staff.
- 5.3 Staff advising on planning matters will ensure that their advice is not partial, nor seen to be. This is because a consequent report could be seen as advocacy for a particular point of view. A written note should be made of significant pre-application discussions and important telephone conversations. Where contentious issues have been discussed a follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent.
- 5.4 Some Borough Councillors also serve on Parish or County Councils or voluntary organisations. When acting in their capacity as Borough Councillors they should always act in the best interests of the Borough as a whole. If they choose to speak in advocacy of the interests of some other body they should declare that to be the case.

6.0 REPORTS WRITTEN TO COMMITTEES

- 6.1 Reports to Committee on planning matters should be accurate and cover all relevant points. Where a planning application is subject to a written report, this will refer to the provisions of the Development Plan and all other relevant material planning considerations including a full description of the site and any related planning history.
- 6.2 All reports requiring a decision will have a written recommendation. Oral reports will be used primarily to describe the planning application with the aid of PowerPoint Presentation, and to update Councillors on the accompanying written report. All reports will contain a technical appraisal which clearly justifies the stated recommendation. All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.

7.0 THE DECISION-MAKING PROCESS AND DECISIONS CONTRARY TO STAFF RECOMMENDATIONS AND/OR THE DEVELOPMENT PLAN

- 7.1 In discussing, and determining a planning application or other planning matter, Councillors should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits, If Councillors wish to refuse or approve an application against staff advice, impose additional conditions to a permission, or refer the matter to another committee, staff should explain the implications of such action. The

Councillor's reasons for refusal or the additional conditions to be applied, whether for approval or for referral to another committee, must be clearly stated at the time the propositions are made and votes taken at the meeting.

- 7.2 If a resolution is passed which is contrary to a recommendation of the Executive Head of Planning and Economy (whether or approval or refusal) a detailed minute of the Committee's reasons will be made, and a copy placed on the application file.
- 7.3 If the report of the Executive Head of Planning and Economy recommends approval of a departure from the Development Plan, the full justification for this recommended departure should be included in the report. The views of the Strategic Planning Manager should be included in the report.
- 7.4 Councillors with a pecuniary interest or significant non-pecuniary interest in a planning matter or application, should not participate in the decision-making process unless they are covered by one of the exemptions contained in the National Code of Local Government Conduct. Those Councillors who have indicated before the meeting that they had formed a conclusive view on an application or other planning matter should carefully consider whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning process. Their continued involvement could amount to maladministration as well as giving rise to legal challenges.

8.0 SITE VISITS BY COUNCILLORS

- 8.1 The purpose of a site visit is for Councillors to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. A decision by the Area Committee to carry out a site inspection should only take place where objective decisions cannot be taken without viewing the site and adjoining properties. Examples of when site visits might be appropriate include:-
- The proposal represents a significant departure from the Development Plan;
 - The proposal raises wider policy issues;
 - There is considerable local concern about a proposal and there are sufficient planning reasons for carrying out a visit.
- 8.2 All site visits by Councillors should be conducted in compliance with the separate procedure note dealing with such visits.

9.0 QUALITY AUDIT

- 9.1 Arrangements will be made for Councillors to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken.
- 9.2 The outcome of this review will be considered by the Joint Area Committee and may lead to identification of possible amendments to existing policies or practice.

10.0 COMPLAINTS AND RECORD KEEPING

- 10.1 In order that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file should contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.
- 10.2 The same principles of good record keeping will be observed in relation to all enforcement and Development plan matters. Monitoring of record keeping will be undertaken regularly by the appropriate managers in Executive Head of Planning and Economy.
- 10.3 The Council has already adopted a complaints procedure and complaints of non-compliance with this Code could be subject to that procedure and, in the case of Councillors could involve consideration by the Standards Committee.