



# CONSTITUTION

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# **PART 1**

## **Summary and Explanation**

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## **1 The Council's Constitution**

- 1.1 Epsom and Ewell Borough Council has agreed a constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
- 1.2 The Constitution is divided into fifteen (15) Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols set out in Parts 3 to 5 of the Constitution.
- 1.3 In accordance with the Localism Act 2011, the Council operates a committee system as its form of governance. This preserves the opportunity for all Councillors to be directly involved in decision-making.

## **2 What is in 'The Constitution'?**

- 2.1 **Article 1** of the Constitution commits the Council to providing clear leadership to the community, actively involving citizens in decision-making and helping Councillors represent their constituents more effectively.
- 2.2 **Articles 2 to 15** explain the rights of citizens and how the key parts of the Council operate. These are:
  - (a) Members of the Council (Councillors) (Article 2)
  - (b) Citizens and the Council (Article 3)
  - (c) The Council (Article 4)
  - (d) The Mayor (Article 5)
  - (e) Overview and Scrutiny (Article 6)
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  - (k) Decision making (Article 12)
  - (l) Finance, contracts and legal matters (Article 13)
  - (m) Review and revision of the Constitution (Article 14)
  - (n) Suspension, interpretation and publication of the Constitution (Article 15)

### **3 How the Council operates**

- 3.1 The Council is composed of 38 Councillors (otherwise called Members) elected every four years. The overriding duty of Councillors is to the whole community in the Borough, but they have a duty and democratic accountability to their constituents in their Ward, including those who did not vote for them.
- 3.2 Members have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Standards Committee assists and advises the Council, as deemed necessary, in meeting its duty to promote and maintain high standards of conduct.
- 3.3 All Members meet together as the Council. Meetings of the Council are normally open to the public. Here, Members decide the Council's overall policies and set the budget each year; settle the Council's main plans, like the Corporate Plan; approve the Council's contribution as a partner to the Community Strategy; and resolve any issues which would normally be decided by committees or officers except for their controversial nature.

### **4 How decisions are made**

- 4.1 Decisions are made by the Council or by committees or senior officers of the Council under delegated authority. The Council has five policy committees responsible respectively for strategy (including the Community Strategy) and budget formulation; the environment; leisure; social; and Licensing and Planning Policy issues. In addition, the Planning Committee deals with planning applications and related matters.
- 4.2 Occasionally, a sub-committee will be set up for a specific purpose and time period but otherwise any working groups and panels will only have advisory functions - the committees referred to above will normally be the only ones making decisions.
- 4.3 Meetings of the Council's committees, sub-committees and panels are publicised well in advance and are open to the public except where personal or confidential matters are being discussed.

### **5 Overview and Scrutiny**

- 5.1 There is an Audit, Crime & Disorder and Scrutiny Committee which supports the work of the policy committees and the Council as a whole. It reports to the Council. It allows citizens to participate in investigating matters of local interest. This can lead to reports and recommendations which advise the policy committees and the Council as a whole on its policies, budget and service delivery. Sometimes, it or another committee or panel will also examine the activities of other public bodies whose actions affect the well-being of the community.

- 5.2 The Audit, Crime & Disorder and Scrutiny Committee also monitors the decisions of the policy committees and can ‘call-in’ a decision which has been made but not yet implemented. This enables it to consider whether the decision is appropriate and may lead to a recommendation that the relevant committee or the Council should reconsider the decision.
- 5.3 The Committee may be consulted by policy committees on forthcoming decisions and the development of policy although in most cases the policy committees will develop their own policy. The Audit, Crime & Disorder and Scrutiny Committee is responsible for ensuring that the Council complies with its duties concerning Best Value, in accordance with the Local Government Act 1999. It scrutinises the Council’s financial and audit arrangements and must ensure that suitable arrangements are made to manage performance and deliver priorities.
- 5.4 The Committee can review or scrutinise decisions or other action taken by the local Crime and Disorder Reduction Partnership. It can make reports and recommendations to the policy committees or to Council on its findings.
- 5.5 Ward councillors can refer local crime and disorder matters which they have been unable to resolve to the Audit, Crime & Disorder and Scrutiny Committee for consideration under a process known as “councillor call for action”.

## **6 Area Committees**

- 6.1 The Council does not have Area Committees but has the power to create these in the future, following public consultation on their number, composition, function and delegated financial authority. It will only do this if it is satisfied that it will improve services and lead to more efficient, transparent and accountable decision-making.

## **7 The Council’s Staff**

- 7.1 The Council employs staff, by convention known as Local Government ‘Officers’, to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. Codes of Conduct and a Protocol (see Part 5 of the Constitution) govern the relationships between Members and Officers.

## **8 Citizens’ Rights**

- 8.1 Citizens have a number of rights in connection with their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council’s own processes and can be amended or extended by decision of the Council. The local Citizens’ Advice Bureau can advise on individuals’ legal rights.

## 8.2 Citizens have the right to:

- (a) vote at local elections, if they are registered;
- (b) contact their local Councillor(s) about any matters of concern to them;
- (c) obtain a copy of the Constitution;
- (d) attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed;
- (e) inspect agendas and reports except where, for example, a report has been written about a confidential matter;
- (f) petition to request a referendum on a mayoral form of executive;
- (g) speak at committees – (See Part 4 (b) Committee Rule of Procedure nos. 2 - 16);
- (h) complain to the Council under its internal complaints process;
- (i) complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly - however, they should only do this after raising the complaint with the Council and giving the Council a chance to respond;
- (j) complain to the Council's Monitoring Officer if they have evidence which they think shows that a Member has not followed the Council's Code of Conduct for Members;

and

- (k) inspect the Council's accounts and make their views known to the external auditor.

8.3 Where members of the public use specific Council services they may have additional rights. These are not covered in this Constitution. The Council will also provide further opportunities for involvement through consultation and through invitations to participate in working groups or panels.

8.4 A statement of the rights of citizens to inspect agendas and reports and attend meetings is available at the Council's offices.

8.5 The Council welcomes participation by the Borough's citizens in its work. For further information on your rights as a citizen, please contact the Council's Head of Legal and Democratic Services (01372 732000).



# **PART 2**

# **Articles of the Constitution**

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## **ARTICLE 1 - The Constitution**

### **The Constitution**

- 1.1 This Constitution, and all its appendices, is the Constitution of the Borough Council of Epsom and Ewell (hereafter referred to as 'the Council').

### **Powers of the Council**

- 1.2 The Council will exercise all its powers and duties in accordance with the law and this Constitution.

### **Purpose of the Constitution**

- 1.3 The purpose of the Constitution is to:-
- (a) Enable the Council to provide clear leadership to the community in partnership with residents, businesses and other organisations;
  - (b) Support the active involvement of citizens in the process of local authority decision-making;
  - (c) Help Councillors represent their constituents more effectively;
  - (d) Enable decisions to be taken efficiently, effectively and transparently, with due regard to probity and equity;
  - (e) Create a powerful and effective means of holding decision-makers to public account;
  - (f) Ensure that no one will scrutinise a decision in which he or she was directly involved;
  - (g) Ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
- and
- (h) Provide a means of improving the delivery of services to the community.

### **Interpretation and Review of the Constitution**

- 1.4 Where the Constitution permits the Council to choose between different courses of action, the Council will seek to exercise that choice in the way that it thinks will most closely achieve the purposes stated above. The Council will monitor and evaluate the operation of the Constitution as set out in Article 14.

## ARTICLE 2 - Members of the Council

### Composition and Eligibility

- 2.1 **Composition:** The Council comprises 38 Councillors, (otherwise called Members). Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission for England and approved by the Secretary of State.
- 2.2 **Eligibility:** Only registered voters of the Borough or those living, working or owning land in the Borough will be eligible to hold the office of Councillor.

### Election and Terms of Councillors

- 2.3 **Election:** The regular election of Councillors will be held on the first Thursday in May (or whatever date is fixed by law) every four years (from 2003).
- 2.4 **Terms:** The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### Roles and Functions of all Councillors

- 2.5 **Key Roles:** All Councillors will:
- (a) Collectively be the ultimate policy-makers and carry out the principal strategic and corporate management functions, taking a Borough-wide view;
  - (b) Engage with and represent their communities, whose views they will bring into the Council's decision-making process and whose involvement and participation they will actively encourage;
  - (c) Represent the interests of their ward and where necessary balance different interests;
  - (d) Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - (e) Be involved in decision-making;
  - (f) Be available to represent the Council on other bodies
- and
- (g) Maintain the highest standards of conduct and ethics, showing respect for fellow Members, officers and the community.

## 2.6 **Rights and Duties:** Members will:-

- (a) Have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (b) Not make public any information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Member or officer entitled to know it.

and

- (c) No Member can issue an order for works to be carried out by or on behalf of the Council and nor can he/she, unless specifically authorised to do so, claim any right to inspect or enter any land.

For these purposes, 'confidential' and 'exempt' information are defined in the Access to Information Rules in Part 4 of this Constitution.

## 2.7 **Job Description:** A job description of the role of the Councillor in the Borough is included in Part 3 of this Constitution.

### **Conduct**

2.8 Members will at all times observe the Members' Code of Conduct and will have regard to other documents such as the Codes of Conduct for Planning and Licensing matters and the Member/Officer Protocol set out in Part 5 of this Constitution.

2.9 The Council is required to maintain and update a Register of Interests of its Members. The Register is available for public inspection at the Council's offices and on the Council's website.

### **Allowances**

2.10 Members will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

## **ARTICLE 3 - Citizens and the Council**

### **Citizens' Rights**

3.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution.

- (a) **Voting and Petitions.** Citizens on the Register of Electors for the Borough have the right to vote in elections and to sign a petition to request a referendum for a form of Constitution with an elected Mayor. (A petition signed by 5% of those on the Register of Electors requires

the Council to hold such a referendum). Petitions on other matters will be dealt with in accordance with the relevant Rules of Procedure in Part 4 of this Constitution.

(b) **Information.** Citizens have a right to:-

- Attend meetings of the Council and its committees, Sub-committees and Advisory Panels except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- See reports and background papers, and any records of decisions made by the Council;

and

- Inspect the Council's accounts and make their views known to the external auditor.

(c) **Participation.** Citizens have the right to submit petitions and, in accordance with the relevant Rules of Procedure in Part 4 of this Constitution, to speak at committee meetings.

(d) **Complaints.** Citizens have the right to complain to the:

- Council itself under its complaints scheme;
- Local Government Ombudsman (either directly or through a Councillor) after having first raised the complaint with the Council and given the Council a chance to respond;
- Standards Committee about a breach of the Members' Code of Conduct.
- the Information Commissioner about a breach of the Council's obligations under the Data Protection act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2005.

### **Citizens' Responsibilities**

3.2 Citizens must not be violent, abusive or threatening to Members or Officers in the exercise of their rights set out in 3.1 or generally, and must not wilfully harm property owned by the Council, Members or Officers. The Council will in appropriate cases be prepared to take action to protect its own rights and to support such action by its Members or Officers.

## ARTICLE 4 - The Council

### Meanings

4.1 **Policy Framework:** The policy framework includes the following plans and strategies:-

- Corporate Plan;
- CPA Improvement Plan;
- Best Value Performance Plan;
- Community Strategy;
- Crime and Disorder Reduction Strategy;
- Plans and strategies which together comprise the Development Plan (principally, this is the Epsom and Ewell District Wide Local Plan);
- Sustainable Development Strategy;
- Housing Strategy (including Housing Investment Programme);
- Leisure (Cultural) Strategy;
- Health Strategy.

4.2 **Budget.** The budget includes:-

- The allocation of financial resources to different services and projects;
- Any proposed contingency funds;
- Setting the Council Tax;
- Decisions relating to the control of the Council's borrowing requirement;
- The control of capital expenditure;
- The setting of limits to the amounts by which committees and officers can transfer expenditure between different budget heads (virement).

### Functions of the Council

4.3 Only the full Council will exercise the following functions:-

- (a) Adopting and changing the Constitution;
- (b) Approving and adopting the Policy Framework and the Budget;

- (c) Agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them (except for authorised substitutions in accordance with the relevant Rules of Procedure in Part 4 of the Constitution);
  - (d) Appointing representatives to outside bodies unless the appointment has been delegated by the Council;
  - (e) Delegating functions to other local authorities or their executives and deciding whether or not to accept such a delegation from another local authority;
  - (f) Adopting an allowance scheme under Article 2.5;
  - (g) Changing the name of the Borough;
  - (h) Conferring the title of Honorary Alderman or Honorary Freeman;
  - (i) Confirming the appointment of the Chief Executive;
  - (j) Determining any delegation to officers which does not fall with the purview of any committee;
  - (k) Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal bills;
- and
- (l) All other matters which by law must be reserved to Council.

### **Council Meetings**

4.4 There are three types of Meetings of the full Council:

- (a) the Annual Meeting;
- (b) Ordinary Meetings;
- (c) Extraordinary Meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.



## **ARTICLE 5 - The Mayor**

### **Role and function of the Mayor**

- 5.1 The Mayor and the Deputy Mayor will be elected by the Council annually.
- 5.2 The Mayor, and in his/her absence the Deputy Mayor, will be the first citizen of the Borough and have the following roles and functions, to:-
  - (a) Uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
  - (b) Preside impartially over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Members and the interests of the community;
- 5.3 Should the Mayor wish, in exceptional circumstances, to take part in debate on an issue before the Council, he/she should vacate the Chair for the whole of that item in favour of the Deputy Mayor;
- 5.4 Ensure that Council meetings are a forum for the debate of matters of concern to the local community;
- 5.5 Promote public involvement in the Council's activities;
- 5.6 Attend such civic and ceremonial functions as the Council and/or he/she considers appropriate;
- 5.7 Promote the Council as a whole and act as a focal point for the community.

## **ARTICLE 6 - Overview and Scrutiny**

### **Functions**

- 6.1 The Council will appoint a committee to discharge the scrutiny and review functions conferred by Section 21 of the Local Government Act 2000 and regulations made under Section 32 of the Local Government Act 2000 in relation to the following matters:
  - (a) Local democracy and the achievement of effective, transparent and accountable decision making by the Council;
  - (b) The Council's budget, the management of its budget, capital programme, revenue borrowing and assets and its audit arrangements;
  - (c) The social, economic and environmental well-being of the Borough;

- (d) The provision, planning, management and performance of all Council services;
  - (e) The Council's compliance with its duty concerning Best Value, in accordance with the Local Government Act 1999.
- 6.2 The Council will appoint a committee to discharge the scrutiny and review functions conferred by Section 19 and Schedule 8 of the Police and Justice Act 2006 and regulations made under Section 20 of the Police and Justice Act 2006 in relation to the Crime and Disorder Reduction Partnership.
- 6.3 The functions detailed within sections 6.1 and 6.2 above are discharged by the Council's Audit, Crime & Disorder and Scrutiny Committee.

### **Terms of Reference**

- 6.4 The terms of reference for the Audit, Crime & Disorder and Scrutiny Committee are set out in Part 3 of this Constitution entitled 'Responsibility for Functions'.
- 6.5 Within its terms of reference, the Committee will:
- (a) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - (b) Make reports and/or recommendations to the Council and/or any Committee in connection with the discharge of any functions;
  - (c) Consider any matter affecting the area or its inhabitants,
  - (d) Exercise the right to call-in, for reconsideration, decisions made by any policy committee but not yet implemented by any policy committee.
  - (e) Review and/or scrutinise decisions made or action taken in connection with the discharge by the Crime and Disorder Reduction Partnership of its crime and disorder functions;
  - (f) Make reports and/or recommendations to the Council and/or any appropriate committee in connection with the discharge of the Crime and Disorder Reduction Partnership functions, providing a copy to the responsible authorities and co-operating persons and bodies of the Crime and Disorder Reduction Partnership;
  - (g) Consider "councillor calls for action" concerning local crime and disorder matters in accordance with the Councillor Call for Action Protocol.
- and
- (h) Make reports and/or recommendations to Council or any appropriate policy committee in relation to a councillor call for action concerning a local crime and disorder matter, providing a copy to the member concerned and to members of the CDRP as it thinks appropriate

## **Annual reports**

- 6.6 The Audit, Crime & Disorder and Scrutiny Committee will report annually to the Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.

## **Officers**

- 6.7 The Audit, Crime & Disorder and Scrutiny Committee will exercise overall responsibility for the work programme of those officers whose function is wholly to support its work, and of other officers in so far as they support that work.

## **Proceedings of Audit, Crime & Disorder and Scrutiny Committee**

- 6.8 The Audit, Crime & Disorder and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

# **ARTICLE 7 - Policy and Regulatory Committees**

## **Policy Committees**

- 7.1 The Council will appoint five policy committees as follows:

- (a) Strategy and Resources
- (b) Environment
- (c) Leisure
- (d) Social
- (e) Licensing and Planning Policy

- 7.2 The functions attributed to those committees are set out in Part 3 of this Constitution entitled 'Responsibility for Functions'.

## **Regulatory Committees**

- 7.3 The Council will appoint a Planning Committee, which will be responsible for dealing with planning applications and related matters. The Licensing and Planning Policy Committee will be responsible for issuing premises and personal Licences and for establishing a Panel for the purpose of hearing appeals on both premises and vehicle licences.

- 7.4 The functions of these Committees are set out in Part 3 of this Constitution entitled 'Responsibility for Functions'.

## **ARTICLE 8 - The Standards Committee**

### **Standards Committee**

8.1 The Council has chosen to appoint a Standards Committee in accordance with the Localism Act 2011.

### **Composition**

8.2 The Standards Committee will be politically balanced. Full Council will appoint an independent person to advise it and any member when matters of conduct arise.

### **Roles and Functions**

8.3 The Standards Committee will have the functions set out in its Terms of Reference (see Part 3: Responsibility and Functions).

### **Arrangements for dealing with standards allegations under the Localism Act 2011**

8.4 All hearings and assessments of complaints against Members will be conducted in accordance with the current legal requirements and (subject to that) the provisions set out in Part 4 of this Constitution.

## **ARTICLE 9 - Area Committees**

### **Area Committees**

9.1 The Council may appoint Area Committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of Best Value and more efficient, transparent and accountable decision making.

9.2 In the event that the Council decides after consultation to create any Area Committee (s) it will include, within a scheme approved for that purpose, provision for their form, composition and function; for the avoidance of conflicts of interest through membership of other committees; and for access to information.

## **ARTICLE 10 - Joint Arrangements**

### **Arrangements to Promote Well-being**

- 10.1 The Council, in order to promote the economic, social or environmental well-being of its area may, subject to the other provisions of this Constitution:-
- (a) Enter into arrangements or agreements with any person or body;
  - (b) Co-operate with, or facilitate or coordinate the activities of any person or body;
- and
- (c) Exercise on behalf of that person or body any functions of that person or body.

### **Joint Arrangements**

- 10.2 The Council may establish joint arrangements with one or more local authorities to exercise functions of any of the participating authorities or advise the Council. Such arrangements may involve the appointment of a Joint Committee with these other local authorities.
- 10.3 Details of any joint arrangements, including any delegations to Joint Committees, will be found in Part 3 of this Constitution.

### **Access to Information**

- 10.4 The Access to Information Rules in Part 4 of this Constitution apply.
- 10.5 If the Joint Committee contains Members who are not on the executive of any participating local authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

### **Delegation to and from other local authorities**

- 10.6 The Council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority and also accept such a delegation from another local authority.
- 10.7 The decision whether or not to delegate functions to another local authority or to accept such a delegation from another local authority shall be reserved to the Council.

### **Contracting Out**

- 10.8 The Council may contract out to another body or organisation functions which may be exercised by an Officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994.

10.9 The Council may also arrange for other functions to be carried out by a contractor, where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## ARTICLE 11 - Officers

*NOTE: 'Officers' means all employees and staff engaged by the Council to carry out its functions*

### Management Structure

11.1 **General.** The Council may engage such officers as it considers necessary to carry out its functions.

11.2 **Directors.** The Council will engage persons for the following posts, who will be designated Directors:

Post	Areas of Responsibility
Chief Executive	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all political groups and individual Members</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council)</p>
Director of Finance and Resources	Audit, Accountancy and Revenues

11.3 **Head of Paid Service, Chief Finance Officer and Monitoring Officer.** The Council designates the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service (Local Government & Housing Act 1989, Section 4)
Head of Legal and Democratic Services	Monitoring Officer (Local Government & Housing Act 1989, Section 5)
Director of Finance and Resources	Chief Finance Officer (Local Government Act 1972, Section 151; Local Government Finance Act 1988)

The posts will have the functions described in Article 11.5 to 11.16 below.

- 11.4 **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

### **Functions of the Chief Executive (Head of Paid Service)**

- 11.5 **Discharge of Functions by the Council.** The Chief Executive will report to the Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of officers proposed for the discharge of functions and the organisation of officers.

### **Functions of Director of Finance and Resources (Chief Finance Officer)**

- 11.6 **Ensuring lawfulness and financial prudence of decision making.** After consulting the Chief Executive and the Monitoring Officer, the Director of Finance and Resources will report to the Council and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- 11.7 **Administration of financial affairs.** The Director of Finance and Resources will have responsibility for the administration of the financial affairs of the Council.
- 11.8 **Contributing to corporate management.** The Director of Finance and Resources will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- 11.9 **Providing advice.** The Director of Finance and Resources will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Members and will support and advise Members and officers in their respective roles.
- 11.10 **Giving financial information.** The Director of Finance and Resources will provide financial information to the media, members of the public and the community.

### **Functions of the Head of Legal and Democratic Services (Monitoring Officer)**

- 11.11 **Maintaining an up-to-date Constitution.** The Monitoring Officer will ensure that an up-to-date version of the Constitution is maintained and will ensure that it is available to Members, staff and the public.

- 11.12 **Ensuring lawfulness and fairness of decision making.** After consulting the Chief Executive and Director of Finance and Resources, the Monitoring Officer has a duty, by virtue of Section 5 of the Local Government and Housing Act 1989, to report to the Council if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by the Council.
- 11.13 **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- 11.14 **Conducting Investigations.** The Monitoring Officer will conduct investigations into allegations against Members made to the Council and arrange, if necessary, for the Standards Committee to receive reports or recommendations in respect of them.
- 11.15 **Proper Officer for Access to Information.** The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.
- 11.16 **Providing Advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Members and will support and advise Members and officers in their respective roles.

**Provision of sufficient resources to the Chief Executive, Director of Finance and Monitoring Officer.**

- 11.17 The Council will provide the Chief Executive, the Director of Finance and the Monitoring Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**Conduct**

- 11.18 Officers will comply with the Officers' Code of Conduct and other relevant Codes and Protocols, in particular, the Member/Officer Protocol set out in Part 5 of this Constitution.

**Employment**

- 11.19 The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.



## **ARTICLE 12 - Decision Making**

### **Responsibility for decision-making**

12.1 The Council will issue and keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 in this Constitution.

### **Principles of Decision Making**

12.2 All decisions of the Council will be made in accordance with the following principles:-

- (a) the decision should not be in conflict with the Council's Key Priorities and strategies;
- (b) the decision complied with Council Standing Orders, Contract Standing Orders and Financial Regulations;
- (c) the decision has a clear desired outcome and that any agreed action is proportionate to the outcome;
- (d) the decision has taken account of professional advice from officers, including the Monitoring Officer and the Chief Financial Officer and/or appropriate qualified consultants;
- (e) the decision has taken account of the provisions of the human rights legislation;
- (f) the decision was taken in an open and transparent manner unless otherwise legally permitted and unless the circumstances require the matter to be kept confidential;
- (h) the decision was taken after due consultation and, where appropriate, the views of the local ward members have been sought

### **Decision making by the Council**

12.3 Subject to Article 12.6 the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

### **Decision making by Audit, Crime & Disorder and Scrutiny Committee**

12.4 The Audit, Crime & Disorder and Scrutiny Committee will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

## **Decision making by other Committees and Sub-Committees**

12.5 Subject to Article 12.6, other Council committees and sub-committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution which apply to them.

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

12.6 The Council, a committee, a sub-committee or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person 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.

## **ARTICLE 13 - Finance, Contracts and Legal Matters**

### **Financial Management**

13.1 The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Part 4 of this Constitution.

### **Contracts**

13.2 Every contract made by the Council will comply with the Financial Standing Orders (including Standing Orders relating to Contracts) set out in Part 4 of this Constitution.

### **Legal Proceedings**

13.3 The Head of Legal and Democratic Services is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he/she considers that such action is necessary to protect the Council's interests.

### **Custody of Seal**

13.4 The Common Seal of the Council shall be kept in some safe place and shall be secured by a lock and the keys shall be kept in some safe place by the Head of Legal and Democratic Services.

### **Sealing of Documents**

13.5 The Common Seal of the Council shall not be affixed to any document unless the sealing has been authorised by a resolution of the Council or of a committee or officer to which the Council has delegated its powers in this behalf, but a resolution of the Council (or of a committee or an Officer where

that committee or officer has the power) authorising the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial, or address, the making of any rate or contract, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

- 13.6 The seal shall be attested by the Mayor (or Deputy Mayor) and the Chief Executive (or Head of Legal and Democratic Services) and an entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the persons who shall have attested the seal.

### **Signature of Documents**

- 13.7 Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or unless the Council or a committee, or sub-committee to which the Council has delegated its powers, has given the necessary authority to some other person for the purpose of such proceedings, be signed by the Chief Executive or the Head of Legal and Democratic Services.

## **ARTICLE 14 - Review and Revision of the Constitution**

### **Duty to monitor and review the Constitution**

- 14.1 The Monitoring Officer will ensure that the operation of the Constitution is monitored and reviewed to ensure that the aims and principles of the Constitution are given full effect and will report to the Council on this at least once every year.

### **Changes to the Constitution**

- 14.2 **Approval.** Changes to the Constitution will only be approved by the Council after consideration of a proposal from the Standards Committee (in respect of the Council's Rules of Procedure), Chief Executive or the Monitoring Officer or by way of Councillors proposing a motion on notice in accordance with the Council Procedure Rules set out in Part 4 of this Constitution.
- 14.3 **Change from alternative arrangements to a form of executive.** If at any time the Council decides to change from alternative arrangements, it must take reasonable steps to consult local electors and other interested persons in the Borough when drawing up proposals.

## **ARTICLE 15 - Suspension, interpretation and publication of the Constitution**

### **Suspension of the Constitution**

- 15.1 **Limit to suspension:** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the Council or committees to the extent permitted within those Rules and the law.
- 15.2 **Procedure to suspend:** A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of the Council or the relevant Committee are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- 15.3 **Rules capable of suspension:** The following Rules may be suspended in accordance with Article 15.1:-
- (a) The Council Procedure Rules (as specified in those Rules);
  - (b) Financial Procedure Rules;
  - (c) Contract Procedure Rules.

### **Interpretation**

- 15.4 The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1, and to any advice given by the Chief Executive.

### **Publication**

- 15.5 The Chief Executive will give a printed copy of this Constitution to each Councillor upon delivery to him/her of that individual's declaration of acceptance of office on the Councillor first being elected to the Council.
- 15.6 The Head of Legal and Democratic Services will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- 15.7 The Head of Legal and Democratic Services will ensure that the summary of the Constitution is made widely available, in print and by electronic means, within the Borough and is updated as necessary.

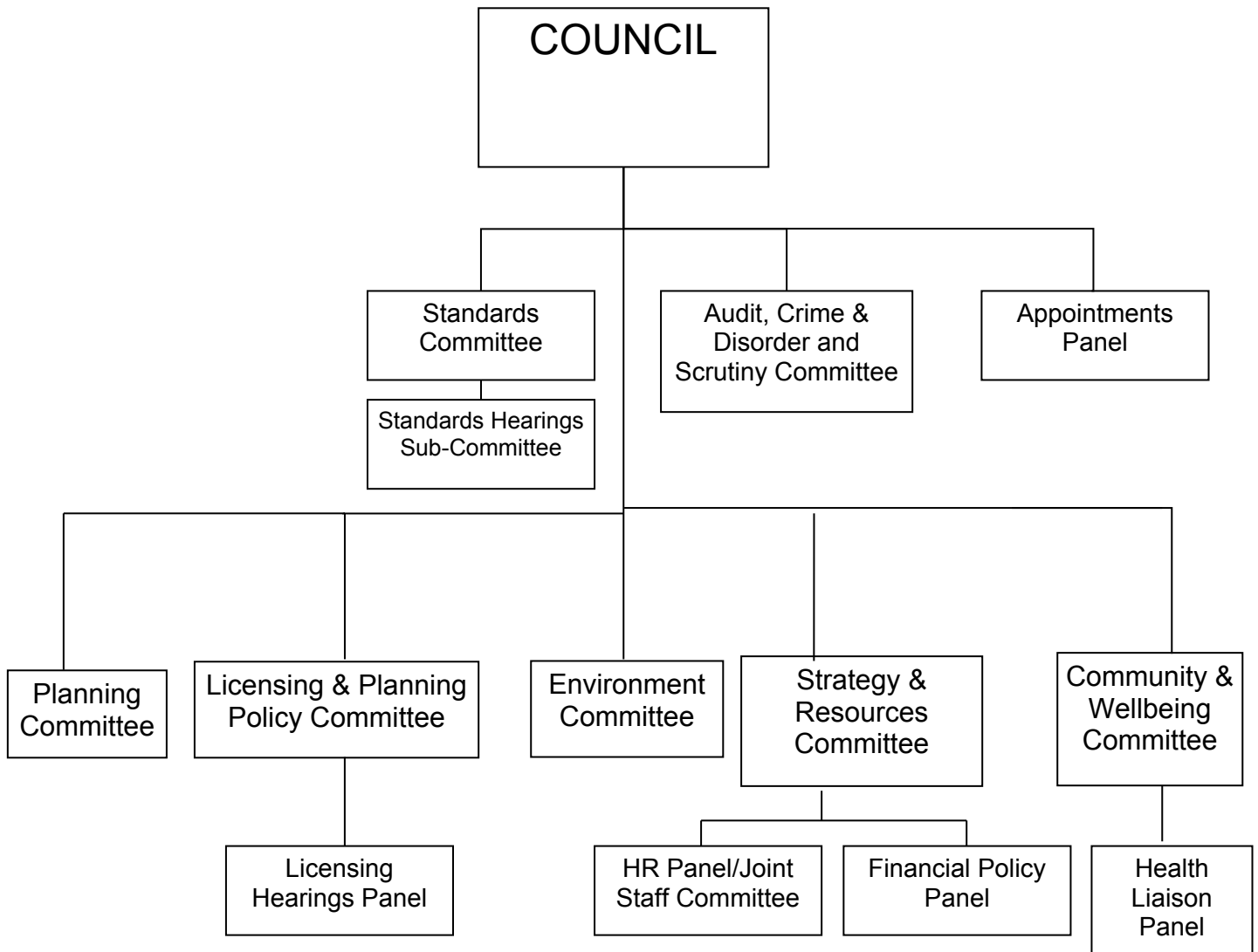
# **PART 3**

## **Responsibility for Functions**

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# 1 Diagram of Committee Structure



## 2. Membership and Meetings of Committees

### Ordinary Committees

- 1.1 Because of the nature of the business, the Planning Committee has thirteen members. Other committees have fewer members to facilitate the transaction of business. Committees will normally make the final decision on any matter before it, if they have delegated authority to do so, or will make a report and recommendation to Council if they do not have such authority. It is also open to a majority of members present and able to vote at a meeting to agree to refer a matter to Council.
- 1.2 The Committees and number of members on each committee is as follows:

Community and Wellbeing	10
Environment	10
Licensing and Planning Policy	10
Strategy and Resources	10
Audit, Crime & Disorder and Scrutiny	10
Planning	13
Standards	9
Total	72

- 1.3 Members of the Audit, Crime & Disorder and Scrutiny Committee may not scrutinise any decision in which they were involved as a member of a policy Committee.
- 1.4 In addition to the main committees, the Council may set up time-limited sub-committees for specific purposes.

### Advisory Bodies and Joint Arrangements

- 1.5 The Council currently has four standing advisory panels which will report as required to the appropriate committee or Council as set out in their Terms of Reference. Two of the panels have specific partnership roles and will include those partners in their regular meetings. The third is to provide advice on the corporate financial framework and policy-making and will include in its membership the Chairmen of the Environment, Leisure, Social and Strategy & Resources committees, with appropriate political balance. The fourth has been set up to advise the Council on nominations/appointments to external bodies. Recommendations may be made by the panels to committees or directly to the Council. The advisory panels and numbers of members on them are as follows:



Appointments Panel	8
Financial Policy Panel	8
Health Liaison Panel	7
Human Resources Panel (NOTE: meeting with staff representatives will still be designated as Joint Staff Committee)	6
Nonsuch Park Joint Management Committee	3
<b>Total</b>	<b>32</b>

- 1.6 The Council has also entered into a number of joint arrangements. Further details on these arrangements are set out in Section 9 of this Part of the Constitution.

### **Arrangements for Meetings**

- 1.7 There are currently four cycles of meetings in each municipal year – June/July; September - December; January/February; March/April. Each committee and advisory panel will normally meet at least once in each cycle of meetings and may arrange such special meetings as are necessary. The Planning Committee will meet at least eleven times per year.

## **2 Terms of Reference of Policy Committees**

- 2.1 In accordance with the aims and objectives set by the Council in its Corporate Plan and the targets set out in the Community Strategy (produced by the Council and its partners), the principles of Best Value, and within the approved Budget and Policy Framework to:

- (a) Deal with all policy and operational matters, including statutory responsibilities;
  - (b) Develop its strategies and policies and put them to the Council for approval;
  - (c) Draw up Service Delivery Plans and revenue budgets, and develop proposals for capital projects, and submit these to the Strategy and Resources Committee for recommendation to Council where these form part of the corporate policy framework;
  - (d) Implement approved capital projects;
  - (e) Develop and maintain communication and consultation with the public, local businesses, voluntary and other relevant organisations, and form partnerships and influence partners;
  - (f) Distribute grant aid or award rate relief in accordance with conditions laid down by Council;
- and
- (g) Determine the level of delegation to officers.

In respect of the following subject areas:-

**Environment**

- (a) Transportation policy
- (b) Waste management refuse collection and recycling
- (c) Environmental improvement schemes
- (d) The quality of the public realm, including cleansing
- (e) Highway matters that are the responsibility of the Borough Council and drainage
- (f) Public conveniences
- (g) Community safety, including anti-social behaviour
- (h) Parking
- (i) Contaminated land
- (k) Environmental health
- (l) Food safety and health and safety
- (m) Cemeteries and closed churchyards

**Community and Wellbeing**

- (a) The promotion of sport, leisure, cultural and recreational activities
- (b) Parks, open spaces and countryside (including Nonsuch Park JMC and Epsom and Walton Downs)
- (c) Allotments
- (d) The Playhouse, Bourne Hall, Ewell Court House and the Ebbisham Centre
- (e) The Rainbow Centre
- (f) Bourne Hall Museum
- (g) Services for young people.
- (h) Affordable housing
- (i) Housing strategy and investment programme
- (j) Housing standards, homelessness, homelessness prevention and advice, housing needs assessment

- (k) Housing benefit - welfare aspects
- (l) Private sector housing and administration of housing grants
- (m) Personal social services for the elderly and disabled
- (n) Local NHS Services
- (o) Work within the Voluntary Sector
- (p) Gypsy site management

### **Licensing and Planning Policy Committee**

- (a) Matters relating to the local economy
- (b) To consider and approve Local Plan documents for public consultation (including Development Plan Documents up to Preferred Options stage and Supplementary Planning Documents up to Consultation stage);
- (c) To consider and recommend for approval to Council, submission versions of Development Plan Documents;
- (d) To consider and approve final versions of Supplementary Planning Documents, and any subsequent changes to the Development Plan not constituting a new or substantially revised Development Plan Document;
- (e) To consider and approve other informal policy guidance for adoption;
- (f) To consider and approve the Council's Local Development Scheme and Annual Monitoring Report;
- (g) To consider and approve (i) draft Conservation Area Appraisals and Management Plans for public consultation and (ii) the final version of Conservation Area Appraisals and Management Plans;
- (h) To consider and approve matters related to the Community Infrastructure Levy (CIL) leading up to the examination in public and the adoption of the CIL charging schedule;
- (i) To consider and comment upon other authorities' or stakeholders' planning policy documents;
- (j) To respond to government consultations on draft planning legislation and proposed planning policies;
- (k) Land use policy statements and briefs for specific areas
- (l) To consider any other planning policy matters not included in any of the above as deemed necessary by the Head of Planning and Building Control.

- (m) To consider and determine (or delegate to a Licensing Hearings Panel)
  - opposed and/or contentious applications made under the Licensing Act 2003 and/or applications for review under the said Act;
  - Opposed and/or contentious applications made under the Gambling Act 2005 and/or applications for review under the said Act;
  - Opposed and/or contentious applications for the granting, renewal, transfer or revocation of sex establishment licences; private hire and public hire licences;
- (n) To approve a licensing policy statement and gambling policy statement for recommendation to the Council and to keep this under review in accordance with the Licensing Act 2003 and the Gambling Act 2005 respectively;
- (o) To agree a pool of members to receive the necessary training to constitute Licensing Hearings Panels to undertake the administration of applications made under the Licensing Act 2003, the Gambling Act 2005, the Local Government (Miscellaneous Provisions) Act 1976 and the Town and Police Closures Act 1847.
- (p) To appoint four Members from those trained in licensing matters to undertake the role of Chairman of the Licensing Hearings Panels.
- (q) Safeguarding the historic environment.

### **Strategy and Resources**

- (a) The Budget and Policy Framework, for submission to the Council
- (b) Implementation and monitoring of treasury management policies
- (c) The Corporate Governance Framework (jointly with the Chairmen of Standards and Audit, Crime & Disorder and Scrutiny Committees)
- (e) Data quality and corporate risk management
- (f) The local economy
- (g) Emergency planning and business continuity
- (h) The Council's human resources, property assets and finances
- (i) Housing benefits administration
- (j) Civic and ceremonial matters
- (k) Dealing (at first instance) with any matters of general policy which do not fall within the terms of reference of any other committee and are not reserved to the Full Council.

### **3 Terms of Reference of the Licensing Hearings Panel**

3.1 The Council is responsible for issuing premises and personal licences.

#### **Licensing Hearings Sub-Committee**

**(Note: Political balance requirements do not apply)**

3.2 Licensing Hearings Panels will be formed of any three members of a pool of members appointed by the Licensing and Planning Policy Committee, one of whom shall be the Chairman. The three members appointed for any hearing shall be selected by the officers in consultation with the Chairman of the Licensing and Planning Policy Committee. Panels will be required to determine applications:-

- (a) For a personal licence where an objection has been made;
- (b) For a personal licence with unspent convictions;
- (c) For premises licence where a representation has been made;
- (d) For a club premises certificate where a representation has been made;
- (e) For a provisional statement where a representation has been made;
- (f) To vary a premises licence/club premises certificate where a representation has been made;
- (g) To vary designated premises supervisor if there is a police objection;
- (h) For transfer of premises licence if there is a police objection;
- (i) For interim authorities if there is a police objection;
- (j) To review a premises licence/club premises certificate  
and to determine;
- (k) Opposed and/or contentious applications for the granting, renewal, transfer or revocation of gaming permits;
- (l) Opposed and/or contentious applications for the granting, renewal, transfer or revocation of sex establishment licences;
- (m) Contentious applications for the grant or renewal of Private Hire and Hackney Carriage Driver, Vehicle and Operator Licences and the refusal, suspension or revocation of these licences where serious offences or breaches of licence conditions have been committed.

## **4 Terms of Reference of the Planning Committee**

- 4.1 In accordance with the aims and objectives set by Council and the Corporate Plan and the targets set out in the Community Strategy (produced by the Council and its partners), the principles of Best Value, and within the approved Budget and Policy Framework, to: -
- (a) deal with regulatory matters required by, and flowing from, Town and Country Planning legislation;
  - (b) develop and maintain communication and consultation with the public, local businesses and relevant organisations;
  - (c) determine the level of delegation to officers.

## **5 Terms of Reference of the Audit, Crime & Disorder and Scrutiny Committee**

### **Audit, Crime & Disorder and Scrutiny Committee**

- (a) Exercise the Council's scrutiny and review functions in accordance with Article 6 of Part of this Constitution and the Scrutiny Procedure Rules set out in Part 4; including overall responsibility for audit and governance frameworks (including functions of an audit committee);
- (b) Oversee compliance with the Council's duties concerning Best Value;
- (c) Monitor implementation of recommendations from the external and internal auditors;
- (d) Monitor progress on the Council's Corporate Plan;
- (e) Review and approve the Annual Governance Statement.
- (f) Exercise the Council's scrutiny and review functions in relation to local crime and disorder matters within the remit of the Crime and Disorder Reduction Partnership in accordance with Article 6 of Part 2 of this Constitution

## **6 Terms of Reference of the Standards Committee**

1. To assist and advise the Council in meeting its duty to promote and maintain high standards of conduct by members.
2. To monitor and review the effectiveness of the Code of Conduct for members.
3. To monitor, review and propose amendments to the Council's Standing Orders.

4. To establish as necessary Hearing Sub-committees to hear and decide what action should be taken in respect of allegations against members.
5. To ensure that the general public are informed of the effectiveness of the Council's promotion of high standards of conduct by members and effectiveness of arrangements to deal with breaches of the Code of Conduct for members.
6. To grant dispensations relieving a member from either or both of the restrictions in section 31(4) of the Localism Act 2011.

## **7 Terms of Reference of Advisory Panels**

- 7.1 In accordance with the aims and objectives set by the Council in its Corporate Plan and the targets set out in the Community Strategy (produced by the Council and its partners), the principles of Best Value, and within the approved Budget and Policy Framework, to advise the Council or its Committees or Sub-Committees on any matter relating to the following subject area: -

### **Appointments Panel**

- (a) to make appointments and nominations sought by the Surrey Leaders' Group, Outside Bodies and Charities to be forwarded to the Annual Council meeting for determination
- (b) In the case where appointments and nominations are sought during the Municipal Year, to make such appointments and nominations to be forwarded on to the next appropriate Ordinary Meeting of the Council.

### **Human Resources**

- 7.2 To consider, and where appropriate advise the Strategy and Resources Committee on:-
- (a) human resource policies and practices;
  - (b) monitoring sickness absence, staff turnover, health and safety.
- 7.3 In addition, the Human Resources Panel, meeting with staff representatives on the **Joint Staff Committee** has the following functions: -
- (a) to provide formal consultation and discussions between the Council and its staff representatives on matters relating to pay, employee relations, terms and conditions of employment, and training and development;
  - (b) to consider any relevant matters referred to it by Management or Staff representatives to seek to resolve differences of interpretation or misunderstanding.

## **Financial Policy**

- 7.4 To advise the Strategy and Resources Committee on:-
- (a) all matters relating to the Budget and Policy Framework;
  - (b) new legislation or government policy relating to local government finance;
  - (c) procurement strategy and those matters that have budget or procurement implications for more than one committee;
  - (d) performance against key performance indicators.
- 7.5 To ensure effective scrutiny of the treasury management strategy and policies.
- 7.6 To respond on behalf of the Strategy and Resources Committee to urgent consultation requests from central or regional government.

## **Health Liaison**

- 7.7 To consider, and where appropriate advise the Social Committee on:-
- (a) preparing, promoting and monitoring the Council's Health Strategy in association with National Health Service bodies, Social Services and the voluntary sector;
  - (b) providing leadership and liaising with NHS bodies, the County Council and other agencies to promote the effective use of all resources and the delivery of best value Health and Social Services to the community.

Working in partnership with a Member from each of the following – Elmbridge District Council, Mole Valley District Council, Reigate & Banstead District Council and officers from these local authorities on:-

- Promoting the interests of the local residents in any decisions concerning health services
- developing a shared vision for the nature, location and quality of local NHS services
- facilitating partnership working and the sharing of information and to co-ordinate input into the NHS decision-making processes
- providing a focus for the Councillor-lead meetings and interaction with local NHS representatives

Furthering the local democratic legitimacy of NHS bodies and their local public accountability.



## **8 Joint Arrangements**

### **Nonsuch Park Joint Management Committee**

- 8.1 Nonsuch Park is managed and maintained by a Joint Management Committee, comprising an equal number of councillors from Epsom and Ewell and Sutton Borough Councils. Chairmanship rotates between the two councils annually. The two councils fund, on an equal basis, the running of the Park, after taking income into account.

### **Coast to Capital Joint Committee**

- 8.2 The purpose of the Joint Committee is to approve the Strategic Economic Plan and proposed Growth Deal for the Coast to Capital Local Enterprise Partnership (LEP) area.
- 8.3 The Coast to Capital area encompasses all of the County of West Sussex, Brighton & Hove, Lewes, Croydon and the four eastern Surrey districts (being this Council, Mole Valley, Reigate and Banstead and Tandridge). There are two county councils, two unitary authorities, 12 district and borough councils and the South Downs National Park Authority within the area and partnership. It is one of the larger LEPs outside London, with just under 2 million residents and over 150,000 businesses and organisations.
- 8.4 The Joint Committee includes representatives from all 16 authorities and the South Downs National Park Authority. The LEP and other business interests and organisations are not eligible to serve on this Joint Committee, which has been established under the Local Government Act 1972.

### **Surrey First**

- 8.5 A joint committee established for the oversight of delivery of Surrey Public Authority Services comprising the 12 local authorities in Surrey and Surrey Police.

### **Surrey Police and Crime Panel**

- 8.6 A joint committee comprising the 12 local authorities in Surrey and two independent members to carry out the functions set out in the Police Reform and Social Responsibility Act 2011.

## **9 Core Job Description: The Role of the Borough Councillor in Epsom and Ewell**

- 9.1 Councillors are volunteers and bring a wide variety of skills and experience to the job of being a councillor. The multi-member ward structure of the Council provides the opportunity for individual councillors to specialise and use their particular skills and experience, working as part of a team for the benefit of the local community they represent, as well as the wider interest of the Borough as a whole.
- 9.2 However, there is a core role which the community and the Council as a whole expect of all Councillors. This job description sets out that role under the six headings below.

### **Representing the local Ward Community**

- (a) Seeking, and listening to, the views of individuals, voluntary groups and businesses within the ward and representing local ward community views.
- (b) Balancing conflicting views and expectations to present a considered view to the Council or other agencies which have an impact on that community.
- (c) Informing the local community about the work of the Council and helping it to take an informed view of the options that may be before the Council.

### **Representing Individuals and Groups**

Whenever appropriate:-

- (a) Helping individuals, groups and businesses, to secure the appropriate services of the Council.
- (b) Helping individuals and groups to articulate their needs and have their case or their complaint heard, and when appropriate, presenting their case for them.

### **Representing the Whole Community**

- (a) To take an overview of the needs and views of the whole community - residents, voluntary groups and businesses together.
- (b) To balance long and short term needs and to promote the long term economic, social and environmental well being of the Epsom and Ewell community as a whole.

## **Representing the Council**

- (a) Acting as an ambassador of the Council in the wider community to present its ambition, its policies and its views.
- (b) Where appointed to a particular position as the Council's representative on other public or voluntary bodies, to represent and secure the Council's policies through influence and formal partnership working in those bodies.
- (c) Building and maintaining relationships with the Council's partners.

## **A Local Politician**

- (a) To promote and represent the values and manifesto on the basis of which he/she has been elected in the decision making arrangements of the Council.
- (b) To support any political group or party to which he/she may belong in order to secure and maximise its support in local and other appropriate democratic elections.

## **Managing the Council and its Services (The Committee Role)**

- (a) As a member of the full Council, to set the Corporate Plan and to monitor the performance of its Committees.
- (b) As a member of a Council committee, sub-committee or panel, to manage the provision of the Council's services to the Community, in accordance with the Council's aims and objectives set out in its Corporate Plan.
- (c) To review the Council's performance in the provision of its policies and services and identify opportunities to provide better value to the community.

## 10 Scheme of Delegation to Officers

### Introduction

- 10.1 This scheme of delegation authorises the Chief Executive and the Director of Finance and Resources to exercise the functions of the Council as set out in this document. It repeals and replaces all previous schemes of delegation.
- 10.2 This scheme is without prejudice to the exercise of the Council's functions by the Council and the Council's committees, sub-committees and panels.
- 10.3 For the purposes of this scheme the areas of responsibility of the Chief Executive and Director of Finance and Resources are set out in Schedule 1 below and "Head of Service" means the Heads of Service reporting either to the Chief Executive or Director of Finance and Resources.

### General Delegation to Officers

- 10.4 The Chief Executive and the Director of Finance and Resources (the Director) are empowered to make decisions on behalf of the Council in accordance with the following general principles:-
- (a) if a function, power or responsibility has not been specifically reserved to the Council or a committee, the Chief Executive or Director within whose remit the matter falls is authorised to act;
  - (b) the Council and its Committees will make decisions on matters of significant policy. The Chief Executive, and the Director have express authority to take all necessary actions to implement Council and committee decisions that commit resources, within agreed budgets in the case of financial resources, as necessary and appropriate;
  - (c) the Chief Executive and the Director are empowered to take all operational decisions, within agreed policies, in relation to the services for which they are responsible;
  - (d) the Chief Executive and the Director are empowered to take all necessary decisions in cases of emergency;
  - (e) in relation to all delegated authority conferred on the Chief Executive and Director by this scheme, the Chief Executive may allocate or re-allocate responsibility for exercising particular powers to any officer of the Council in the interests of effective corporate management as he or she thinks fit;
  - (f) where there is doubt over the responsibility for the exercise of a delegated power, the Chief Executive, or their nominee, is authorised to act;

- (g) anything delegated to the Director or the Head of Legal and Democratic Services is also delegated to the Chief Executive;
  - (h) these delegations should be interpreted widely to aid the smooth running of the organisation, the effective deployment of resources and the efficient delivery of services.
- 10.5 For the purposes of this scheme, emergency shall mean any situation in which the relevant officer believes that there is a risk of damage to property, a threat to the health or well-being of an individual or that the interests of the Council may be compromised.
- 10.6 In deciding whether or not to exercise such delegated powers, the Chief Executive and the Director should consider whether to consult the appropriate Group Leader, Group Chairman or Committee Chairman and have regard to their views. Officers shall always be entitled to refer matters for decision to the appropriate member body where they consider it expedient to do so.
- 10.7 The Chief Executive and the Director may authorise officers in their service areas to exercise, on their behalf, powers delegated under this scheme, and there will be a presumption that all operational and budgetary responsibility for services shall be exercised by the Head of Service for the appropriate services, unless the Chief Executive directs otherwise.
- 10.8 All delegations conferred under this scheme must be formally recorded in writing by the Chief Executive, and the Director as the case may be (including for the avoidance of doubt any delegation under paragraph 10.4 (e) and 10.7 above). Any decision taken under such authority shall remain their responsibility, and must be taken in their name. The Head of Place Development and the Planning Development Manager shall exercise in their own names any powers delegated to them in connection with the determination of planning applications or any other planning function and such decisions shall remain their responsibility.
- 10.9 The Chief Executive will make such arrangements as she considers appropriate to maintain a central record of all delegations under this scheme. The record will be available for public inspection.
- 10.10 In exercising these delegated powers the officers concerned shall have broad discretion, subject to complying with all relevant legislation, the Council's Constitution, including its Contract and Financial Procedures and Regulations, and overall Council policy, to use the most efficient and effective means available, including the deployment of staffing and other resources within their control and the procurement of other resources necessary, whether within or outside the Council.
- 10.11 Officers shall act so as to achieve for their service the policies and objectives of their service area always having regard to the overall corporate interests of the Council.

- 10.12 Where an officer referred to in paragraph 10.7 above is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, another officer should be nominated by the Chief Executive. This nomination should be formally recorded in writing.
- 10.13 Notwithstanding anything contained in this scheme of delegation, officers shall not have the power to make decisions upon any matter that has been reserved to a member body except in cases of emergency.
- 10.14 Without prejudice to the generality of the foregoing the Chief Executive and the Director shall have the power:-
- (a) to take all lawful action consistent with overall Council policy to deliver agreed strategy, plans and policy within their area of responsibility and within approved budgets. This shall include, but not exhaustively:-
    - (i) invitation and acceptance of tenders in accordance with Contract Standing Orders;
    - (ii) submission of bids for funding;
    - (iii) write-off of irrecoverable debts;
    - iv) virement (within the budget framework);
    - (v) disposal and acquisition of assets;
    - (vi) service and placing of any necessary statutory or other notices (other than those expressly reserved to the Council or a Committee);
    - (vii) in consultation and with the consent of the Head of Legal and Democratic Services authorising the institution, defence or appearance in criminal or civil proceedings in relation to any legislation which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the Council.
  - (b) to put in place management arrangements, which define the area of responsibility of all officers under their area of responsibility;
  - (c) in the case of any overspend to notify the Director of Finance in the role of Section 151 Officer in accordance with the Financial Procedure Rules and Regulations;
  - (d) to determine staffing arrangements within approved budgets, subject to agreement on grading with the Head of Human Resources & Organisational Development and conformance with Council policies;
  - (e) to take all action to recruit, appoint, develop, manage and reward employees within approved Council policies and procedures (including

operation of policies for voluntary severance, early retirement, redundancy and redeployment) and relevant conditions of service.

*[For the avoidance of doubt the appointment of the Chief Executive and Director shall be made by a duly appointed member body in accordance with the Officer Employment Rules. The relevant Committee Chairman will be consulted upon the appointment of a Head of Service but shall take no other part in the process.]*

## **Taking Decisions**

10.15 In taking any decision, the officer concerned must be satisfied that the following issues have been properly considered and completed where appropriate. All of these issues should be considered at the earliest possible stage:-

- (a) the views of the relevant Committee Chairman following the application of the consultation criteria set out in paragraph (c) below;
- (b) the implication of any Council policy, initiative, strategy or procedure. Officers need to be aware of any potential impact of a delegated decision in other areas. In such cases, consultation with officers, relevant Committee Chairman/Chairmen and local members, where the issue relates to a specific area, should take place;
- (c) consultation in accordance with the Council's Consultation Strategy and the views emanating from that process;
- (d) the range of available options;
- (e) the staffing, financial and legal implications;
- (f) the assessment of any associated risks in accordance with the Council's Risk Management Strategy;
- (g) the involvement of appropriate statutory officers;
- (h) the relevance of any regional or national guidance from other bodies;
- (i) the Council's Constitution, its Contract and Financial Procedures and Regulations, all relevant guidance, legislation and Codes of Practice;
- (j) the need to secure Best Value.

10.16 In order to assist with the above, arrangements should be made by relevant officers to deal with times of absence e.g. holidays. This could, for example, be through a named alternative.

## **Scrutiny**

- (a) A report should be presented annually to the Audit, Crime & Disorder and Scrutiny Committee setting out significant decisions taken by Officers under delegated powers in the previous year;
- (b) any member may request that (with the exception of decisions made by the Planning Committee) decisions taken by officers under delegated powers are scrutinised by the Audit, Crime & Disorder and Scrutiny Committee;
- (c) any such scrutiny will not make any action taken as a result of the decision invalid. However, the scrutiny body will be able to recommend improvements to the process or a different course of action in future.

## **Legal and Procedural**

10.17 The Head of Legal and Democratic Services is authorised:-

- (a) to take any action to implement any decision taken by or on behalf of the Council, including the signature and service of statutory and other notices and any document;
- (b) to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Head of Legal and Democratic Services considers that such action is necessary to protect the Council's interests;
- (c) to instruct counsel, solicitors and other experts for legal proceedings, public inquiries, and other matters involving the Council;
- (d) to enter objections to any proposal affecting the Borough, the Council or the inhabitants of the Borough.

10.18 For the avoidance of doubt anything which is not covered by this scheme, including the appointment of a proper officer for the purpose of any statutory function, will be determined by the Chief Executive.

## **General Indemnity**

10.19 The Council has given a general indemnity to any officer acting in the purported discharge of any authority delegated to him for any action, costs, claim or liability incurred by him or her in the form in Schedule 2.



## Schedule 1 - Chief Officers – Areas of Responsibility

Post	Areas of Responsibility
Chief Executive	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers) for all services.</p> <p>Responsible for Place Development, Venues &amp; Facilities, Legal &amp; Democratic Services, Human Resources &amp; Organisational Development, Community &amp; Wellbeing, in support of the Council's corporate goals, ensuring that the Council meets its statutory obligations.</p> <p>The Chief Executive (Head of Paid Service) is the Proper Officer for all statutory purposes unless otherwise determined by them.</p>
Director of Finance and Resources	<p>Participate in the corporate management of the Council.</p> <p>Responsible for ICT, Customer Services &amp; Business Support, Operational Services, Financial Services, Revenues &amp; Benefits, and Housing &amp; Environmental Services, in support of the Council's corporate goals, ensuring that the Council meets its statutory obligations in these areas.</p> <p>Responsible for the proper administration of the Council's financial affairs under section 151 Local Government Act 1972, Section 114 of the Local Government and Finance Act 1988 and Accounts and Audit Regulations and Guidance.</p>
Head of Legal and Democratic Services	<p>To act as the Council's Monitoring Officer in accordance with S 5 of the Local Government and Housing Act 1989 as amended.</p>

## **Schedule 2 - Indemnity to Staff**

- 1.1 The Borough Council will, subject to the exceptions set out below, indemnify its employees and former employees against claims made against them (including costs awarded and reasonable costs incurred) and will not itself make claims against them for any loss or damage (other than claims falling within the cover provided to its employees under any policy of insurance taken out by the Borough Council or any motor vehicle insurance policy taken out by the employee) occasioned by any neglect, act, error or omission committed by them in or about the pursuit of their duties as they may be from time to time in the course of their employment with the Borough Council whilst acting within the scope of their authority which shall include when they are acting for other persons or other bodies with the Council's consent.

### **Exceptions**

- 1.2 The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:-
- (a) Fraud, dishonesty or a criminal offence on the part of the employee;
  - (b) Any neglect, error or omission by the employee otherwise than in the course of his duties;
  - (c) Liability in respect of losses certified by the District Auditor as caused by wilful misconduct.
- 1.3 The indemnity will not apply if an employee, without the written authority of the Borough Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution, or where there is evidence that the employee had acted with reckless disregard for the consequences.
- 1.4 The indemnity is without prejudice to the right of the Council to take or institute disciplinary action against an employee in respect of any neglect, act, error or omission.

# **PART 4**

# **Rules of Procedure**

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## SECTION A – Council Rules of Procedure (Standing Orders)

*Issued: July 2002; 2<sup>nd</sup> Revision July 2012*

### Introduction

The purpose of these Rules of Procedure (Standing Orders) is to regulate the Proceedings and Business of the Council, Committees, Sub Committees and Advisory Panels of the Borough of Epsom and Ewell to ensure that the Council's business is carried out honestly, fairly and efficiently. They should be used to guide Members towards making the right decisions, not to make debating points or unreasonably to obstruct business.

### (a) Relating to Procedures of the Council

#### Definitions

**FCR 1** In these Rules of Procedure the following terms have the following meanings. However, if in order to make sense of a passage a different meaning needs to be attributed to a word or phrase, then that meaning may be given.

**“Authority”** means Epsom and Ewell Borough Council or one or more of its Committees, Sub-Committees, Advisory Panels or Officers acting on the Councils behalf, using powers which have been lawfully delegated.

**“Advisory Panel”** refers to bodies which report as required to the appropriate committee as set out in their Terms of Reference

**“Chairman”** means the Member currently appointed or elected to chairman of a Committee, Sub-Committee or Advisory Panel

**“Chief Executive”** refers to the Council's Head of Paid Service, designated under Section 4 of the Local Government and Housing Act 1989

**“Committee”** refers to a committee of the Council (whether a policy or regulatory committee) unless a distinction is made in the relevant Standing Order

**“Constitution”** means the Council's Constitution under Section 37 of the Local Government Act 2000

**“Council”** means Epsom and Ewell Borough Council acting by the Council

**“Director of Finance and Resources”** refers to the Council's Chief Finance Officer designated under section 151 of the Local Government Act 1972



**“FCR”** means Full Council Rule of Procedure, the rules which regulate the proceedings and business of meetings of the Council of the Borough of Epsom and Ewell

**“Group”** means a political group as defined in the Local Government (Committees and Political Groups) Regulations 1990.

**“Mayor”** refers to the person elected to be Mayor of the Borough

**“Member”** in relation to the Council, means a Member of the Council; in relation to any committee, sub-committee or advisory panel, it means a person who has been appointed as a Member of that committee, sub-committee or advisory panel, whether or not entitled to vote.

**“Monitoring Officer”** means the person designated as monitoring officer under section 5 of the Local Government and Housing 1989. If that person is unable to act owing to absence or illness, the expression means a person nominated as his deputy under subsection (7) of that section

**“Sub-committee”** refers to a sub-committee of a committee

**“Working Day”** means any day on which the Town Hall, Epsom is open to the public, excluding Saturdays, Sundays and Bank Holidays

As long as the context of a passage allows:

- Singular expressions include plural meanings;
- Plural expressions include singular meanings;
- Masculine references include feminine meanings;
- Feminine references include masculine meanings

## General

**FCR 2** Unless otherwise stated in these rules of procedure or statute, where anything in these Rules of Procedure is required to be done in writing, it may be done by email.

**FCR 3** A rule, or part of a rule, may not be suspended or revoked if it reproduces a statutory requirement. It is not necessary for the exact words of the statute to be repeated in a rule. Such rules will be identified in bold type but the presence or absence of bold type does not affect the operation of this paragraph. Any of the other rules may be suspended by the Council by agreeing a motion to that effect provided that either:

- (a) A notice of motion has been given under FCR 73 including an intention to suspend the Council’s rules of procedure; or

- (b) A motion has been moved under FCR 80 (motions which can be moved without notice) and at least two thirds of the whole number of members of the Council is present.

## Challenging previous decisions

- FCR 4** Until two further ordinary meetings of the Council have been held no motion may be moved to rescind or alter any decision of the Council or a decision of a committee on a matter within its terms of reference, and no motion or amendment to the same effect as one which has been rejected by Council or a committee shall be moved unless, in either case: -
- (a) it is recommended by a committee; or
- (b) notice of the motion has been given by at least seven Members of the Council acting together

## Calling a meeting

- FCR 5** The Council will meet on such dates each year as are agreed when the calendar of meetings is approved or amended (ordinary meetings); the first ordinary meeting of each municipal year will be the Annual Meeting.
- FCR 6** **The Annual Meeting shall normally be held on an appropriate date in May at 19.00 hours.**
- FCR 7** A meeting of the Council can be called at any time by the Mayor (an extraordinary meeting).
- FCR 8** The Chief Executive, Director of Finance and Resources and Monitoring Officer can each at any time direct that a meeting of the Council be called (an extraordinary meeting).
- FCR 9** **Any five members acting together may direct that a meeting of the Council be called (an extraordinary meeting). The members shall first send a joint written request asking the Mayor to call a meeting (the request should be sent to the Head of Legal & Democratic Services). If the Mayor refuses or does not call a meeting within seven days after receiving the request, the members may direct the Head of Legal & Democratic Services to do so forthwith. The request shall set out the business to be considered at the meeting.**
- FCR 10** **In relation to every meeting, the Head of Legal & Democratic Services shall send by post to all members a Summons to the meeting at least six clear working days before the day of the meeting.**
- FCR 11** **The Summons shall specify the business proposed to be transacted at the meeting to which it relates.**

**FCR 12** Unless the contrary is set out in the Summons, meetings of the Council shall begin at 1930 hours and shall be held in the Council Chamber at The Town Hall in Epsom.

## **Order of business**

**FCR 13** At the Annual Meeting, the order of business shall be as follows:

- (a) Appointment of the Mayor**
- (b) Appointment of the Deputy Mayor**
- (c) To receive any declarations of interest
- (d) Consideration of the minutes of the previous meeting(s)**
- (e) Any business required by statute to be done
- (f) Approval of the Constitution, with or without changes
- (g) Appointments to Committees, Sub-Committees and Panels
- (h) Appointments of Committee, Sub-Committee and Panel Chairmen
- (i) Appointments to Outside Bodies
- (j) Any business which in the view of the Mayor and Chief Executive is urgent and cannot be dealt with by one of the Council's Committees.

**FCR 14** At ordinary meetings the order of business shall be as follows:

- (a) Appointment of a person to preside if the Mayor and Deputy Mayor are both absent
- (b) To receive any declarations of interest
- (c) Consideration of the minutes of the previous meeting(s)**
- (d) Any business required by statute to be done
- (e) To receive such communications or deal with such business as the Mayor may wish to lay before the Council
- (f) Business remaining from the previous meeting
- (g) Questions from Members
- (h) Recommendations from Committees
- (i) Reports from Officers
- (j) Motions on notice

- (k) Any other business set out in the Summons
- (l) Any business which in the view of the Mayor and the Chief Executive is urgent and cannot be dealt with by one of the Council's committees

**FCR 15** At an extraordinary meeting the order of business shall be as follows:

- (a) Appointment of a person to preside if the Mayor and Deputy Mayor are both absent.
- (b) To receive any declarations of interest
- (c) The business specified in the request/direction that the meeting be called.

**FCR 16** Unless subject to a statutory requirement, the order of consideration of business at any meeting may be changed by the Mayor or by the will of the meeting following a motion to that effect which shall be moved, seconded and put to the vote without debate. The mover of the motion shall be entitled to make a short statement (maximum two minutes) to explain why they believe the order of business should be changed.

**FCR 17** Business which the Council decides should be dealt with after the press and public have been excluded shall normally be considered after all other business has been concluded.

**FCR 18** On consideration of the minutes of a previous meeting, there shall be no discussion except in relation to their accuracy. Any question as to the accuracy of the minutes shall be raised by way of a formal motion seeking to alter the minutes. **Following approval of the minutes they shall be signed by the Mayor.**

## **Quorum**

**FCR 19** **No business may be transacted at a meeting of the Council unless at least one quarter of the members of the Council are present** (currently ten members).

**FCR 20** **Where more than one third of the members of the authority become disqualified at the same time, then, until the number of members is increased to not less than two-thirds of the whole number of members, the quorum shall be determined by reference to the number of members remaining qualified.**

**FCR 21** If at the time a meeting is scheduled to start, or at any time during a meeting, the Mayor declares that a quorum is not present, the meeting shall be adjourned to a date and time fixed by the Mayor at the time the meeting is adjourned, or to the date of the next ordinary meeting of the Council.

## Voting

- FCR 22** Subject to the provisions of any enactments all questions coming or arising before the Council shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.
- FCR 23** A question may be decided by “unanimous consent” where the Mayor asks if a matter is agreed and no member objects. In the event of any member objecting, a formal vote shall be taken.
- FCR 24** Except as otherwise provided, voting shall be on a show of hands of those present.
- FCR 25** In the case of an equality of votes, the Chairman of the meeting shall have a second or casting vote.
- FCR 26** The number of members voting for or against a motion shall be recorded in the minutes.
- FCR 27** Before any vote is taken, any member may stand and ask for the voting to be recorded. If that member is supported by seven other members rising immediately in their places, the voting shall be recorded in the minutes to show how each member cast their vote. The names of members not voting shall also be recorded.
- FCR 28** Unless a recorded vote has been taken, immediately after any vote has been taken, following a request to that effect from any member, their vote for or against the motion, or the fact that they did not vote, shall be recorded in the minutes.
- FCR 29** Where there are any appointments to be made to outside bodies by the Council and the number of persons nominated exceeds the number of vacancies, a secret ballot shall be held. Each member shall be entitled to vote for as many individuals as there are vacancies. The nominee(s) with the most votes shall be taken to be appointed. The Chief Executive shall announce the voting figures and shall identify the successful candidates to the meeting, which shall be asked to give its consent to the appointments.

## Appointment of Committees and Chairmen

- FCR 30** The Council shall at the Annual Meeting appoint such committees, sub-committees, advisory panels and other bodies as are deemed necessary to carry out the work of the Council.
- FCR 31** The Council may at any time appoint such other Committees or bodies as are necessary to carry out the work of the Council, whether on an ongoing or time-limited project specific basis.
- FCR 32** Subject to any statutory provision, the Council:-

- (a) shall not appoint any Member of a Committee to hold office later than the next Annual Meeting of the Council;
- (b) may at any time dissolve a Committee, sub-committee, advisory panel or other body, or alter its membership.

**FCR 33** The Council shall at the Annual Meeting elect Chairmen and Vice-Chairmen of Committees, Sub-Committees and Advisory Panels.

**FCR 34** At any one time a Member may hold the office of Chairman of only one of any of the following committees:

- (a) Any of the four policy committees
- (b) Planning
- (c) Licensing

## **Role of the Mayor**

**FCR 35** The appointment of the Mayor is to be the first business at the Annual Meeting of the Council.

**FCR 36** In the event of a casual vacancy in the office of Mayor, the Mayor will be appointed in accordance with section 88 of the Local Government Act 1972.

**FCR 37** The Mayor, if present, shall preside at meetings of the Council.

**FCR 38** If the Mayor is absent, the Deputy Mayor shall preside at a meeting.

**FCR 39** If both the Mayor and Deputy Mayor are absent, the first business of the meeting shall be to elect a member to take the chair and preside over the meeting.

**FCR 40** All powers or duties of the Mayor at a meeting may be exercised by whoever is appointed to preside over the meeting.

**FCR 41** The ruling of the Mayor as to the meaning or application of these rules of procedure or as to any proceedings of the Council shall be final and shall not be challenged at any meeting of the Council.

**FCR 42** Subject to FCR 13, 14 and 15, the order of business to be set out in a Summons shall be approved by the Mayor.

**FCR 43** The Mayor shall decide whether any question or motion submitted by a member is in order and should be included in the summons. If any question or motion is ruled out of order, the member or members who gave it shall be informed of the reason for such ruling.

- FCR 44** The Mayor, following consultation with the Chief Executive, shall decide whether an item of business not set out in the summons shall be considered at a meeting as a matter of urgency by reason of special circumstances, which shall be announced and specified in the minutes of the meeting.
- FCR 45** The Mayor shall rule on any point of order which arises during a meeting, and shall first be entitled to seek such advice as they think necessary.
- FCR 46** The Mayor shall control the debate on any matter to avoid excessive repetition and confine debate within the scope of the meeting and reasonable limits of time. In so doing, the Mayor shall remain impartial and ensure that different viewpoints are heard.
- FCR 47** The Mayor shall be entitled not to allow any amendments which are frivolous or vexatious. The Mayor shall also be entitled not to allow any further amendments where several amendments have already been considered and considers that further amendments would have the effect of unreasonably prolonging debate on a matter before the Council.
- FCR 48** Whenever the Mayor stands up during a debate any member then standing shall resume their seat and the Council shall be silent. The Mayor may interrupt the debate to restore order by using the command “order”, or by striking the gavel. The Council must then be silent until the Mayor calls on a Member to speak.

### **Disturbance by the public**

- FCR 49** If a Member of the public interrupts the proceedings at any meeting the Mayor shall issue them a warning. If they continue the interruption the Mayor shall order their removal from the Council Chamber. In case of general disturbance in any part of the Chamber open to the public the Mayor shall order that part to be cleared.
- FCR 50** In the event of a public disturbance, the Mayor may without question adjourn the meeting for such period as s/he considers expedient.

### **Disorderly conduct by Members**

**FCR 51** If any Member:

- (a) Persistently disregards the ruling of the Mayor; or
- (b) Behaves irregularly, improperly or offensively; or
- (c) Deliberately disregards established procedure; or
- (d) Deliberately obstructs the business of the meeting;

then the Mayor may name the Member and require them both to apologise and to correct their behaviour immediately, or to do either.

**FCR 52** If a Member named by the Mayor under the paragraph above continues their misconduct, the Mayor may do any or all of the following at their discretion at any time during the meeting:

- (a) forbid the Member from speaking for some or all of the rest of the meeting;
- (b) order the Member to leave the meeting for all or part of the remaining business.
- (c) order the Member to be removed from the meeting.
- (d) adjourn the meeting for such period as they think fit

**FCR 53** A Member may not impute improper motives, or use any offensive expression, to any other Member. The Mayor shall be the sole judge at the meeting of when this rule has been broken. If a Member ignores or rejects the Mayor's ruling the Member shall be dealt with under the two preceding paragraphs.

## **Guillotine**

**FCR 54** Any meeting of the Council which has sat continuously for four hours shall, if items remain to be dealt with, be adjourned to a day and time to be appointed by the Mayor.

**FCR 55** At Council meetings commencing at 1930 hours, if all business has not been dealt with by 2300 hours, the Mayor shall then review the order of the remaining items on the agenda. Any items still outstanding shall be dealt with in the order announced by the Mayor and in order to do so the Mayor may, if necessary, invoke FCR 16, and/or (in accordance with FCR 80(h)) may move suspension of FCR 54 (adjournment of meeting after four hours), so that consideration of business can continue beyond four hours.

## **Adjournment of meetings**

**FCR 56** The Council may adjourn any meeting to a later hour on the same day, or to any other day and hour so long as it is within 10 working days of the original meeting.

**FCR 57** If no date is set by Council for a reconvened meeting, the date shall be determined by the Mayor in consultation with the Chief Executive.

**FCR 58** An adjourned meeting shall be deemed a continuation of the original meeting.

**FCR 59** No business shall be transacted at any adjourned meeting which was not included in the notice convening the meeting of which it is an adjournment.



**FCR 60** Written notice of the adjourned meeting shall be sent by the Head of Legal and Democratic Services to each Member specifying the business to be transacted.

### **Questions from Members of the Council**

**FCR 61** A member of the Council may ask a question at any Council meeting if the requirements of this standing order are satisfied.

**FCR 62** The question must be addressed to the Mayor or the Chairman of any Committee, sub-committee or advisory panel.

**FCR 63** The question must relate to a matter which concerns the Council's powers or duties or which affects the Borough or its inhabitants.

**FCR 64** Notice of the question must be given in writing to the Head of Legal & Democratic Services no later than three clear working days before the day of the meeting.

**Note:** The deadline for questions for a meeting of the Council held on a Tuesday is therefore the preceding Wednesday (17.00 hours)

**FCR 65** Questions shall be called by the Mayor in the order in which notice of the question was received, except that if a member gives notice of more than one question, their second or subsequent question(s) shall appear after all of the first questions submitted by other members, and so on.

**FCR 66** Where practicable, a written answer to each question shall be circulated to all members no later than one working day before the meeting. Any oral answer shall be committed to writing and shall be published within three working days after the meeting.

**FCR 67** Every question shall be put and answered without debate or comment from any other member. If no written answer has been circulated to members in advance, when answering a question the person to whom it is put shall state why it has not been practicable to provide a written answer.

**FCR 68** Their question having been called at the meeting, a questioner may ask one supplementary question which must be relevant to the subject of the question on notice. If a Questioner knows they will be absent from the Council Meeting, they may notify the Mayor which member they wish to substitute for them and ask a supplementary question on their behalf. If the member is absent and no substitute has been appointed, the Mayor shall first ask whether any other Member from within the same Group as the questioner wishes to take the opportunity to ask a supplementary question. If the member concerned is not in a group or no member of the group wishes to ask a supplementary question, any other Member may indicate to the Mayor their wish to ask a supplementary question, and the Mayor shall call on the first to do so to ask their question.

**FCR 69** The Mayor shall allow up to 30 minutes for questions and their replies at the meeting. If a question is being asked or answered at the time limit, the answer must be completed within 5 minutes. A written answer must be provided within 3 working days to any questions not called within the 30 minute period and in respect of which no written answer has already been circulated to members.

**FCR 70** With the consent of the Mayor, following consultation with the person to whom the question is addressed, a question may be asked of which the notice required by FCR 64 has not been given where the question relates to an urgent matter. In this case notice shall be given, as soon as practicable, and not later than noon, on the day of the meeting.

## **Motions**

**FCR 71** Subject to FCR 73 (notice to be given in writing), any member of the Council may propose a motion at any meeting of the Council.

**FCR 72** A recommendation from a committee shall constitute a motion to be proposed by the Chairman, and shall not require to be seconded. If the Chairman is not present, the Vice-Chairman or another member of the committee shall propose the recommendation.

**FCR 73** Subject to FCR 80 (motions which may be moved without notice), a notice of motion (other than a recommendation from a Committee) must be given in writing and delivered to the Head of Legal & Democratic Services by no later than 5pm on the eighth clear working day before the date of the meeting at which it is intended to be considered. A record will be kept of all motions received and these will be dated and numbered in the order in which they were received.

**Note:** The deadline for notice of motions for a meeting of the Council held on a Tuesday is therefore the Wednesday (17.00 hours) of the week prior to the week immediately preceding the meeting.

**FCR 74** All motions must be relevant to some matter on which the Council has powers or duties, or which affects the borough.

**FCR 75** If notice is given of any motion which in the opinion of the Mayor, following consultation with the Head of Legal & Democratic Services is out of order it shall not be accepted and placed on the agenda. If a motion is not accepted the member who gave the notice will be informed in writing.

**FCR 76** All motions of which notice has been duly given shall be set out in the summons for the meeting in order of receipt.

**FCR 77** If a motion set out in the summons is not moved either by the member who gave the notice or some other member it shall be treated as withdrawn and shall not be moved without fresh notice being given.

**FCR 78** A motion which has been moved and seconded may only be withdrawn with the consent of the meeting.

**FCR 79** The Council shall first be invited to decide how a motion on notice from a member should be dealt with. In particular the Council will be asked to decide whether to debate a motion immediately or to refer it to the appropriate committee. Before the Council takes the vote, advice shall first be sought from the Chief Executive. If there is not unanimity as to the course of action, the proposer of the motion shall then have the right to make a statement of up to two minutes in length as to what course of action they consider should be followed, and the appropriate committee chairman shall have the right to respond, also for up to two minutes. The question of referral shall then be put to the vote. If the matter is referred to a committee, the committee in question must consider the motion and will normally make a final decision on the motion if they have delegated authority to do so, or make a report and recommendation to Council if they do not have such authority.

### **Motions which may be moved without notice**

**FCR 80** The following motions may be moved without notice:

- (a) To appoint a person to preside at a meeting
- (b) To correct the minutes
- (c) To change the order of business
- (d) To remit a matter to a committee
- (e) To appoint a committee arising from an item mentioned in the summons
- (f) To adopt recommendations of committees or officers and to take action resulting from such adoption
- (g) That leave be given to withdraw a motion
- (h) To suspend rules of procedure
- (i) To amend a motion
- (j) To defer consideration of a matter to a later date
- (k) To adjourn the meeting
- (l) To proceed to next business
- (m) That the question be now put
- (n) That a member be not further heard

- (o) To exclude the public
- (p) To give the consent of the Council, where consent is required by these standing orders

### **General rules of conduct during a debate**

**FCR 81** Whilst a motion or amendment is under debate no other motion shall be moved except any one of the following:

- (a) To remit a matter to committee for consideration/reconsideration
- (b) To defer consideration of a matter to a later date
- (c) To adjourn the meeting
- (d) To proceed to next business
- (e) That the question be now put
- (f) That a member be not further heard
- (g) To exclude the public
- (h) To give the consent of the Council, where consent is required by these standing orders

**FCR 82** All members must address the Mayor when speaking during a Council meeting.

**FCR 83** The maximum time for any speech shall not be exceeded except with the consent of the Mayor.

**FCR 84** Only one member shall speak at any one time, and members shall stand whilst speaking. All other members shall remain seated, unless rising to make a point of order/personal explanation.

**FCR 85** Members must not speak about anything except the subject under discussion, or to raise a point of order, point of personal explanation or one of the motions listed below

**FCR 86** If a member stands to raise a point of order or point of personal explanation, the Member shall be heard immediately, and any member then speaking shall give way.

**FCR 87** A point of order relates only to an alleged breach of a rule of procedure or statutory provision. The member raising the point of order shall specify which rule of procedure or statutory provision is involved and how the Member thinks it has been broken. The Mayor's ruling on any point of order is final (FCR 41 refers)

**FCR 88** A point of personal explanation is an opportunity to correct an apparent misunderstanding of comments made by the member earlier in the debate. The member raising the point shall specify what the Member said earlier and how they feel this has been misunderstood. The Mayor's ruling on any point of order is final (FCR 41 refers)

## **Rules of debate**

**FCR 89** There shall be no debate unless a motion has been proposed and (except where specifically stated) seconded.

**FCR 90** The proposer of the motion shall speak first (max 5 minutes)

**FCR 91** The seconder of the motion may speak immediately after the proposer or indicate that they wish to speak later in the debate but will not be allowed to speak after the relevant Chairman.

**FCR 92** The motion shall then be opened for debate.

**FCR 93** Members wishing to speak shall indicate this by raising an arm to catch the attention of the Mayor.

**FCR 94** Members shall generally be called to speak (max 3 minutes) in the order in which the Mayor notices their wish to speak, except that the Mayor may alternately invite speakers from opposing sides of the debate, to seek to maintain a balanced debate.

**FCR 95** No member may speak more than once on the same matter (unless otherwise stated).

**FCR 96** When there is no-one else wishing to speak, or the Mayor determines that there has been sufficient discussion (see FCR 46 and 47), or following agreement of a "closure motion" (see FCR 107 to 111), the Mayor shall call on the Chairman of the relevant committee to reply to the debate (max 5 minutes), following which the proposer of the motion, if it is not a recommendation from a committee, shall have a final right of reply to the debate (max 5 minutes), before the motion is put to the vote.

## **Amendments**

**FCR 97** Amendments to a motion may be submitted in writing in advance of the meeting. Amendments which have been submitted in advance will be called by the Mayor in such order as shall best facilitate their consideration, immediately following the speech of the proposer, but shall be moved and seconded before being debated.

**FCR 98** In accordance with FCR 89, an amendment to a motion may also be moved and seconded during the debate but shall be provided in writing to the Mayor before being debated.

**FCR 99** Only one amendment shall be debated at a time.

**FCR 100** An amendment must be relevant to the motion. It must take the form of a proposal:

- (a) To refer the matter back to committee
- (b) To leave out words
- (c) To leave out words and insert or add others
- (d) To insert or add words

**FCR 101** The Mayor shall not accept an amendment if,

- (a) it is outside the scope of the original motion
- (b) it is outside scope the meeting
- (c) it is outside the Council's powers
- (d) it would contravene FCR 4 (challenging a previous decision)and/or
- (e) has the same effect as voting against the motion.

**FCR 102** The mover of the amendment shall speak first (max 5 minutes)

**FCR 103** Members shall be called in turn (see FCR 84 above).

**FCR 104** A member who has spoken on the original motion or on any amendment may speak again on any subsequent amendment (max 3 minutes).

**FCR 105** The Chairman of the relevant committee shall have the right of reply at the close of debate on an amendment (max 5 minutes), following which the mover of the original motion may reply to the debate on an amendment (max 3 minutes). Neither the Chairman of the relevant committee nor the mover of the original motion shall otherwise speak on an amendment. If they do so, they forfeit their right to reply to the debate on that amendment.

**FCR 106** If an amendment is carried the motion as amended takes the place of the original motion and becomes the substantive motion to which any further amendments may be moved.

## **Closure motions**

**FCR 107** At the conclusion of the speech of another member any member (except the proposer or seconder of the motion and, as the case may be, the amendment under debate), including the Mayor, may move one of the motions listed in FCR 81 (a) to (e) above (a "closure motion"). When moving a closure motion the member must refer to these rules of procedure and state which motion they are moving and, once the Mayor has ruled that the motion is in order, will be given the opportunity to explain why it is being moved (max 2 minutes).

**FCR 108** On a motion to remit a matter to a committee, the Mayor shall give the chairman of the committee the right to reply to the motion (max 3 minutes), after which the motion shall be put to the vote without debate or comment.

**FCR 109** On a motion to defer consideration of a matter to a later date or to adjourn the meeting, if the Mayor considers that the matter requires further discussion but cannot reasonably be discussed at the meeting in question, the motion to defer shall be put to the vote without debate.

**FCR 110** On a motion to proceed to next business, unless the Mayor thinks that the Council needs to reach a decision at that meeting on the matter then under consideration, the motion to proceed to next business shall be put to the vote, without comment or debate.

**FCR 111** On a motion that the question be now put, unless the Mayor thinks that there has been insufficient debate of the matter, the Mayor shall first put to the vote the motion that the question be now put and, if it is passed, shall give the mover of the motion under consideration a right of reply (max 5 minutes) before putting that motion to the vote.

## **(b) Relating to the Conduct of Committees, Sub-Committees and Advisory Panels**

### **Definitions**

**CPR 1** In these Rules the following terms have the following meanings. However, if in order to make sense of a passage a different meaning needs to be attributed to a word or phrase, then that meaning may be given.

**“CPR”** means Committee Rule of Procedure, the rules which regulate the proceedings and business of meetings of the Committees, Sub Committees and Advisory Panels of the Council of the Borough of Epsom and Ewell

**“FCR”** means Full Council Rule of Procedure, the rules which regulate the proceedings and business of meetings of the Council of the Borough of Epsom and Ewell

**“Policy Committee”** is a collective term for one or more of the following committees: Strategy and Resources; Environment, Leisure and/or Social

**“Advisory Panel”** refers to one or more of the following: the Financial Policy Panel, Health Liaison Panel and/or Human Resources Panel

The term **“Chairman”** refers to the person elected by annual council or to the person elected by the committee to chair a meeting in their absence (if no Vice Chairman has been appointed or is absent themselves)

## Questions from the public

**CPR 2** At meetings of the Council's policy committees, Planning Policy Sub-Committee, Licensing Committee and Scrutiny Committee up to 30 minutes will be set aside for written or oral questions from any member of the public who lives, works, attends an educational establishment or owns or leases land in the Borough on matters within the Terms of Reference of the body in question.

**CPR 3** A person who wishes to ask a written question must submit their question in writing (either in hard copy or by email) to the Council's Head of Legal and Democratic Services. The written question must arrive by 5.00pm on the fifth working day before the day of the meeting.

**Note:** For example, for a meeting on a Wednesday, the request must therefore arrive by 5.00pm on the Wednesday of the week before the meeting.

**CPR 4** The member of the public must set out: (a) the wording of the question they wish to ask (b) an address, email address or telephone number at which they can be contacted before and after the meeting (c) whether they live, work, attend an educational establishment or own or lease land in the Borough and if so, details.

**CPR 5** The question or topic may not relate to a specific planning application or decision under the Planning Acts, a specific application for a licence or permit of any kind, the personal affairs of an individual, or a matter which is exempt from disclosure or confidential under the Local Government Act 1972. Questions which in the view of the Chairman are vexatious or frivolous will not be accepted.

**CPR 6** Following receipt of a written question, the Head of Legal and Democratic Services will ensure that the applicant is contacted and told whether their request complies with the conditions above and if so what the procedure will be at the meeting. If contact details are not readily identifiable or have not been supplied, the question will not be accepted even if in all other respects it is valid.

**CPR 7** Questions must be addressed to the Chairman of the relevant meeting

**CPR 8** The Chairman may decline to answer a question or may give an answer orally at the meeting or may provide a written reply. If available, the questioner will be supplied with a written answer before the Meeting. At the Meeting, and as part of the initial response to a question, the Chairman may invite other members of the relevant body to contribute or simply refer to a publication where the answer or further details may be found.



- CPR 9** At the Meeting the Chairman will ask the questioner if the response answers their concern or if they wish to ask one supplementary question. If a supplementary question is asked, it must be relevant to the subject of the original question. The Chairman may decline to answer a supplementary question or invite other members of the relevant body to contribute to a response.
- CPR 10** Written questions and any supplementary questions to written questions shall be taken first. Written questions shall be taken in the order they were received followed by any oral questions until 30 minutes have elapsed since the first question was called.
- CPR 11** A member of the public may ask more than one question but their second question (written or oral) shall be taken after all other individuals who wish to ask a question have been given the opportunity to do so.

## **Public speaking at the Planning Committee**

- CPR 12** In relation to planning applications, there shall be three categories of speaker per application: objector, supporter and applicant/agent.
- CPR 13** A person who wishes to speak at a Planning Committee must register their wish to do so between 6pm and 7pm on the evening of the meeting at the Town Hall reception desk.
- CPR 14** Normally, in addition to the applicant/agent, only one member of the public may speak for or against a single application. Registration will normally be on a first come first served basis but an individual may choose to waive this right in favour of an individual who attempted to register at a later time. Alternatively, several members of the public may appoint one person to speak on their behalf provided they can reach agreement to this amongst themselves. .
- CPR 15** Speakers shall be called in the order of (1) objector (2) supporter (3) applicant/agent
- CPR 16** A speaker shall have a maximum of three minutes to address the Committee and must confine their remarks to the application upon which they requested to speak. The applicant/agent shall be given an amount of time equal to the amount of time allocated to the all the objectors. The address shall be in the form of a statement, not attempts to question the applicant or other person but may address issues raised by other speakers.

## **Petitions**

- CPR 17** A petition is a written or electronic communication which is signed by or sent to the Council on behalf of at least 20 people. The Council's response to a petition will depend on what the petition asks for and how many people have signed it but may include presenting the petition at a committee meeting.

**CPR 18** The presentation of petitions at policy committees shall take place immediately after the submission of questions by members of the public in the order in which notice of them is received by the Head of Legal and Democratic Services.

**CPR 19** The petition organiser shall have the opportunity to present the petition to a meeting of the appropriate policy committee provided that they have given notice of their intention to do so to the Head of Legal and Democratic Services by 5.00pm at least five working days before the meeting at which the petition is to be presented.

**Note:** For example, for a meeting on a Wednesday, the request must therefore arrive by 5.00pm on the Wednesday of the week before the meeting.

**CPR 20** The presentation of a petition shall be limited to not more than five minutes, and shall be confined to reading out, or summarising, the subject matter of the petition, indicating the number and residency of the signatories, and making such further supporting remarks relevant to the petition.

**CPR 21** Regarding petitions presented to a policy committee (of which proper notice has been given):-

(i) a written response may be available in advance of the meeting

(ii) the Chairman of the Committee may, if he considers it convenient and conducive to the despatch of business, allow the subject matter to be dealt with at the meeting at which it is presented; or otherwise

(ii) the subject matter shall stand referred, without discussion, either to the next ordinary meeting of the Committee or other appropriate body.

## **Committee, Sub-Committee and Advisory Panel timetables and agendas**

**CPR 22** The Head of Legal and Democratic Services will prepare a timetable of meetings of the Council, Policy Committees, Sub-Committees and Advisory Panels each year and submit it to the Authority for approval. Meetings shall be organised in accordance with the approved timetable. The Head of Legal and Democratic Services may re-arrange the date for, or cancel, a meeting if they and the Chairman of the body in question are both satisfied that there is good reason for doing so or insufficient business to justify the meeting being held, or for other reasons which in their view are sufficient. When a meeting is cancelled or the date is changed, the Head of Legal and Democratic Services shall notify Members via Members Briefing or email or by any other means they think fit. When possible, notice of the cancellation or change shall also be posted on the Council's website.

**CPR 23** The Head of Legal Democratic Services must send out an Agenda at least six working days before every meeting of a policy committee, sub-committee or advisory panel, or as soon as the meeting is called whichever is later. A hard copy of the agenda shall be sent to every person entitled to receive papers of the committee, sub-committee or advisory panel.

**CPR 24** The agenda must include:

- (a) all items of business referred to the policy committee, sub-committee or advisory panel by the Council or another policy committee, sub-committee or advisory panel;
- (b) any reports submitted to the committee or sub-committee by the Chief Executive, Directors or Service Managers;
- (c) any item of business which the Chairman requires to be included;

**CPR 25** Any Member who wishes to request that a particular item of business be included must give notice in writing to the Head of Legal and Democratic Services by 5.00pm on the eighth working day before the date of the meeting.

**Note:** For example, for a meeting on a Wednesday, the request must therefore arrive by 5.00pm on the Friday before the week immediately preceding the meeting.

**CPR 26** A report shall not be submitted to a Policy Committee, Sub-Committee or Advisory Panel if, in the opinion of the Head of Legal and Democratic Services it does not comply with legal or policy requirements.

**CPR 27** Subject to any requirements of the Chairman, the Head of Legal and Democratic Services must arrange the order of business in a manner in which they consider will ensure the effective despatch of business.

**CPR 28** If it is impossible, owing to exceptional circumstances, to include a report on a particular item on the Agenda before it is despatched, or if a report is proposed to be put to the meeting as a matter of urgency in special circumstances under Section 100 B of the Local Government Act 1972, the Head of Legal and Democratic Services shall circulate it to every person entitled to receive the papers of the committee or sub-committee as soon as practicable after they have been prepared.

**CPR 29** The Scrutiny Committee has the right, in the exceptional circumstances mentioned in paragraph 14 of the Overview and Scrutiny rules, to call-in any decision of a policy committee other than a recommendation to the Council in accordance with the Protocol set out in Part 5 of the Constitution.

## **Special meetings of Committees, Sub-Committees and Advisory Panels**

- CPR 30** The Chairman of a policy committee (or in his absence the Vice Chairman) or the Chairman of a sub-committee or advisory panel may call a special meeting of that policy committee, sub-committee or advisory panel at any time. The Chief Executive, Director of Finance and Resources and Monitoring Officer may also call a special meeting to consider business at any time.
- CPR 31** A special meeting may also be called if a joint written request signed by at least three, or one quarter of the total number, of the voting members of a policy committee, sub-committee or advisory panel, whichever is the greater, has been made to the Chairman of a policy committee (or in his absence, Vice Chairman) or Chairman of a sub-committee or advisory panel (the request should be sent to the Head of Legal and Democratic Services)
- CPR 32** The Chairman may not refuse to hold a special meeting in such circumstances and a special meeting must be called within seven days of the presentation of such a properly constituted request.
- CPR 33** The request to call a special meeting must state the business to be transacted and no other business. The Head of Legal and Democratic Services must fix a date for the meeting which so far as practicable is appropriate for the proper despatch of that business. CPR 23 (circulation of papers) will then apply.

## **Rights and duties to attend meetings**

- CPR 34** With the exception of Licensing Hearings Sub-Committees, any member of the Council may attend the meetings of all policy committees, sub-committees and advisory panels, and permission to speak will not normally be refused by the Chairman.
- CPR 35** A co-opted member of a committee, sub-committee or advisory panel has the right to attend all meetings of that body but may speak only on matters which the Chairman considers reasonably and fairly relate to the purposes for which they were appointed to the body. Co-opted members may not speak on the appointment of a Chairman or Vice-Chairman or be elected to those offices.
- CPR 36** In the case of the Planning Committee, Members of the Committee who have entered the meeting late for a particular item, have no right to vote on that item.

**CPR 37** The Scrutiny Committee may require any Member of a policy committee, the Chief Executive and/or any senior officer to attend before it to explain in relation to matters within its remit (a) any particular decision or series of decisions, (b) the extent to which the actions taken implement Council policy and (c) their performance and it is the duty of those persons to attend if so required.

**CPR 38** Notwithstanding anything said above, a member whose notice of motion has been referred by the Council to any policy committee, sub-committee or advisory panel shall be given notice of the meeting at which it is proposed to consider the motion.

## **Quorum**

**CPR 39** The quorum of a policy committee, sub-committee, Audit, Crime & Disorder and Scrutiny Committee or advisory panel shall be at least one quarter of the total number of Members of the relevant body rounded up to the next whole number, but shall never be less than three except where authorised by statute or where ordered by the Council.

**CPR 40** If there is no quorum at the time the meeting is summoned to start, the Chairman will allow a delay of fifteen minutes to see if a quorum assembles. If there is still no quorum at the end of that period, the meeting must be reconvened at another time.

**CPR 41** If during any meeting of a committee, sub-committee or advisory panel the Chairman ascertains that a quorum is not present, the meeting shall stand adjourned for fifteen minutes. If after fifteen minutes there is still no quorum present, the meeting shall end.

**CPR 42** The Chairman may fix a date and time to deal with any business which cannot be dealt with because of CPR 40 or 41 above. If they do not do so, the business shall be dealt with at the next timetabled meeting of the committee, sub-committee or advisory panel.

## **Absence of Chairman**

**CPR 43** If the Chairman is absent from a meeting, the Vice Chairman shall Chair the meeting. In the absence of a Vice Chairman, or if no Vice Chairman has been appointed by the Council, the Committee must elect a person to Chair the meeting.

**CPR 44** A Chairman or Vice Chairman must be drawn from the membership of the committee or sub-committee.

**CPR 45** If the Chairman or Vice Chairman enters the meeting after another member has been appointed to preside, that Member must immediately at the conclusion of the matter under discussion offer the chair to the Chairman or Vice Chairman.

**CPR 46** If the Chairman resigns or is unable to act as such, the Vice Chairman shall become the Chairman until a Chairman (and if necessary a Vice Chairman) is elected for the remainder of the municipal year by the Council. If the Vice Chairman resigns or becomes unable to act as such, the Council must elect a new Vice-Chairman.

**CPR 47** Any power or duty of the Chairman in relation to the conduct of a meeting may be exercised by the person chairing the meeting and any reference to the Chairman shall be taken to include such persons except that an officer shall not be entitled to a vote of any kind.

## **Guillotine**

**CPR 48** At 22.00 hours (or two and a half hours after a meeting has commenced) the Chairman of a policy committee, sub-committee or advisory panel shall review the business to be transacted and shall order the items so as to dispose of all matters requiring a decision by 22.30 hours. In respect of any matters still outstanding at 22.30 hours, the committee shall be asked to decide either that these be agreed as presented without debate/discussion or that they be held over until the next meeting.

## **Minutes**

**CPR 49** The Minutes of every meeting of a policy committee, sub-committee or advisory panel shall be written and presented to the next ordinary meeting of the relevant body.

**CPR 50** The Chairman shall put that the Minutes of the meeting held on the day in question be signed as a true record.

**CPR 51** There shall be no discussion on the Minutes, except by way of a motion relating to their accuracy. If no question of accuracy is raised, or as soon as any question is settled, the Chairman shall initial each page of the minutes in addition to dating and signing the final page of the said document.

**CPR 52** If the committee, sub-committee or advisory panel is not scheduled to meet again, or is not likely to meet in the foreseeable future, the Chairman of the committee or sub-committee (or in his absence any Member of it) may sign the Minutes using the above procedure when the proceedings of that body are reported to (or at a convenient meeting of) the Council or the parent committee, subject to the resolution of all questions as to their accuracy which may then be raised by Members who were present at the meeting.

## **Scheme of delegation**

**CPR 53** A committee, sub-committee or advisory panel shall act in accordance with its terms of reference and delegated powers as agreed by the Council and set out in this Constitution.

## Rules of debate

**CPR 54** Meetings of policy committees, sub-committees and advisory panels are to be conducted with as little procedural formality as is consistent with the need for good order and the effective conduct of business. However, the following guidelines should be taken into account:

### Proposals and Amendments

**CPR 55** The officers' recommendations in a report shall constitute proposals which do not require to be moved and seconded and shall be the basis for any further debate.

**CPR 56** During a debate, a Member should make it clear if they are suggesting something which they wish to be, or form part of, the decision of the policy committee, sub-committee or advisory panel. It is best practice for any such proposals to be seconded and the Chairman may require them to be submitted in writing so that they may be read to the meeting before being discussed. For the sake of clear and transparent decision making, the Chairman should explicitly ask the Committee to agree to any such proposal and if any Member of the Committee disagrees, a vote by show of hands should be taken prior to any further debate.

**CPR 57** Members must not speak about anything except the subject under discussion, a point of order, personal explanation or declaration of interest.

**CPR 58** Members have no right to speak as often as they wish on a particular agenda item and the Chairman may rule that a Member may no longer be heard. The Chairman's ruling on this shall be final and not open to comment.

**CPR 59** Any proposals from the floor should not have the same effect as voting against the officers' recommendation (s) or be outside the scope of the original proposal, outside the scope of the meeting or outside the Council's powers.

**CPR 60** It is the role of the Chairman to summarise what the Committee has decided, and if necessary, to take a final vote by show of hands, before moving onto the next item of business.

### Motions referred from Council under FCR 79

**CPR 61** The proposer of a motion referred to the Committee by the Council shall have the right to open the debate on the matter in question but may not vote on the matter unless they are a member of that policy committee, sub-committee or advisory panel. When there is no-one else wishing to speak, or the Chairman determines that there has been sufficient discussion, the Chairman shall call on the proposer of the motion referred from Council to reply to the debate (max 3 minutes), before the matter is put to the vote.

**CPR 62** A member exercising a right of reply shall confine themselves to answering previous speakers and shall not introduce new matters or material; the Chairman's ruling on this shall be final and not open to comment.

**CPR 63** In accordance with FCR 79, the policy Committee, sub-committee or advisory panel in question will normally make a final decision on the motion, if they have delegated authority to do so, or make a report and recommendation to Council if they do not have such authority.

### **Proposals which may be moved during debate**

**CPR 64** When a matter is under debate no other proposal shall be moved except to:

- (a) amend the proposal under discussion
- (b) move that a Member not be further heard
- (c) move a motion under Section 100A (4) of the 1972 Act to exclude the press and public
- (d) move a closure motion

### **Closure Motions**

**CPR 65** At the conclusion of the speech of another member any member may move one of the following closure motions:

- (a) To refer a recommendation of a sub-committee or advisory panel back to that body for reconsideration
- (b) To defer consideration of the matter until the next ordinary meeting of the Committee
- (c) To adjourn the meeting
- (d) to put the question
- (e) To proceed to the next business

**CPR 66** When moving a closure motion the member must state which closure motion they are moving and, once the Chairman has ruled that the motion is in order, will be given the opportunity to explain why it is being moved (max 2 minutes).

**CPR 67** On a proposal to refer a recommendation back to a sub-committee or advisory panel, the Chairman shall give the chairman of the relevant body, if they are present, the right to reply to the motion (max 3 minutes), after which the proposal shall be put to the vote without debate or comment.



- CPR 68** On a proposal to defer consideration of a matter to a later date or to adjourn the meeting, if the Chairman considers that the matter requires further discussion but cannot reasonably be discussed at the meeting in question, the proposal to defer shall be put to the vote without debate or comment.
- CPR 69** On a proposal to proceed to next business, unless the Chairman thinks that the committee, sub-committee or advisory panel needs to reach a decision at that meeting on the matter then under consideration, the proposal to proceed to next business shall be put to the vote, without comment or debate.
- CPR 70** On a proposal that the question be now put, unless the Chairman thinks that there has been insufficient debate of the matter, the Chairman shall put to the vote the proposal that the question be now put without comment or debate.
- CPR 71** Unless a proposal to exclude the press and public is on the agenda, the Chairman shall ascertain the grounds for the motion and shall ascertain from the appropriate officers present whether the public can lawfully be excluded. If so, they shall allow the proposer of the matter under discussion a right of reply on the proposal to exclude the press and public and shall then put the proposal to the vote. If it is passed the Chairman may at their discretion either immediately require the press and public to leave the room in which the debate is being held or adjourn the debate until some convenient time later in the meeting when the public shall have been excluded.

#### **Chairman's discretion to put the question**

- CPR 72** The Chairman may curtail the debate at any time if they consider that the Committee, Sub-Committee or Advisory Panel has sufficiently discussed the matter. They shall thereupon give the movers of the motion and amendment (if any) their rights of reply and put that motion or amendment to the vote.

#### **Points of Order/Personal Explanation**

- CPR 73** If a member wishes to raise a point of order or point of personal explanation, the Member should normally stand and shall be heard immediately, and any member then speaking shall give way.
- CPR 74** A point of order relates only to an alleged breach of a rule of procedure or statutory provision. The member raising the point of order shall specify which rule(s) of procedure or statutory provision is involved and how the Member thinks it has been broken. The ruling of the Chairman on any point of order is final.

**CPR 75** A point of personal explanation is an opportunity to correct an apparent misunderstanding of comments made by the member earlier in the debate. The member raising the point shall specify what the Member said earlier and how they feel this has been misunderstood. The ruling of the Chairman on any point of order is final.

### **Respect for the Chairman**

**CPR 76** The Chairman may interrupt the debate to restore order by using the command “order” or by striking the gavel. The Committee must then be silent until the Chairman calls upon a Member to speak.

**CPR 77** All Members must address the Chairman when speaking.

### **Composition of Committee, Sub-Committees and Advisory Panels (including substitution of Members)**

**CPR 78** A committee may not appoint a sub-committee unless the Council has expressly agreed to the creation of a sub-committee or it is mentioned in the Constitution.

**CPR 79** Every member of the Council shall be eligible for appointment to a sub-committee.

**CPR 80** A Committee may decide to co-opt additional members onto the Committee, whether members of the Council or not. Co-opted members of a Committee shall not be counted in the quorum for the Committee and shall not be entitled to vote on any matter before the Committee. Co-opted members may be appointed to assist with a specific area of business or generally to assist the Committee in its work.

**CPR 81** Subject to section 102 (5) of the 1972 Act (councillor leaving office to cease to be a member of a committee) and CPR 82 (substitutions) every person appointed as a voting member of such a committee or sub-committee and every person appointed to exercise other functions in relation to a sub-committee shall continue until the appointment is terminated by the authority or they resign.

**CPR 82** A Member of a Committee, Joint Committee, Sub-Committee or Advisory Panel may for the whole of a specified meeting designate as his/her substitute another Member other than a Member of the Scrutiny Committee. The substitute may attend the meeting on behalf of, but not in addition to, the nominating Member and shall be entitled to speak and vote. The nominating Member, or in their absence, the Leader/Chairman of his/her Group Deputy Leader/Chairman of his/her Group, shall inform the Head of Legal and Democratic Services or his representative in writing or by e-mail, prior to the meeting in question, that his/her substitute will be attending

**CPR 83** Provisions for the appointment of substitutes do not apply to meetings of Licensing Hearings Sub-Committees.

## **Motions affecting staff**

**CPR 84** If any question arises at a meeting of a Committee, Sub-Committee or Advisory Panel as to the appointment, promotion, dismissal, salary or conditions of service of any person employed by the Council, or their conduct, the matter must not be discussed until it has been decided whether or not to exclude the press and public under Section 100 A (4) of the 1972 Act.

## **Good order in meetings**

### **Disorderly conduct by Members**

**CPR 85** If any Member:

- (a) Persistently disregards the ruling of the Chairman; or
- (b) Behaves irregularly improperly or offensively; or
- (c) Deliberately disregards established procedure; or
- (d) Deliberately obstructs the business of the meeting;

then the Chairman may name the Member and require them both to apologise and to correct their behaviour immediately, or to do either.

**CPR 86** If a Member named by the Chairman under the paragraph above continues their misconduct, the Chairman may do any or all of the following at their discretion at any time during the meeting:

- (a) they may forbid the Member from speaking for some or all of the rest of the meeting;
- (b) they may order the Member to leave the meeting for all or part of the remaining business.
- (c) they may order the Member to be removed from the meeting.
- (d) they may adjourn the meeting for such period as they think fit

**CPR 87** A Member may not impute improper motives, or use any offensive expression, to any other Member. The Chairman shall be the sole judge at the meeting of when this rule has been broken. If a Member ignores or rejects his ruling he shall be dealt with under the two preceding paragraphs.

### **Disturbance by members of the public**

**CPR 88** If a Member of the public interrupts the proceedings at any meeting the Chairman shall issue them a warning. If the member of the public continues the interruption the Chairman shall order the member of the public's removal from the meeting room

**CPR 89** In the event of a public disturbance, the Chairman may without question adjourn the meeting for such period as s/he considers expedient.

## **General**

**CPR 90** The decision of the Chairman as to acceptable conduct whether by members or the public shall be final.

## **Recordings and Photography**

**CPR 91** Audible alerts on mobile phones must be turned off. Permission to record or take photographs/video during a meeting should be sought in advance of the meeting and the Chairman may attach such conditions to the permission as they see fit, which may include providing a duplicate copy of any recording or photograph made or taken on Council premises.

## **Voting**

**CPR 92** Upon summation of a decision by the Chairman, (CPR 60 refers) a question may be decided by “unanimous consent” were the Chairman asks if a matter is agreed and no member objects. In the event of any member objecting, a formal vote shall be taken.

**CPR 93** Except as otherwise provided, voting shall be on a show of hands of those present.

**CPR 94** At a meeting of a decision making body any four Members may request that the vote be recorded to show who voted for and against the proposal and who abstained. For a recorded vote, an appropriate officer shall call the name of each Member present and that Member shall speak to indicate whether he votes for or against the motion or abstains, without further comment.

**CPR 95** Unless a recorded vote has been taken, immediately after any vote has been taken, following a request to that effect from any member, their vote for or against the motion, or the fact that they did not vote, shall be recorded in the minutes.

**CPR 96** The Chairman must ascertain the numbers voting for or against any motion or amendment, or for any candidate. They or an officer present shall inform the meeting of the numbers. Once the Chairman has satisfied themselves as to the totals their declaration of the result cannot be questioned.

## **Second or casting votes**

**CPR 97** If the votes are tied on any issue, the Chairman may use a second or casting vote as follows:

- (i) If the Chairman voted at the same time as the other Members (i.e. used their first vote) they may use his second vote;

- (ii) if the Chairman did not vote at the same time as the other Members they may use their casting vote;
- (iii) the Chairman shall not delay their first vote in order to ascertain the voting figures and then use it to produce an equality of votes in order to use their second vote.
- (iv) the Chairman may decline, without explanation, to use either their second or casting vote;

If the votes remain tied at the end of the voting process the effect is that no decision has been taken on the matter in question and the motion being voted upon is lost.

### **Record of attendance**

**CPR 98** The Democratic Services Officer will be responsible for recording attendance at meetings.

### **Implementation of Committee Decisions**

**CPR 99** Subject to the right of a Member to propose any motion to Council and for the Council to deal with that motion, all matters specified in the Terms of Reference shall usually be referred for consideration to Committees, Sub-Committees or Advisory Panels under whose names such matters appear. Committees shall be authorised to take such action as they think fit in relation to any matters falling within their Terms of Reference, subject to their reporting to Council with their recommendations thereon where matters of principle or policy are involved.

**CPR 100** A decision of a policy committee or sub-committee which is vulnerable to call-in under CPR 29 and/or the Overview and Scrutiny Procedure Rules in Part 4 of this Constitution shall not be implemented until the fifth working day after it has been made.

## **SECTION B - Access to Information Procedure Rules**

### **1 Scope**

- 1.1 These rules apply to all meetings of the Council, the Scrutiny Committee, policy and other Committees, sub-Committees and the Standards Committee (together called meetings).

### **2 Additional rights to information**

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law (such as the Freedom of Information Act).

### **3 Rights to attend meetings**

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these rules.

### **4 Notices of meeting**

- 4.1 The Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Town Hall, Epsom.

### **5 Access to agenda and reports before the meeting**

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the Town Hall at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons has been sent out, the Chief Executive will make each such report available to the public as soon as the report is completed and sent to Councillors.

### **6 Supply of copies**

- 6.1 The Council will supply copies of any:-
- (a) agenda and reports which are open to public inspection;
  - (b) further statements or particulars necessary to indicate the nature of the items in the agenda;
- and
- (c) any other documents supplied to Councillors in connection with an item, if the Chief Executive thinks fit;

to any person on payment of a charge for postage and any other costs.

## **7 Access to minutes etc. after the meeting**

- 7.1 The Council will make available copies of the following for six years after a meeting:-
- (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
  - (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
  - (c) the agenda for the meeting;
- and
- (d) reports relating to items when the meeting was open to the public.

## **8 Background papers**

### **List of Background Papers**

- 8.1 The Chief Executive will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:-
- (a) disclose any facts or matters on which the report or an important part of the report is based;
- and
- (b) which have been relied on to a material extent in preparing the report.
- 8.2 but does not include published works or those which disclose exempt or confidential information (as defined in Rule 9.3 and 9.4).

### **Public Inspection of Background Papers**

- 8.3 The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **9 Exclusion of access by the public to meetings**

### **Confidential Information - Requirement to Exclude Public**

- 9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

## **Exempt Information - Discretion to Exclude Public**

- 9.2 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.
- 9.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

## **Meaning of Confidential Information**

- 9.4 Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

## **Meaning of Exempt Information**

- 9.5 Exempt information means information falling within the seven categories below provided that in all the circumstances the public interest in withholding the information outweighs the public interest in disclosing the information.

<b>EXTRACTS FROM THE LOCAL GOVERNMENT (ACCESS TO INFORMATION)(VARIATIONS) ORDER 2006</b>	
<b>DESCRIPTIONS OF EXEMPT INFORMATION: ENGLAND</b>	
1.	Information relating to any individual
2.	Information which is likely to reveal the identity of an individual
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information) (N.B. Information within this paragraph is not exempt if it must be registered under: a) the Companies Act 1985 b) the Friendly Societies Act 1974 c) the Friendly Societies Act 1972 d) the Industrial and Provident Societies Acts 1965 to 1978 e) the Building Societies Act 1986 f) the Charities Act 1993)
4.	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5.	Information in respect of which a claim to legal privilege could be maintained in legal proceedings.



**EXTRACTS FROM THE LOCAL GOVERNMENT (ACCESS TO INFORMATION)(VARIATIONS) ORDER 2006**

**DESCRIPTIONS OF EXEMPT INFORMATION: ENGLAND**

- |    |                                                                                                                                                                                                                                 |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6. | Information which reveals that the authority proposes:<br>a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or<br>b) to make an order or direction under any enactment. |
| 7. | Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.                                                                                               |

9.6 Information falling within any of paragraphs 1 - 7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning Act General Regulations 1992.

### **The Standards Committee**

9.7 When the Standards Committee is considering a matter of Member conduct under Section 60 or 64 of the Local Government Act 2000, the following paragraphs are to be treated as added to the list of information which can be treated as exempt:

7A	Information which is subject to any obligation of confidentiality
7B	Information which relates in any way to matters concerning national security
7C	The deliberations of a Standards Committee or a Sub-Committee of Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any findings on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

## **10 Exclusion of access by the public to reports**

10.1 If the Chief Executive thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 9, the meeting is likely not to be open to the public. Such reports will be marked 'Not for Publication' together with the category of information likely to be disclosed.

## **11 Summary of public's rights**

11.1 A copy of these Rules, constituting a written summary of the public's rights to attend meetings and to inspect and copy documents, will be kept at and available to the public at the Town Hall, Epsom.

## **SECTION C - Budget and Policy Framework Procedure Rules**

### **1 The framework for decision-making**

- 1.1 The Council will be responsible for the adoption of its Budget and Policy Framework as set out in Article 4. Once a Budget or a Policy Framework is in place, it will be the responsibility of the policy committees to implement it.

### **2 Process for developing the framework**

- 2.1 The process by which the Budget and Policy Framework shall be developed is:
- (a) Each year the Strategy and Resources Committee will recommend to the Council, which will then publish, a programme for establishing the Budget and Policy Framework for the following year. Within this programme, it will identify any strategic policy or resource issues on which it wishes to request studies by the Scrutiny Committee.
  - (b) Within the overall programme, each policy committee may identify any study it wishes to request from the Scrutiny Committee related to policy issues on which it wishes to make recommendations to the Council as part of the Budget and Policy Framework.
  - (c) Policy studies undertaken by the Scrutiny Committee should engage as widely as possible with citizens and stakeholders in the community and use a variety of methods to gauge public views. The results should be presented to the relevant policy committee which will then develop proposals to be submitted to the Council.
  - (d) The Policy and Budget Framework to be presented to Council will be available for public consultation for a period of 4 weeks.
  - (e) In approving the Policy and Budgetary Framework presented to it by the Strategy and Resources Committee, the Council will also specify the extent of virement within the Budget and degree of in-year changes to the Policy Framework which may be undertaken by policy committees, in accordance with paragraphs 3 and 4 of these Rules (virement and in-year adjustments). Any other changes to the Budget and Policy Framework are reserved to the Council.

### **3 Virement**

- 3.1 The Council will decide on virement limits having regard to the nature of its functions, the size of its budget, and the need to maintain a balance between the Budget and Policy Framework and the flexibility needed in-year to deliver services in accordance with Best Value principles.

## **4 In-year changes to policy framework**

4.1 The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by policy committees or officers with delegated authority must be in line with it. No changes to any policy and strategy which make up the Policy Framework may be made by a policy committee or officer with delegated authority except changes:

- (a) necessary to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;

and

- (c) in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

4.2 The Council may make in-year changes to its Budget and Policy Framework other than in the circumstances set out in 4.1 above, but will only do so on the recommendation of a policy committee or in response to a report from the Chief Executive or on a motion after proper notice in accordance with the Council Procedure Rules set out in Part 4 of this Constitution, in all cases after a period of consultation with citizens and stakeholders appropriate to the nature of the changes proposed.

## **SECTION D - Overview and Scrutiny Procedure Rules**

### **1 Number of, and arrangements for, Scrutiny Committee(s)**

- 1.1 The Council will have one Scrutiny Committee, the Audit, Crime & Disorder and Scrutiny Committee, which will arrange for the performance of all overview and scrutiny functions on behalf of the Council. It will consist of at least five Councillors.
- 1.2 The Audit, Crime & Disorder and Scrutiny Committee will be responsible for:-
- (a) arranging the performance of overview and scrutiny functions on behalf of the Council;
  - (b) the appointment of such sub-committees or panels as it considers appropriate to fulfil those review and scrutiny functions;
  - (c) ensuring that the Council complies with its duty concerning Best Value, in accordance with the Local Government Act 1999;
  - (d) approving an annual Overview and Scrutiny Work Programme, including the programme of any sub-committees or panels;
  - (e) Monitoring the Council's financial and audit arrangements and considering regular reports from the auditor on the outcome of audits.
  - (f) putting in place a system to ensure that referrals from the Scrutiny Committee to Council and to the policy committees, either by way of report or for reconsideration, are managed efficiently.
  - (g) scrutinising the development and implementation of the Community Strategy.
  - (h) monitoring progress on the Council's Corporate Plan.

### **2 Who may sit on the Audit, Crime & Disorder and Scrutiny Committee?**

- 2.1 All councillors may be members of the Audit, Crime & Disorder and Scrutiny Committee but no councillor may be involved in scrutinising a decision in which he/she has been directly involved.

### **3 Co-optees**

- 3.1 The Scrutiny Committee will seek to co-opt other Councillors to constitute sub-committees, or panels, provided that no councillor may scrutinise a decision in which he/she has been involved.
- 3.2 The Scrutiny Committee shall be entitled to appoint to any sub-committee or panel a co-opted member who is not a councillor or an officer of this Council.

## **4 Meetings of the Audit, Crime & Disorder and Scrutiny Committee**

- 4.1 There shall be at least four ordinary meetings of the Audit, Crime & Disorder and Scrutiny Committee in each year. In addition, Special Meetings may be called from time to time as and when appropriate. A Special Committee meeting may be called by the Chairman, by any three members of the Committee or by the Scrutiny Officer if he/she considers it necessary or appropriate.

## **5 Quorum**

- 5.1 The quorum for the Audit, Crime & Disorder and Scrutiny Committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

## **6 Chairmanship of the scrutiny committee**

- 6.1 The Chairman of the Audit, Crime & Disorder and Scrutiny Committee will be appointed by the Council from among the Councillors sitting on the Committee.

## **7 Work programme**

- 7.1 The Audit, Crime & Disorder and Scrutiny Committee will be responsible for setting its own work programmes and in doing so it shall take into account, along with other considerations, the wishes of Members on that Committee who are not members of the largest political group on the Council.

## **8 Agenda items**

- 8.1 Any Members of the Council may give written notice to the Scrutiny Officer that they wish an item to be included on the agenda of the Audit, Crime & Disorder and Scrutiny Committee or submit such an item. If the Scrutiny Officer receives such a notification or item, then he/she will include it on the first available agenda of the Committee for consideration by the Committee. However, where the notification or item is deemed to be a councillor call for action, the Councillor call for Action Protocol shall be implemented
- 8.2 The Audit, Crime & Disorder and Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Council, and if it considers it appropriate the policy committees, to review particular areas of Council activity. Where it does so, the Audit, Crime & Disorder and Scrutiny Committee shall report its findings and recommendations back to the policy committee and/or the Council. The Council and/or the relevant policy committee shall consider the report of the Audit, Crime & Disorder and Scrutiny Committee at its next available meeting.

## **9 Policy and development overview**

- 9.1 The role of the Audit, Crime & Disorder and Scrutiny Committee in relation to the development of the Council's Budget and Policy Framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- 9.2 In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, the Scrutiny Committee may make proposals to policy committees for such development in so far as it relates to matters within their terms of reference although it is recognised that in most cases policy committees will develop their own policy.
- 9.3 The Scrutiny Committee may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

## **10 Reports from the Scrutiny Committee**

- 10.1 Once the Scrutiny Committee has completed its deliberations on any matter it will prepare a formal report and submit it via the Scrutiny Officer for consideration by the relevant policy committee (if the proposals are consistent with the existing Budgetary and Policy Framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed Budget and Policy Framework).
- 10.2 If the Scrutiny Committee cannot agree on one single final report to the Council or the relevant policy committee, as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or policy committee with the majority report.
- 10.3 The Council or the relevant policy committee shall consider the report of the Scrutiny Committee at its next available meeting
- 10.4 When the Council meets to consider any referral from the Scrutiny Committee on a matter which would impact on the Budget and Policy Framework, it shall also consider the response of the relevant policy committee to the Scrutiny proposals, and shall if necessary defer consideration of those proposals until after the next meeting of the relevant policy committee.

## **11 Rights of scrutiny committee members to documents**

- 11.1 All Members have the right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution, and members of the Scrutiny Committee, and any sub-committees or panels (including any co-opted members), have all such rights in relation to any of the agreed work programme of the Committee.

## **12 Members and officers giving account**

12.1 The Audit, Crime & Disorder and Scrutiny Committee may scrutinise and review decisions made (other than quasi-judicial decisions, e.g. planning and licensing applications) or actions taken in connection with the discharge of any of the Council's functions. As well as reviewing documentation, in fulfilling the scrutiny role, the Committee may require any member of a policy committee, the Chief Executive and/or any Head of Service to attend before it to explain in relation to matters within its remit:-

- (a) any particular decision or series of decisions;
  - (b) the extent to which the actions taken implement Council policy;
- and
- (c) their performance.

and it is the duty of those persons to attend if so required.

*[Note: Save in exceptional circumstances, and in agreement with the Chief Executive, no officer below Director or a Division Head shall be required to appear before the Audit, Crime & Disorder and Scrutiny Committee.]*

12.2 If any Member or Officer is required to attend the Scrutiny Committee under this provision, the Chairman of the Committee will inform the Scrutiny Officer. The Scrutiny Officer shall inform the Member or Officer in writing giving at least five working days' notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.

12.3 If, in exceptional circumstances, the Member or Officer is unable to attend on the required date, the Scrutiny Committee shall, in consultation with the Member or Officer, arrange an alternative date for attendance to take place within a maximum of ten working days from the date of the original request.

## **13 Attendance by others**

13.1 The Scrutiny Committee may invite people other than those people referred to in paragraph 12 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend, whether in relation to scrutiny of the Council's policies and activities or those of any other agency which affect the social, environmental or economic well-being of the residents of the Borough. Other committees or advisory panels may also, from time to time, scrutinise such other agencies.

## 14 Call-in

- 14.1 Call-in should only be used in exceptional circumstances. These are where Members of the Scrutiny Committee have evidence which suggests that a policy committee took a decision which was not in accordance with one or more of the principles set out in Article 12 (Decision Making).
- 14.2 In any event, call-in will not apply to quasi-judicial decisions e.g. development control and licensing.
- 14.3 The call-in procedure is as follows:-
- (a) When a decision is made by a policy committee or under joint arrangements, the decision shall be published electronically by Democratic Services to a group email address which includes the Scrutiny Officer and members of the Scrutiny Committee normally within two working days of being made and shall also be available on request in hard copy from the Town Hall. When all members of the Council are invited to speak and vote at a meeting of a committee, then the power of call-in does not apply.
  - (b) That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the Scrutiny Committee objects to it and calls it in. The Notice shall include the following statement: "The following represents a summary of the decisions taken by the Committee. It is not intended to represent the formal record of the meeting (for which reference should be made to the Minutes) but to facilitate the call-in process".
  - (c) During that period, the Scrutiny Officer or Monitoring Officer shall call-in a decision for scrutiny by the Scrutiny Committee if so requested in writing or by e-mail, both of which should include the reasons, by any three Members of the Scrutiny Committee, and shall then notify Members of the decision-making Committee of the call-in. He/she shall call a meeting of the Committee on such date as he/she may determine, where possible after consultation with the Chairman of the Committee, and in any case within ten working days of the decision to call-in.
  - (d) If, having considered the decision, the Scrutiny Committee is still concerned about it, then it may refer it back to the decision making Committee for reconsideration, setting out in writing the nature of its concerns or refer the matter to the Full Council. Following consideration of the decision by the Scrutiny Committee, the Scrutiny Officer or Monitoring Officer shall notify the members of the decision-making Committee of the outcome. Where the Scrutiny Committee refers the decision back to the decision-making committee, the notification will include details of when the written report will be published.



- (e) If following an objection to the decision:
- (i) the Scrutiny Committee does not meet in the period set out above or the expiry of the ten working day period; or
  - (ii) The Scrutiny Committee does meet but does not refer the matter back to the decision making Committee
- the decision shall then take effect.
- (f) If the matter is referred to the Full Council, and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective from the date of the Council Meeting. However, if the Council does object, it may refer any decision to which it objects back to the decision-making committee, together with the Council's views on the decision or may itself determine the matter.

***Note: Paragraph 14 should be read in conjunction with the Protocol on the Call-in procedure set out in Part 5 (Codes and Protocols) of the Constitution***

## **15 Exceptions**

- 15.1 In order to ensure that call-in is not abused, nor causes unreasonable delay, the Council may place certain limitations on its use. It will only seek to impose such limitations after consideration of a report from the Chief Executive.

## **16 Call-In and Urgency**

- 16.1 The call-in procedure set out above shall not apply where the decision being taken by a policy committee is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest. The record of the decision, and notice by which it is made public shall state whether in the opinion of the Chief Executive or his/her nominee, the decision is an urgent one, and therefore not subject to call-in. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 16.2 The operation of the provisions relating to call-in and urgency shall be monitored annually by the Chief Executive or his/her nominee, and a report submitted to Council with proposals for review if necessary.

## **17 Procedure at Scrutiny Committee Meetings**

- 17.1 The Scrutiny Committee shall consider the following business:-
- (a) minutes of the last meeting;
  - (b) declarations of interest;

- (c) consideration of any matter referred to the Committee for a decision in relation to the calling in of a decision;
- (d) responses from the Council or a policy committee to reports of the Scrutiny Committee;

and

- (e) the business otherwise set out on the agenda for the meeting.

17.2 Where the Scrutiny Committee asks people to attend to give evidence at Committee or Panel meetings they are to be conducted in accordance with the following principles:-

- (a) that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- (b) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
- (c) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

17.3 Following any investigation or review, the Committee shall prepare a report for submission to the relevant Committee and/or Council as appropriate and shall make its report and findings public.

## SECTION E - Financial Regulations

*Issued: July 2002; Revised July 2013*

### 1 About Financial Regulations

#### What are Financial Regulations?

- 1.1 Financial Regulations are a set of rules (standing orders) that govern the financial affairs of the Council. They are approved by the Council and apply to every Member and officer of the Council and anyone acting on its behalf.
- 1.2 The Regulations identify the financial responsibilities of the full Council, Committees and Panels, the Head of Paid Service, the Monitoring Officer, the Director of Finance and Resources, Heads of Service and Budget Managers. Where decisions have been delegated or devolved to other responsible officers, references to the relevant Director in the regulations should be read as referring to those officers.
- 1.3 All Members and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value. Compliance with Financial Regulations will help discharge this responsibility.

#### Finance Rule Book

- 1.4 The Finance Rule Book sets out in more detail some of the procedures to which staff who manage budgets or carry out financial transactions need to adhere, although we try to avoid detailed prescription wherever possible. All Members and officers **must** comply with Financial Regulations.
- 1.5 Financial Regulations and the Finance Rule Book cover all major financial systems and processes however the Council has other procedures covered by the Procurement Strategy, the Team Strategy and Capital Strategy. Managers must also be aware of the requirements of all these policies and procedures.

#### How does this relate to Standing Orders for Contracts?

- 1.6 Financial Regulations are complementary to the Council's Standing Orders for Contracts, which are about the systems and procedures for procuring goods and services. The Financial Regulations and the Finance Rule Book deal with the financial and control issues relating to the procurement of goods and services.

#### What do Financial Regulations cover?

- 1.7 The Financial Regulations set out the financial management policies of the Council. The list on the "Contents" page tells you the subjects included.

- 1.8 Financial Regulations are not detailed procedure notes. The Finance Rule Book provides greater detail, although will not necessarily cover all eventualities. Where appropriate Managers should maintain their own procedure notes to fit in with the needs of their own service.

#### **What if something is not clear?**

- 1.9 The Director of Finance and Resources is responsible for issuing advice and guidance to underpin the Financial Regulations that Members, Officers and others acting on behalf of the Council are required to follow.
- 1.10 If you are not clear what a regulation means to your work area, or how to apply it, please ask for guidance. You can ask the Director of Finance and Resources, Head of Financial Services, Head of Corporate Risk and Resource Management, your service accountant (a list is available on Money Matters in IRIS) or the Head of Internal Audit (Internal Audit Contract Manager).

#### **What if I don't agree with the Regulations?**

- 1.11 Please let us know. If the rules are stopping you providing a service in a business-like manner we will ask the Council to change them. However, the rules are written to protect the Council, the public purse and you. You must have a good reason for suggesting a change.

#### **What will happen if I don't comply?**

- 1.12 If it is minor non-compliance then you may just be asked to amend your work practices accordingly and correct the situation as appropriate. A serious breach will be reported to the Directors or the Scrutiny Committee dependent upon the nature of the breach. The rules in the Council's Disciplinary Procedure may also come into play.

### **FINANCIAL MANAGEMENT**

## **2 Financial Management – General**

#### **Status of Financial Regulations**

- 2.1 The Financial Regulations are made by the Council pursuant to its Constitution and subject to the provisions of the Local Government Act 1972. They are the working arrangements whereby the Council's financial transactions are regulated in accordance with the powers and duties confirmed by the Council.
- 2.2 It is the responsibility of each Committee, Director and Budget Manager to ensure compliance with all the requirements of these Regulations.

- 2.3 The Regulations also apply to services carried out under agency arrangements for any other Authority or organisation except where it has been agreed in advance by the Director of Finance and Resources, to comply with another organisation's regulations. Agents acting for the Council will be expected to comply with these Regulations unless otherwise agreed by the Director of Finance and Resources.
- 2.4 These Regulations also apply to arrangements with any other Authority, partnership or organisation except where it is otherwise specifically agreed by the Director of Finance and Resources.
- 2.5 The Financial Regulations do not override any statutory provisions.

### **Roles and Responsibilities**

- 2.6 The Articles of the Constitution of the Council include details of the roles and responsibilities of the Council, Committees, the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer.
- 2.7 The Regulations must be read in conjunction with current schemes of delegation to Committees and Officers.

### **Responsibilities of the Director of Finance and Resources**

- 2.8 The Director of Finance and Resources as the Council's Chief Finance Officer has statutory duties in relation to the financial administration and stewardship of the authority. This statutory responsibility cannot be overridden.
- 2.9 The statutory duties arise from:
- Section 151 of the Local Government Act 1972
  - The Local Government Finance Act 1988
  - The Local Government and Housing Act 1989
  - The Accounts and Audit Regulations 2011
- 2.10 The Director of Finance and Resources is responsible for:
- the proper administration of the authority's financial affairs
  - setting and monitoring compliance with financial management standards
  - advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
  - providing financial information
  - preparing the revenue budget and capital programme
  - treasury management

- determining the Council Tax Base
  - determining the Business Rates Base
- 2.11 Section 114 of the Local Government Finance Act 1988 requires the Director of Finance and Resources to report to the full Council and the external auditor if the Authority or one of its Officers:
- (a) Has made or is about to make a decision which involves or would involve the Council incurring unlawful expenditure.
  - (b) Has taken, or is about to take, a course of action which if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency; or
  - (c) Is about to enter an item of account, which is unlawful.
- 2.12 Section 114 of the 1988 Act also requires the Director of Finance and Resources to nominate a properly qualified member of staff to deputise should he or she be unable to perform the duties under section 114 personally.
- 2.13 The Director of Finance and Resources is responsible for maintaining a regular review of the Financial Regulations and submitting any additions or changes necessary to the full Council for approval. The Director of Finance and Resources is also responsible for reporting, where appropriate, serious breaches of the Financial Regulations to the Scrutiny Committee.

### **Responsibilities of Directors**

- 2.14 Directors are responsible for ensuring that Committee members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Director of Finance and Resources.
- 2.15 It is the responsibility of Directors to consult with the Director of Finance and Resources and seek approval on any matter liable to affect the authority's finances materially, before any commitments are incurred.
- 2.16 Heads of Service are responsible for ensuring that all staff in their division are aware of the existence and content of the Council's Financial Regulations and other internal regulatory documents and that they comply with them. A copy of the document will be available on the Council's Internet and intranet site (IRIS).
- 2.17 Directors shall control expenditure and income, monitor performance, and take the necessary action to avoid exceeding any budget. The Director of Finance and Resources shall provide appropriate financial information or the means by which budgets may be monitored effectively.
- 2.18 Where expenditure or income involves a contractual agreement with a third party, the Directors must follow procedures laid down in the Contracts Standing Orders.

- 2.19 Heads of Service shall establish sound arrangements for the planning, appraisal, authorisation and control of their operations to ensure that economy, efficiency and effectiveness are achieved.
- 2.20 Directors or Heads of Service may nominate staff – called Budget Managers - to manage budgets on their behalf. This delegation does not in any way reduce the overall responsibilities of the Director and Heads of Service. Budget Managers shall carry out their responsibilities in line with these Regulations and the Finance Rule Book.

### **Authorised Signatories**

- 2.21 Directors shall determine who is authorised to sign official documents on their behalf, and shall provide the Director of Finance and Resources with up-to-date lists of specimen signatures of authorised Officers. The Director of Finance and Resources will refuse to accept any document submitted where the authorising signature does not correspond to that notified.

## **3 Accounting Arrangements**

### **Accounting policies**

- 3.1 The Director of Finance and Resources is responsible for selecting accounting policies and ensuring that they are applied consistently.

### **Accounting records and procedures**

- 3.2 The Director of Finance and Resources is responsible for determining the accounting procedures and records for the Council. The Director of Finance and Resources will ensure that the accounting systems are observed and that the accounts of the Council and supporting records are kept up to date.

### **The Annual Statement of Accounts**

- 3.3 The Director of Finance and Resources is responsible for ensuring that the annual statement of accounts is prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC).
- 3.4 The Strategy and Resources Committee is responsible for approving the Annual Statement of Accounts in accordance with the requirements of the Accounts and Audit Regulations 2011.

### **Allocation of Accounting Duties**

- 3.5 The following principles shall be observed in the allocation of accounting duties:
- (a) The duties of providing information regarding sums due to or from the Council and of calculating, checking and recording these sums, shall be separated as completely as possible from the duty of collecting or disbursing them;

- (b) Officers charged with the duty of examining and checking the accounts of cash transactions shall not themselves be engaged in any of these transactions.

### **Subsidies and Grants Receivable**

- 3.6 The Director of Finance and Resources will take such action and establish procedures to ensure that the Council's subsidy and grant entitlement are maximised.

## **FINANCIAL PLANNING**

### **4 Financial Planning - General**

#### **Introduction**

- 4.1 The full Council is responsible for agreeing the Council's policy framework and budget. In terms of financial planning, the key elements are:-
- The Corporate Plan and Key Priorities
  - The Four Year Financial Plan
  - The Annual Budget
  - The Capital Strategy and Capital Programme.
  - The Treasury Management Strategy

#### **Policy Framework**

- 4.2 The Council is responsible for approving the policy framework and budget which will be proposed by the Strategy and Resources Committee. The policy framework comprises the plans and strategies identified in the Constitution of the Council.
- 4.3 The Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework.

#### **Maintenance of Reserves**

- 4.4 It is the responsibility of the Director of Finance and Resources to advise the Strategy and Resources Committee and/or the full Council on prudent levels of reserves for the Authority.



## **Financial Plan**

- 4.5 The Director of Finance and Resources shall maintain, in consultation with the other Directors, a forward Financial Plan. The Financial Plan will show the financial implications of changes in Council policy, legislation, service levels, activity and other factors for at least three years ahead. The Director of Finance and Resources will review financial projections annually. The Strategy will show, in summary, the estimated impact of future spending plans on the General Fund.
- 4.6 In order that the information requirements of the Financial Plan and Medium Term Financial Strategy are satisfied, reports to Committees with significant financial implications shall show the full year effect of the proposals and the implications for at least the next three financial years.
- 4.7 Budget Targets including updates of the financial projections should be presented to the Strategy and Resources Committee by the Director of Finance and Resources no later than October each year.

## **Review and Notification to the Director of Finance and Resources**

- 4.8 Directors and Budget Managers must regularly review the financial implications of changes in policy and other factors, and must notify the Director of Finance and Resources promptly of the impact on current and future budgets.

## **5 Revenue Budget Preparation**

### **Budget format**

- 5.1 The general format of the budget will be approved by the Strategy and Resources Committee on the advice of the Director of Finance and Resources.
- 5.2 The detailed form of the revenue estimates shall be determined by the Director of Finance and Resources and must be consistent with the general directions of the Strategy and Resources Committee.

### **Budget preparation**

- 5.3 Directors shall prepare estimates of income and expenditure reflecting agreed Key Service Priorities in consultation with the Director of Finance and Resources in accordance with guidelines issued by the Strategy and Resources Committee.
- 5.4 The Director of Finance and Resources shall report on the estimates to the appropriate policy committees. They shall in turn report the estimates to the Council with such recommendations as are deemed necessary.
- 5.5 The Director of Finance and Resources shall advise the Strategy and Resources Committee and other committees as necessary on budget matters.

- 5.6 The Directors shall supply the Director of Finance and Resources with such information as is necessary to support the estimates.

### **Budget Timetable**

- 5.7 The Director of Finance and Resources will prepare a budget timetable each year. All budget submissions shall be made in accordance with the timetable.

## **6 Revenue Budget Control**

### **Budget monitoring and control**

- 6.1 It is the responsibility of each Director to manage and direct resources to achieve the objectives of the budget. This involves the monitoring of expenditure and income and the regular review of performance. Where budgets are delegated to Budget Managers they are charged with the same responsibility.
- 6.2 Once approved by the Council, the revenue budget will give authority for expenditure to be incurred in the appropriate year unless:
- (a) It would cause the appropriate budget head to be overspent,
  - (b) It is a long-term financing agreement that will have implications for government capital controls in which case the Director of Finance and Resources must be consulted.
  - (c) It is a contingency sum requiring the approval of the relevant committee before expenditure is incurred.
- 6.3 The Director of Finance and Resources is responsible for providing appropriate financial information to enable budgets to be monitored effectively.
- 6.4 The Director of Finance and Resources must report to all Members on the overall budget position on a regular basis.

### **New Services and Extension of Service Provision**

- 6.5 Any proposal to incur expenditure relating to the adoption of a new policy or extension of an existing policy not already sanctioned by the Council, must be accompanied by a report to the relevant policy committee with the financial implications agreed with the Director of Finance and Resources, prior to the report being submitted to the relevant policy committee.
- 6.6 Proposals which commit future budgets to a level of expenditure greater than that provided for in the current year shall be reported to the relevant policy committee and the Strategy and Resources Committee and clearly to show the total level of future annual commitment.

## Supplementary Estimates

- 6.7 Policy Committees are required to manage services within the overall revenue and capital budget allocations. The Council will exceptionally consider supplementary estimates for significant added expenditure that cannot be managed within the total agreed budget. Where the expenditure exceeds the budget a report will be prepared for consideration by the relevant policy committee.
- 6.8 Where it is apparent that any budget for a service may be exceeded (or there will be a shortfall of income) the appropriate Director must prepare a written report setting out the reasons and proposing how the shortfall may be met, and submit it to the Director of Finance and Resources. The Director of Finance and Resources will advise on the action to be taken, which may include proposals for report to Committee, virement or exceptionally a request for supplementary estimate. The request for a supplementary estimate should also state that no acceptable virement has been identified.
- 6.9 Expenditure may be authorised in an emergency by the Director of Finance and Resources with the agreement of the Chairman of the relevant Committee and shall be reported to the next meeting of that Committee. This procedure will only be adopted if the emergency does not provide sufficient time to follow the urgent action procedure described in 5.22

## Virement

- 6.10 The Financial Policy Panel is responsible for agreeing procedures for virement of expenditure between budget headings.
- 6.11 The delegated approvals are --

Value	Level of Responsibility
Up to £5,000 within Cost Centre	Budget Managers
Up to £5,000 within Service Group	Divisional Manager/ Head of Service
Up to £20,000 within Committee	Relevant Head of Service or Director of Finance and Resources
Above £20,000	Committee Approval required

- 6.12 Virement between revenue and capital budgets will not be permitted due to the different sources of funding.
- 6.13 All virements must be completed on approved virement documentation.
- 6.14 Virements out of cost centre will be monitored in aggregate, based on the limits specified above, during the financial year by the relevant service accountant.
- 6.15 Virement between revenue income and expenditure will not be permitted, without committee approval.

- 6.16 Virements in or out of the salary budget must be within control totals maintained by the Directors.
- 6.17 The virement of training budgets for any purpose other than training requires an express recommendation of the Human Resources Panel..
- 6.18 Virements may not be made:-
- (a) Between committees without the approval of the Strategy and Resources Committee and Council;
  - (b) In or out of the Epsom and Walton Downs Conservators and Nonsuch Park Joint Management Committee accounts.
- 6.19 Where the proposed virement involves a significant issue of principle, or a significant proportion of the original budget, the approval of the Strategy and Resources Committee is required.

### **Treatment of year-end balances**

- 6.20 For Capital Schemes not completed by the 31<sup>st</sup> March a schedule of capital budgets carried forward will be presented to the Strategy and Resources Committee by June.
- 6.21 Underspends on the revenue account will not normally be carried forward. Exceptionally such requests to allow the fulfillment of commitments will require the approval of the Strategy and Resources Committee

### **Matters of Urgency (Procedures of the Council/Standing Order 45)**

- 6.22 Where it is proposed to seek approval for expenditure under the “Matters of Urgency” rules in the Council’s Standing Orders or the “Matters of Urgency” proposal has any other financial implication, the appropriate Director must consult with the Director of Finance and Resources who will advise on the action to be taken. The consultation with the Director of Finance and Resources must take place prior to seeking the approval of the relevant Committee Chairman.
- 6.23 Further guidance on the Urgent Actions procedures to be followed is contained in the Finance Rule Book.

## **7 Capital Programme**

### **Preparation of the capital programme**

- 7.1 The Director of Finance and Resources is responsible for maintaining a rolling capital programme and this is reported annually for consideration by the Financial Policy Panel who will also advise the Strategy and Resources Committee on funding implications.

- 7.2 The programme will include spending plans for the ensuing three years. The detailed form of the programme shall be determined by the Director of Finance and Resources and must be consistent with the general directions of the Strategy and Resources committee.
- 7.3 Projects that are reliant on the receipt of government or other third party funding, including central government and other grants must follow the normal capital programme procedures.

#### **Capital Member Group and Capital Officer Group**

- 7.4 The Financial Policy Panel will advise Strategy and Resources Committee on the Capital Programme review and capital funding. The Capital Member Group has responsibility for advising on the development of the Capital Strategy for the capital programmed review in consultation with the Director of Finance and Resources.
- 7.5 The Officer Capital Management Group is responsible for the appraisal of all capital schemes submitted annually by budget managers, taking into account key strategies including the Key Priorities and Asset Management Plan and the available capital resources. (More detail is provided in the Finance Rule Book).

#### **New capital schemes**

- 7.6 New Schemes will be assessed based on the criteria within the Capital Strategy and recommended to the relevant committee within the capital funding released by the Strategy and Resources Committee, prior to approval from full Council . Each new scheme must have a capital project appraisal form completed and approved by the Capital Member Group.

#### **Status of capital programme approval**

- 7.7 Inclusion in the capital programme does not of itself confer authority to incur expenditure before:
- (a) The relevant Committee has approved a project appraisal in accordance with the procedures set out in the Capital Strategy and the Asset Management Plan;
  - (b) A tender or quotation has been received which does not exceed the amount included in the programme and any other relevant cost limits;
  - (c) All necessary statutory approvals have been received.
  - (d) External funding has been secured where relevant.
  - (e) Spend to Save Schemes have been appraised and demonstrated pay-back of investment

## Variations to capital projects

7.8 The size, content or specification of a scheme shall not be significantly changed without the approval of the relevant service committee.

## Virement

7.9 The guidance for virement of the capital programme is as follows:-

Value	Level of Responsibility
Within Cost Centre/ Capital Scheme	Relevant Budget Manager/ Project Manager
Moving budget from one scheme to another within committee up to £20,000	Director, following consultation with relevant Committee Chairman & Chairman of Strategy and Resources
Moving budgets between committees	Relevant committee and full Council approval

7.10 All virements must be completed on the approved virement documentation

## Monitoring of progress

7.11 The detailed monitoring is the responsibility of the Capital Officer Group. It is the Director of Finance and Resources responsibility to report to Members on a quarterly basis and to submit any major variances of the Capital Programme to the Financial Policy Panel.

7.12 A Director who becomes aware that the estimated cost of a capital scheme for which he/she is responsible is likely to be exceeded in total by 10 per cent or £20,000, whichever is the less, shall report the likelihood to the next meeting of the relevant policy committee and the Strategy and Resources Committee stating the amount of the excess anticipated and the reason.

## RISK MANAGEMENT AND CONTROL OF RESOURCES

### 8 Risk Management

#### Introduction

8.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the authority. This should include the proactive participation of all those associated with planning and delivering services.

## **Risk management**

- 8.2 The Strategy and Resources Committee is responsible for approving the Council's risk management policy statement and strategy and for reviewing the effectiveness of risk management. The Director of Finance and Resources is responsible for ensuring that proper insurance exists where appropriate and advising the Strategy and Resources Committee on insurance arrangements.
- 8.3 The Chief Executive and all Directors are responsible for preparing the Council's risk management policy statement and for promoting it throughout the authority.

## **Internal control**

- 8.4 The Director of Finance and Resources is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use. In addition, the Monitoring Officer has statutory responsibilities to report on prospective breaches of the law or maladministration.
- 8.5 The Accounts and Audit Regulations require every local authority to conduct a review at least once a year of the effectiveness of its system of internal control and shall include an Annual Governance Statement, prepared in accordance with proper practices. Heads of Service are responsible for ensuring effectiveness systems of internal control within their service.
- 8.6 It is the responsibility of Directors to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

## **Preventing fraud and corruption**

- 8.7 The Director of Finance and Resources is responsible for the development and maintenance of a policy to prevent fraud and corruption and for submitting it for approval to the Strategy and Resources Committee, prior to obtaining approval from full Council.
- 8.8 It is the responsibility of Directors to make the relevant staff aware of the requirements of the protocol for addressing the issues raised by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 and the Terrorism Act 2000.

## **Staffing**

- 8.9 The Head of Paid Service is responsible for determining how officer support for committee roles within the authority will be organised.

- 8.10 The Head of Paid Service is responsible for providing overall management to staff. The Head of Paid Service is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.
- 8.11 Directors are responsible for controlling total staff numbers by:
- advising the Strategy and Resources Committee on the budget necessary in any given year to cover estimated staffing levels;
  - adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs;
  - the proper use of appointment procedures.

### **Security of Assets and Information**

- 8.12 Directors and Heads of Service should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.
- 8.13 Directors and Heads of Service shall be responsible for maintaining proper security and privacy of information contained in the financial and other records under their control. This includes information held on the computer in accordance with the principles of the Data Protection Act and other relevant legislation.

## **9 Insurance**

### **Review of Arrangements**

- 9.1 The Council shall review its insurance arrangements at least every five years and submit its requirements to competitive tender. Details of insurance requirements are summarized below and provided in detail in the Finance Rule Book.

### **Review of Insurance Cover**

- 9.2 The Director of Finance and Resources shall keep under review all insurance cover in consultation with other Directors as appropriate.

### **Records of Insurance Cover**

- 9.3 The Director of Finance and Resources shall maintain records of all insurance placed by the Council, showing the property and/or risks covered.



## **Notification of Risks**

- 9.4 Directors must give prompt notification to the Director of Finance and Resources of all new risks, properties or vehicles that require to be insured and of any alterations affecting existing insurance.
- 9.5 Directors shall give prompt notification in writing to the Director of Finance and Resources of any loss, liability, damage or any event which may result in a claim against the Council, or in a claim by the Council under a policy of insurance or otherwise.

## **Negotiation of Claims**

- 9.6 The Director of Finance and Resources shall negotiate all claims in consultation with other officers as necessary.

## **Partnerships and 3<sup>rd</sup> Parties**

- 9.7 Heads of Service must ensure that the correct insurance cover is in place for any arrangements with contractor, partners or 3<sup>rd</sup> parties prior to such arrangements being entered into.

## **Fidelity Guarantee Policy**

- 9.8 All appropriate employees of the Council shall be included in a suitable fidelity guarantee policy.

# **10 Audit**

## **Audit requirements**

- 10.1 The Accounts and Audit Regulations require every local authority to maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control.
- 10.2 The Audit Commission is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998.
- 10.3 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

## **Provision of Internal Audit**

- 10.4 The Director of Finance and Resources shall maintain an adequate and effective system of internal audit to satisfy the Council's responsibilities under the Accounts and Audit Regulations 2011. The audit shall be performed, as far as practicable, to the standards set out in the "Statements on Internal Audit practice - Public Sector" published by the Chartered Institute of Public Finance and Accountancy and the Institute of Internal Auditors' guidelines.

10.5 Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisations operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

### **Powers of Internal Auditors**

10.6 To assist in complying with the requirements of Regulation 6 of the Accounts and Audit Regulations 2011, the Director of Finance and Resources or his authorised representative shall have authority to:

- (a) Enter at all reasonable times on any Council premises or land.
- (b) Have access at all times to all records, documents and correspondence relating to any financial and other transactions of the Council, whether held by employees of the Council or by Consultants' employees under a contract for professional services.
- (c) Require and receive such explanations as are necessary concerning any matter under examination.
- (d) Require any employee of the Council to produce cash, stores or any other Council property under his control.

### **Reporting of Irregularities**

10.7 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Council the relevant Director concerned shall immediately notify the Director of Finance and Resources. The Director of Finance and Resources shall take such steps as considered necessary by way of investigation and report. This regulation does not relieve any Director from giving similar notification to the Chief Executive who may consider any legal and/or disciplinary implications.

### **Annual Report on Internal Audit**

10.8 At least once a year a report shall be presented to the Scrutiny Committee reviewing the internal audit coverage undertaken during the previous year and the audit plan for the forthcoming year.

### **Chief Internal Auditor**

10.9 The post of Chief Internal Auditor, whether internally appointed or through a contract, shall be a fully qualified member of one of the following bodies: -

- (a) An Institute that is a member of the Consultative Committee of Accounting Bodies (CCAB);
- (b) The Institute of Internal Auditors.

## **Internal Audit Protocol**

10.10 The Director of Finance and Resources shall be responsible for approving the protocol of the Internal Audit Section. The purpose of this document is to:

- (a) Set out the role, responsibility, status and authority of Internal Audit within Epsom and Ewell Borough Council;
- (b) Outline the scope of internal audit work; and
- (c) Obtain corporate agreement on how internal audit should operate.

## **Whistleblowing**

10.11 All officers must report any suspected cases of fraud or corruption and should have regard to the Council's Whistleblowing Policy. The purpose of this policy is to establish a means by which employees who either suspect or have identified cases of fraud, corruption or other malpractice may raise issues of concern and be confident that those issues are dealt with seriously and fairly without fear of harassment.

## **11 Control of Assets**

### **Use of Council Property**

11.1 The Council's property must only be used in accordance with the ordinary course of the Council's business. Any other use can only be made in accordance with specific directions issued by the Director concerned.

### **Property**

11.2 The Property and Estate Manager will maintain an up to date register of all properties owned by the Council. The register shall record the purpose for which held, location, extent, purchase details, particulars of nature of interest and rents payable and particulars of tenancies granted.

11.3 The Head of Legal and Democratic Services shall have the custody of all title deeds under secure arrangements.

### **Inventories**

11.4 Heads of Service shall maintain up to date inventories of the Council's furniture, fittings and equipment, and plant and machinery that has a significant value. The care and custody of such equipment shall be the responsibility of the Managers concerned.

11.5 The Head of ICT shall maintain a complete and up to date inventory of all information technology equipment.

## **Stocks and Stores**

- 11.6 Heads of Service shall be responsible for the care and custody of the stocks and stores in their division. Stocks shall be kept at the optimum level sufficient to provide an effective service.

## **Responsibility for Security**

- 11.7 Each Director is responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment cash, etc., under his control. The Director of Finance and Resources must be consulted where security is thought to be defective or where it is considered that special security arrangements may be needed.

## **Cash Holdings**

- 11.8 Maximum limits for each cash holding shall be agreed with the Director of Finance and Resources and shall not be exceeded without his express permission (see Finance Rule Book).

## **Disposal of assets**

- 11.9 Each Head of Service shall be responsible for obtaining the best value for the Council when disposing of assets under their control. The Director of Finance and Resources shall be responsible for issuing guidance for the disposal of assets. (see Finance Rule Book)

# **12 Treasury Management and Trust Funds**

## **Treasury Management Policy**

- 12.1 The Council shall adopt the key recommendations contained in the CIPFA publication "Treasury Management in the Public Services; Code of Practice".
- 12.2 The Council will create and maintain, as the cornerstones for effective treasury management:
- (a) A treasury management policy statement, stating the policies and objectives of its treasury management activities
  - (b) Suitable treasury management practices, setting out the manner in which the organisation will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 12.3 The Council will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, an interim report providing analysis of current performance and a final annual report, in the form prescribed in its treasury management practices.

- 12.4 The Council delegates responsibility for the implementation and monitoring of its treasury management policies and practices to the Strategy and Resources Committee, subject to the advice under the terms of reference of the Financial Policy Panel, and for the execution and administration of treasury management decisions to the Director of Finance and Resources, who will act in accordance with the Council's policy statement and treasury management practices and CIPFA's Standard of Professional Practice on Treasury Management.

### **Treasury Policy Statement**

- 12.5 The content of Treasury Management Strategy will follow the recommendations contained in the Code, subject only to amendment where necessary to reflect the particular circumstances of the Council. Any such amendments will not result in the Council materially deviating from the Code's key recommendations.

### **Treasury Management Practices**

- 12.6 The content of treasury management practices will follow the recommendations contained in the Code, subject only to amendment where necessary to reflect the particular circumstances of the Council. Any such amendments will not result in the Council materially deviating from the Code's key recommendations.

### **Reporting on Treasury Management Activities**

- 12.7 At the start of the financial year the Director of Finance and Resources shall report to the Strategy and Resources Committee on the strategy for treasury management it is proposed to adopt for the forthcoming financial year.
- 12.8 The Director of Finance and Resources shall report to the Strategy and Resources Committee not less than twice in each financial year on the activities of the Treasury Management operation and on the exercise of Treasury Management powers delegated to him/her. One such report shall comprise an Annual Report on Treasury Management for presentation by the end of July of the succeeding financial year. Also an interim report on current performance shall also be presented in Autumn to the Financial Policy Panel.

### **Trust Funds**

- 12.9 All trust funds shall be in the name of the Council unless specifically approved by the Council otherwise. The Chief Executive is responsible for ensuring trust funds are operated within any relevant legislation and the specific requirements of each trust.

### **Investments and Borrowings Records**

- 12.10 The Director of Finance and Resources shall make all borrowings and investments in the name of the Council, except where and to the extent the Council has authorised its investments to be invested by an outside agent.

- 12.11 The Director of Finance and Resources shall maintain a register of loans and investments and records of all borrowings and investments made by the Council.
- 12.12 All negotiable investments, financial bonds and securities held in the name of the Council or its nominees shall be held under secure arrangements.
- 12.13 The requirements of the Council's Treasury Management Policies and Treasury Management Schedules must be followed at all times.

## **SYSTEMS AND PROCEDURES**

### **13 Systems and Procedures - General**

#### **Introduction**

- 13.1 Sound systems and procedures are essential to an effective framework of accountability and control.

#### **Responsibility**

- 13.2 The Director of Finance and Resources is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by Directors to the existing financial systems or the establishment of new systems must be approved by the Director of Finance and Resources. Heads of Service are responsible for the proper operation of financial processes in their own departments.
- 13.3 Any changes to agreed procedures by Directors or Heads of Service to meet their own specific service needs should be agreed with the Director of Finance and Resources.

#### **Training**

- 13.4 Directors should ensure that their staff receive relevant financial training that has been approved by the Director of Finance and Resources.

#### **Data Protection and Freedom of Information Legislation**

- 13.5 Directors must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation in line with procedures agreed by the Head of Information Technology. Divisional Managers must ensure that staff are aware of their responsibilities under the freedom of information legislation.

#### **Schemes of Delegation**

- 13.6 It is the responsibility of Directors to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on the Directors' behalf in respect of payments, income collection and placing orders, together with the limits of their authority.

## **14 Banking Arrangements and Cheques**

### **Banking Arrangements**

- 14.1 The Council shall review its banking arrangements at least every 5 years.
- 14.2 All arrangements with the Council's bankers must be made by or under arrangements approved by the Director of Finance and Resources who is authorised to operate such banking accounts as he may consider necessary. For the avoidance of doubt, the Director of Finance and Resources is also authorised to make such arrangements as are necessary with custodians for the purposes of holding investments, including cash balances, managed by external fund managers.
- 14.3 Unless otherwise agreed by the Director of Finance and Resources, all Council bank accounts shall stand in the name of the Epsom and Ewell Borough Council, but in any case not in the name or designation of any officer.

### **Bank Stationery**

- 14.4 All cheques, and other debit and credit forms shall be ordered only on the authority of the Director of Finance and Resources, who shall make proper arrangements for their safe custody.

### **Signing of Cheques**

- 14.5 Cheques on the Council's banking accounts shall bear the facsimile signature of the Director of Finance and Resources or be signed by the Director of Finance and Resources or other officer authorised to do so.

### **Electronic Payment Systems**

- 14.6 Where payments are to be transmitted electronically, the Director of Finance and Resources shall approve the necessary arrangements to safeguard the Council against potential loss.

### **Authorisation of Payments**

- 14.7 All payments, including BACs payments, in excess of £40,000 shall be countersigned by two authorised officers.
- 14.8 Only those Officers identified in the Council's Treasury Management Procedures are authorised to make payments from the Council's accounts or otherwise approve the transmission of funds. Treasury Management Procedures must be followed at all times.

## **15 Income**

### **Income Policy**

- 15.1 The Council's income policy shall be determined by the Strategy and Resources Committee as part of the Financial Plan. The Director of Finance and Resources is responsible for setting targets for fees and charges within the Financial Plan.
- 15.2 The charge to be made for any service, so far as not delegated as set out in the Constitution to an officer, must be approved by the relevant service committee.

### **Review of Fees and Charges**

- 15.3 The Heads of Service shall review charges at least once a year. Such charges shall then be submitted to the relevant Committee for approval, except where delegated authority shall otherwise provide. The financial implications of such reviews shall be reflected in the estimates for the forthcoming financial year.

### **Collection of Monies**

- 15.4 The collection of all money due to the Council shall be under the supervision of the Director of Finance and Resources or under arrangements specifically approved by the Director of Finance and Resources.

### **Security and Controls**

- 15.5 Each Divisional Manager is responsible for the regular review of their department's internal procedures for collecting and controlling income to ensure that the most effective controls are used.

### **Notification of Income Due**

- 15.6 Each Director shall inform the Director of Finance and Resources promptly with such particulars of all amounts due as may be required by him to record correctly all sums due to the Council and to ensure the prompt rendering of accounts for the recovery of income due. This shall include details of all contracts, leases and other agreements and arrangements entered into which involve the receipt of money by the Council. The Director of Finance and Resources shall have the right to inspect any documents or other evidence in this connection.

### **Money Laundering**

- 15.7 The Council is required by law to establish procedures for money laundering as set out in the Anti Money Laundering Policy contained in the Finance Rule Book.



15.8 The Head of Corporate Risk and Resource Management is the designated Money Laundering Officer and is responsible for updating policies and procedures and providing advice to all staff. All staff must abide by the policy at all times and take prompt and proper action if they have any suspicions of money laundering.

### **Recovery of Debts**

- 15.9 Directors shall ensure that debts due to the Council are referred to the Director of Finance and Resources for recovery without delay.
- 15.10 The Director of Finance and Resources shall take all reasonable steps to recover amounts due to the Council, including the appointment of Bailiffs or other collection agencies.
- 15.11 The Director of Finance and Resources is authorised to initiate County Court proceedings and sign the appropriate forms for the recovery of sundry debts.
- 15.12 With the exception of outstanding Council Tax and Business Rates, all outstanding debts which have been initiated in the County Court but which are being contested shall be referred to the Director of Finance and Resources who shall take all reasonable steps to recover them.

### **Writing Off Debts**

- 15.13 A debt that is properly due to the Council shall only be reduced or written off as irrecoverable on the authority of: -
- (a) The Director of Finance and Resources for debts up to £5,000, and
  - (b) Over £5,000, in consultation with the Chair of Strategy and Resources provided that they are satisfied that the debt is not recoverable at reasonable effort and expense.
  - (c) Write off's in excess of £20,000 should be reported to the Strategy and Resources Committee.
- 15.14 A record of all amounts written off shall be maintained by the Director of Finance and Resources and shall be kept up to date at all times.

## **16 Orders for Work, Goods and Services**

### **Key Controls**

- 16.1 Orders shall only be issued for goods or services if the cost is covered by an approved revenue or capital budget.
- 16.2 All orders must comply with the Council's Standing Orders for Contracts and the guidelines set down in the Council's Procurement Strategy.

- 16.3 Official orders must be issued for all work, goods or services to be supplied to the Council except for instances listed in the Finance Rule Book and such other exceptions as the Director of Finance and Resources may approve.

#### **Official Orders**

- 16.4 Official orders shall be in a form approved by the Director of Finance and Resources and are to be signed only by staff approved by the appropriate Head of Service. They shall include any contractual requirements set out in Standing Orders for Contracts.
- 16.5 Each order shall conform to directions regarding purchasing and the standardisation of supplies and materials.
- 16.6 A copy of each order shall be retained by the responsible officer and shall show the cost or estimated cost of the work or goods and the relevant application. The copy may be kept in paper form or in an electronic form.
- 16.7 Telephone, facsimile transfer ("fax") or verbal orders shall be confirmed as soon as practicable, within 2 working days, by official orders that clearly show that they confirm instructions previously issued.
- 16.8 Official orders must only be used for legitimate Council business. They must not be used for the procurement of goods, materials or services for the personal or other use of an employee, nor must personal or private use be made of Council contracts.

#### **Variation of Orders**

- 16.9 Variations to Official Orders must be confirmed as soon as practicable in writing with a reference to the original Official Order.

#### **Staff Benefits Scheme**

- 16.10 Any procurement under the staff benefit package must be made in accordance with the regulations for that scheme.

#### **Related Party Transactions**

- 16.11 Any Officer who is in a position to influence the award of a contract or the placing of an order must inform their Director if a transaction will involve an individual or company with whom they have a relationship.
- 16.12 No-one employed by the Council should enter into a contract with the Council, either as an individual or as a company, other than through their employment contract unless otherwise approved by the Chief Executive.

## **17 Paying for Work, Goods and Services**

### **Separation of Duties**

- 17.1 The activity of ordering/receiving goods should be separate from the authorization of payment of the account.

### **Method of Payment**

- 17.2 The normal method of payment of money due from the Council shall be by BACS drawn on the Council's banking accounts by the Director of Finance and Resources.

### **Certification of Invoices**

- 17.3 All managers and authorised signatories are responsible for examining, verifying and certifying invoice(s) and any other payment vouchers arising from activities in their division. An authorized signatory must be satisfied that all works, goods or services received to which the account relates have been carried out, examined and approved, are within budget and are correctly coded. Such certification, by or on behalf of the Director, shall be in manuscript or by an electronic method approved by a Director. The names of officers authorised to sign such records shall be sent to the Director of Finance and Resources by each manager together with specimen signatures and shall be amended on the occasion of any change within agreed limits specified in the Finance Rule Book.

### **Examination of Invoices**

- 17.4 Invoices and other payment vouchers shall be passed without delay to the Director of Finance and Resources who shall examine them to the extent that is considered necessary, for which purpose he shall be entitled to make such enquiries and to receive such information and explanations as may be required. Where the Director of Finance and Resources is satisfied that a certified account has not fully complied with the Council's Standing Orders for Contracts or Financial Regulations, it shall be returned to the certifying officer requesting an explanation. In the event that no satisfactory explanation is forthcoming, the Director of Finance and Resources shall report on the circumstances to the Corporate Board meeting and take action as necessary.

### **Payment Policy**

- 17.5 Directors shall take all reasonable steps necessary to ensure that the payment is made within 30 days wherever possible.
- 17.6 Special payment terms may only be agreed with suppliers following the prior agreement of the Director of Finance and Resources.

## **Purchasing Cards**

- 17.7 16.7 Nominated officers agreed by the Head of Financial Services can have purchasing cards for the purchase of low value and frequently supplied goods. The nominated officers are responsible for ensuring all payments are made timely and correctly with appropriate authorization and vouchers corresponding to payments. The nominated officers are responsible for ensuring their cards are held securely at all times. (further details are available in the Finance Rule Book and procedures)

## **18 Payments to Employees and Members**

### **Responsibility**

- 18.1 The Head of Human Resources and Organisational Development is responsible for all payments of salaries and wages to all staff, including payments for overtime, and for payment of allowances to Members.

### **Payment of Salaries and Wages**

- 18.2 The payment of all salaries, wages, pensions, compensations and other emoluments to all employees or former employees of the Council shall be made under arrangements approved and controlled by the Director of Finance and Resources.
- 18.3 The Head of Human Resources and Organisational Development shall maintain effective records affecting the payment of salaries and wages, and in particular:
- (a) Appointments, (both permanent and temporary), resignations, dismissals, suspensions, secondments, and transfers;
  - (b) Absences from duty for sickness or other reason, apart from approved leave;
  - (c) Changes in remuneration;
  - (d) Information necessary to maintain records of service for pensions, income tax and National Insurance.

### **Appointment of Staff**

- 18.4 Appointments of all employees shall be made in accordance with the Human Resources Policies and Procedures of the Council and the approved establishments, grades and rates of pay.

### **Variations to the Establishment**

- 18.5 Any proposal to vary the authorised establishment shall be made in accordance with the Human Resources Policies and Procedures approved by the Council.

## **Time Sheets and other Records**

- 18.6 The format of all time records and other pay documents must be approved by the Director of HR and Communication.

## **Claims for Staff Expenses**

- 18.7 All claims for payment of car allowances, training expenses, subsistence allowances, travelling and incidental expenses shall be submitted via the HR Self Service system and duly certified by the appropriate manager, by a specified date in each month.
- 18.8 The certification by the relevant manager shall be taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.
- 18.9 All officers must keep receipts for inspection by the Inland Revenue. These should be submitted to the appropriate manager and stored by HR

## **Payments to Members**

- 18.10 Payment to Members shall be in accordance with the Council's Members' Allowances Scheme.
- 18.11 Payment to co-opted members entitled to claim travelling and/or other allowances will be made by the Director of Finance and Resources upon receipt of the prescribed form duly completed.

## **19 Taxation**

### **Responsibility**

- 19.1 The Director of Finance and Resources is responsible for advising Directors, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the authority.
- 19.2 The Director of Finance and Resources is responsible for maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.
- 19.3 The Director of Finance and Resources shall be responsible for all communications with HM Revenue and Customs for all matters relating to taxation. The Director of Finance and Resources shall maintain records and accounts sufficient to meet the obligations of the collection agencies.
- 19.4 The Director of Finance and Resources shall report any significant changes relating to the Council's tax affairs to Financial Policy Panel and/or Strategy and Resources Committee.

- 19.5 The Director of Finance and Resources shall be responsible for creating and maintaining an awareness of the importance of effective tax accounting across the whole organisation, and especially among those responsible for the processing of transactions.
- 19.6 The Director of Finance and Resources shall issue instructions and manuals as appropriate based on up to date legislation.

### **Appointment of Advisors**

- 19.7 The Director of Finance and Resources shall appoint professional advisers where considered necessary to resolve any taxation issues.

### **Property Transactions**

- 19.8 The Director of Finance and Resources and Property and Estates Manager shall be informed of all proposed acquisitions, disposals, rentals and leasing of property at the planning stage and shall advise on the taxation implications accordingly.

## **EXTERNAL ARRANGEMENTS**

### **20 Partnerships, External Arrangements and Work for Third Parties**

- 20.1 As part of its Community Strategy the Council provides a distinct leadership role for the community bringing together contributions from various stakeholders. The Council also has a role to play in championing needs and bidding for external funding.
- 20.2 The Director of Finance and Resources is responsible for issuing any required guidance on the financial aspects of contracts with third parties and external bodies.
- 20.3 Directors and managers must ensure that work for 3<sup>rd</sup> parties does not have an adverse impact on any of the Council's services before entering into agreements a risk management appraisal has been undertaken. Also that all guidance issued by the Director of Finance and Resources is complied with and that all agreements and arrangements are properly documented.
- 20.4 The Director of Finance and Resources must ensure that adequate insurance arrangements are in place for all partners, 3<sup>rd</sup> parties or external arrangements. Director of Finance and Resources is also responsible for advising on the tax implications of agreements with other parties.
- 20.5 The relevant Director is responsible for approving partnership arrangements and informing the Director of Finance and Resources of such arrangements. Where appropriate Directors should seek financial and legal advice prior to entering into a partnership arrangement and that risk assessments are undertaken.

- 20.6 Directors are also responsible for evaluating any long term implications of entering into such arrangements and informing the Director of Finance and Resources.
- 20.7 The Directors must also ensure that adequate records are maintained of any expenditure, grant or income including match funding.
- 20.8 The appropriate Director and manager is responsible for ensuring that all funding notified by external bodies is received and used for the intended purpose and properly recorded in the Council's accounts. It is also the responsibility of the appropriate Head of Service to inform the Director of Finance and Resources of bids for external funding with any implications such as match funding and or revenue budget implications.
- 20.9 Any contracts must comply with the Council's Contract Standing Order

## **SECTION F – Contract Standing Orders**

*Last revised July 2007; Latest revision July 2016*

### **1. Scope and Applicability**

#### **Introduction**

- 1.1 These Contract Standing Orders (CSOs) apply to all contracts entered into by the Council.
- 1.2 CSOs apply to the procurement of all works, services (including consultants), supplies and the disposal of assets.
- 1.3 The Council is required to adopt CSOs under section 135 of the Local Government Act 1972.
- 1.4 If UK or EU legislation changes in a way which affects these CSOs then that change must be observed until the CSOs can be revised. If there is a conflict between UK or EU legislation and these CSOs then the legislation will take precedence.
- 1.5 These CSOs set out the principles of how the Council will administer contract procurement and management. Officers must comply with the procedures set out in the Council's Procurement Toolkit which can be found on E-Hub.
- 1.6 Any reference in these CSOs to "the Council" shall refer to a committee or person acting in accordance with delegated authority on behalf of the Council.
- 1.7 Any reference to Procurement Practitioner shall refer to any other person referred to in the Procurement Toolkit.

#### **Value of Contracts**

- 1.8 In these CSOs references to the value of contracts are exclusive of VAT.
- 1.9 For the purposes of these CSOs, the value of a contract is the total value of the works, supplies or services for the duration of the contract including any contract extensions, variations (including day works or additional activities) and any provision for the indexation of sums to be paid under the contract.
- 1.10 These CSOs apply to all contracts except contracts referred to in CSO 7.
- 1.11 Expenditure must not be sub-divided to avoid the provisions of these CSOs.



## **2. Statutory Requirements**

- 2.1 Every contract entered into by the Council shall comply with the EU Treaty and any relevant directives of the EU for the time being in force in the United Kingdom together with any UK law and any relevant Council policy.
- 2.2 Where the estimated value of a contract exceeds the relevant EU Procurement Directive threshold then the EU tendering requirements set out in the Public Contracts Regulations 2015 (PCR 2015) must be complied with in conjunction with and in addition to these CSOs. For the purpose of these CSOs, the EU threshold means the threshold set out within the Public Contract Directive as amended from time to time for public supply contracts, public works contracts and public service contracts awarded by local authorities. See Annex A for further details.

## **3. Contract Terms**

- 3.1 All contracts entered into by the Council shall be in writing utilising the e-procurement system with the exception of the disposal of Council assets, land and property referred to in CSO 9.
- 3.2 Before commencing any tender process or other procurement exercise officers must consider the need to consult with a Procurement Practitioner, their Head of Service and/or the Head of Legal & Democratic Services as necessary who will advise on the conditions of the contract required and the appropriate methods and procedures to be used. The Head of Legal & Democratic Services shall be consulted on any bespoke conditions of contract which might be required. Officers must have regard to all necessary legal, financial, procurement, insurance and other professional advice.
- 3.3 All contracts shall be made on the conditions of contract approved by the Head of Legal & Democratic Services.
- 3.4 All contracts shall:
- (i) contain a specification of requirements and the outcomes to be achieved;
  - (ii) state the price to be paid with a statement of discounts or other deductions;
  - (iii) state the time or times within which the contract is to be performed;
  - (iv) require contractors to comply with all relevant policies of the Council;
  - (v) require a contractor to comply with the provisions of the Human Rights Act 1998 as if it were a public body within the meaning of that act;

- (vi) require the contractor to indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of any breach of CSO 3.4(v);
  - (vii) require the Council to pay all undisputed invoices within 30 days (subject to any contractual or statutory obligation to pay earlier);
  - (viii) require the Council to consider and verify all invoices submitted by a contractor in a timely fashion; and
  - (ix) require any sub-contract awarded by the contractor to include the provisions of CSOs 3.4(vii) and (viii) and that such terms are passed down the supply chain.
- 3.5 Every contract which exceeds £25,000 in value or amount and is for the provision of works, supplies or services other than at one time shall provide for adequate redress in the event of default by the contractor as agreed by the Head of Legal & Democratic Services.
- 3.6 Every contract over £75,000 shall:
- (i) provide for liquidated damages to be paid by the contractor where the terms of the contract are not duly performed if financial loss is likely to arise from delay in performing the contract; and
  - (ii) provide that where the cost of purchasing other goods, materials or services exceed the amount which would have been payable to the contractor, this amount shall be recoverable from the contractor.
- 3.7 Every contract shall include a clause allowing the Council to immediately terminate the contract and to recover from the contractor the amount of any loss resulting from the termination of the contract if the contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or procuring to be done or for having done or having procured to be done any action in relation to the obtaining of the contract or any other contract with the Council or for showing, procuring to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if like acts shall have been done by any person employed by the contractor or acting on his behalf (whether with or without the knowledge of the contractor) or, if in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under section 117 of the Local Government Act 1972.
- 3.8 Every contract valued at £750,000 or more shall be sealed with the common seal of the Council.

3.9 For all contracts under £750,000 the awarding officer may sign the contract on behalf of the Council. See CSO 5.14 for further details.

#### **4. Quality Assurance**

4.1 Requirements for quality and quality assurance shall be included in every contract entered into by the Council.

4.2 Where an appropriate British Standard or European Standard specification and/or code of practice issued by the British Standards Institute or equivalent European institution is current at the date of tender every contract, where such a standard is proportionate to the requirements of the specification, shall require that all goods and materials used or to be supplied and all workmanship shall be to a standard not less than the British Standard or European Standard.

#### **5. Procurement Process**

5.1 All contracts shall be awarded following the procedures set out in these CSOs or by such other public body's CSOs as provided for in CSO 7.1(ii).

5.2 All supplies, services and works will be procured in accordance with the requirements and value thresholds set out in CSO 5.14 unless the procurement falls within an exempt category or a waiver is obtained.

5.3 Where an external person or organisation is required to supervise a contract or procurement on the Council's behalf, the relevant Head of Service shall ensure that the external person or organisation complies with the requirements of these CSOs as though that external person or organisation were a Council officer.

5.4 Every tender issued shall include such documents as the Procurement Practitioners and Head of Finance may require. Where procurements are above the EU threshold all procurement documents, including the contract, must be available at the time the contract opportunity is advertised via the Council's e-procurement system. Procurements above £25,000 must be advertised on Contracts Finder within 24 hours of the initial advertisement having been placed via the Council's e-procurement system.

5.5 Every tenderer shall be required to accept the specification of requirements and terms and conditions of contract including a certificate of non-collusion (except where Quick Quotes (QQ) is used) and confirm as a minimum that they have answered in good faith the questions in the tender documentation correctly, accurately, in good faith and there is no conflict of interest.

5.6 Officers must take such steps as may be required to confirm the identity and bona fides of any prospective contractor and in relation to the transaction generally. This may require compliance with the client identification procedures required by the Money Laundering Regulations 2007 or the Land

Registry (where applicable). Any suspicions in relation to money laundering must be reported immediately to the Council's Money Laundering Reporting Officer.

- 5.7 All invitations to tender, with the exception of Quick Quotes, must include the criteria and sub-criteria upon which tenders will be evaluated together with the respective weighting to be applied to each.

### **Framework Agreements**

- 5.8 Officers must consider and, where required, use EU compliant contracts and framework agreements already tendered by the Council or those contracts and frameworks procured by other public sector bodies or consortia which are available to the Council.
- 5.9 Where the Council has a tendered contract or framework agreement for a category of supplies, services and/or works, officers must use such contracts or framework agreements for the procurement of relevant supplies, services or works unless they obtain the agreement in writing of the Head of Finance.
- 5.10 Where supplies, services or works cannot be obtained through an existing contract or framework agreement, officers must comply with the competition requirements in CSOs 5.14.
- 5.11 Further requirements relating to framework agreements can be found at CSO 5.25 – 5.33.

### **Competition Requirements**

- 5.12 The tables in CSO 5.14 are compiled to take account of the PCR 2015 and the EU thresholds.
- 5.13 All tendering procedures are to be carried out in accordance with the requirements and timescales set out in the Procurement Toolkit which can be found on E-Hub.

## Competition - Threshold Requirements

<b>TABLE 1</b>					
<b>SERVICES, SUPPLIES AND WORKS (INCLUDING CONSULTANTS)</b>					
<b>(EXCLUDING SERVICES SET OUT WITHIN SCHEDULE 3 OF THE PCR 2015)</b>					
<b>Estimated value</b>	<b>Advertising requirement</b>	<b>Minimum number of organisations to be invited to tender</b>	<b>Tender procedure</b>	<b>Evaluation</b>	<b>Authorisation required for contract award</b>
<b>Under £5,000</b>	E-Procurement system	One (but preferably three)	QQ	Officer with delegated authority	Officer with delegated authority
<b>£5,000 - £24,999</b>	E-Procurement system	At least three	QQ or Request for Quotation (RFQ) if quality weighting is required for evaluation	At least two officers, one of whom not previously involved in the procurement	Head of Service
<b>£25,000 - £74,999</b>	E-Procurement system, Contracts Finder, trade journal where appropriate	Five	RFQ	At least two officers one of whom must be a representative from the Finance department	Head of Service in conjunction with a representative from Finance
<b>£75,000 – below EU threshold</b>	E-Procurement system, Contracts Finder, trade journal where appropriate	N/A – open procedure to be used	RFQ	At least three officers including one representative from Finance and one from Legal	Head of Service in conjunction with the Director of Finances & Resources

<b>TABLE 1</b> <b>SERVICES, SUPPLIES AND WORKS (INCLUDING CONSULTANTS)</b> <b>(EXCLUDING SERVICES SET OUT WITHIN SCHEDULE 3 OF THE PCR 2015)</b>					
<b>Estimated value</b>	<b>Advertising requirement</b>	<b>Minimum number of organisations to be invited to tender</b>	<b>Tender procedure</b>	<b>Evaluation</b>	<b>Authorisation required for contract award</b>
<b>EU threshold - £750,000</b>	OJEU, E-Procurement system, Contracts Finder, trade journal where appropriate	Five	EU compliant – open, restricted, others	At least three officers including one representative from Finance and one from Legal	The Director of Finances & Resources in conjunction with the relevant committee chairman
<b>Over £750,000</b>	OJEU, E-Procurement system, Contracts Finder, trade journal where appropriate	Five	EU compliant – open, restricted, others	At least three officers including one representative from Finance and one from Legal	The relevant committee

<b>TABLE 2</b> <b>HEALTH, SOCIAL, EDUCATION, RECREATIONAL, CULTURAL, SPORTING, LEGAL SERVICES AND CERTAIN OTHER SERVICE CONTRACTS WITHIN SCHEDULE 3 OF THE PCR 2015</b>					
<b>Estimated value</b>	<b>Advertising requirement</b>	<b>Minimum number of organisations to be invited to tender</b>	<b>Tender procedure</b>	<b>Evaluation</b>	<b>Authorisation required for contract award</b>
<b>Under £5,000</b>	E-Procurement system	One (but preferably three)	QQ	Officer with delegated authority	Officer with delegated authority

**TABLE 2**  
**HEALTH, SOCIAL, EDUCATION, RECREATIONAL, CULTURAL, SPORTING,**  
**LEGALSERVICES AND CERTAIN OTHER SERVICE CONTRACTS WITHIN**  
**SCHEDULE 3 OF THE PCR 2015**

<b>Estimated value</b>	<b>Advertising requirement</b>	<b>Minimum number of organisations to be invited to tender</b>	<b>Tender procedure</b>	<b>Evaluation</b>	<b>Authorisation required for contract award</b>
<b>£5,000 - £24,999</b>	E-Procurement system	At least three	QQ or Request for Quotation (RFQ) if quality weighting required for evaluation	At least two officers, one of whom not previously involved in the procurement	Head of Service
<b>£25,000 - £74,999</b>	E-Procurement system, Contracts Finder, trade journal where appropriate	Five	RFQ	At least two officers one of whom must be a representative from the Finance department	Head of Service in conjunction with a representative from Finance
<b>£75,000 – below EU threshold</b>	E-Procurement system, Contracts Finder, trade journal where appropriate	N/A – open procedure to be used	RFQ	At least three officers including one representative from Finance and one from Legal	Head of Service in conjunction with the Director of Finances & Resources
<b>EU threshold - £750,000</b>	OJEU, E-Procurement system, Contracts Finder, trade journal where appropriate	Five	EU compliant – open, restricted, others	At least three officers including one representative from Finance and one from Legal	The Director of Finances & Resources in conjunction with the relevant committee chairman

**TABLE 2**  
**HEALTH, SOCIAL, EDUCATION, RECREATIONAL, CULTURAL, SPORTING,**  
**LEGALSERVICES AND CERTAIN OTHER SERVICE CONTRACTS WITHIN**  
**SCHEDULE 3 OF THE PCR 2015**

<b>Estimated value</b>	<b>Advertising requirement</b>	<b>Minimum number of organisations to be invited to tender</b>	<b>Tender procedure</b>	<b>Evaluation</b>	<b>Authorisation required for contract award</b>
<b>Over £750,000</b>	OJEU, E-Procurement system, Contracts Finder, trade journal where appropriate	Five	EU compliant – open, restricted, others	At least three officers including one representative from Finance and one from Legal	The relevant committee

### **Tender Procedures**

- 5.15 All procurement processes must comply with the requirements and thresholds set out in CSO 5.14 and the procedures set out in the Procurement Toolkit which can be found on E-Hub.
- 5.16 The open procedure will normally be used for EU threshold procurements.
- 5.17 The restricted, competitive procedure with negotiation, competitive dialogue procedure and the innovative partnership procedure may only be used, or a dynamic purchasing system established, after officers have agreed the appropriateness of the procedure with the Head of Legal & Democratic Services.
- 5.18 Every procurement process shall be conducted in an equitable, fair, non-discriminatory and transparent manner for each contract.

### **Permission to Tender**

- 5.19 Heads of Service have the authority to commence a tendering process provided there is a business case for the procurement and financial provision has been obtained.
- 5.20 Where the value of the contract is in excess of £750,000, the procurement must be approved by the relevant committee prior to the commencement of the procurement process.



## **Tendering – Selection of Tenderers**

- 5.21 Where the number of organisations expressing an interest in an advertisement is fewer than the number set out in CSO 5.14 then all such organisations applying will be asked to tender subject to meeting the requirements of CSO 5.23.
- 5.22 The Head of Service with permission to tender a contract will be responsible for ensuring audit trail records are completed on the e-procurement system showing how tenderers are selected for each contract and the reasons why they were chosen.
- 5.23 Where contracts are subject to the PCR 2015 and are above the relevant EU threshold, the suitability to pursue a professional activity, the economic and financial standing and technical and professional ability of any contractor or supplier shall be assessed if relevant and proportionate to the contract being procured. Such assessment will take place prior to the contractor or supplier being invited to tender. It is not permissible to use a pre-qualification stage for contracts below the EU threshold although suitability assessment questions may be used provided those questions are relevant to the subject matter and are proportionate as advised by the Head of Legal & Democratic Services.
- 5.24 Where contracts are subject to the PCR 2015 and are above the EU threshold, in relation to economic and financial standing, the minimum annual turnover that a contractor or supplier is required to have shall not exceed twice the estimated annual contract value except in duly justified cases. Where the minimum annual turnover required exceeds twice the estimated contract value the justification must be included in the report required by PCR 2015 regulation 84(1).

## **Tenderers sought from Framework Agreements**

- 5.25 This CSO applies where tenders are sought from either a framework agreement set up in compliance with the PCR 2015, as established by the Council, another public body, a local authority consortium, a national agency which is recognised as carrying out procurement for the benefit of public bodies or another local authority as part of a joint purchasing arrangement of which the Council is permitted to use in accordance with the PCR 2015.
- 5.26 Call offs either by mini competition and/or direct award from a framework agreement must be undertaken in accordance with the rules of the relevant framework agreement. Mini competition and/or direct awards, where required by the relevant framework agreement, must be conducted through the Council's e-procurement system.
- 5.27 Tenders will not be required where a framework agreement is with a single supplier or allows the call off of supply without competition. In such cases officers will need to demonstrate that they have obtained value for money.

## **Council Framework Agreements**

- 5.28 Where there is a frequent occasion to go out for tender for a category of work, supply or service, a framework agreement of organisations may be compiled for the Council.
- 5.29 For a multi-supplier framework, each framework agreement must include a minimum of two suitable organisations. Where the Council has decided to enter into a single supplier framework, a single supplier must be appointed to the single supplier framework.
- 5.30 Each framework agreement shall clearly state the rules for call off by mini competition and/or direct awards of contract under the framework as applicable.
- 5.31 Each framework agreement will be compiled in accordance with the competition requirements set out in CSO 5.14.
- 5.32 The suitability of applicants will be evaluated in accordance with the criteria and sub-criteria stated in the contract documentation and upon the information provided in the applicant's submission to be included on the framework agreement.
- 5.33 Framework agreements may exist for a maximum of four years unless the subject matter of the framework agreement justifies a longer contract period as agreed by the Head of Legal & Democratic Service.

## **Submission of Tenders – Electronic Submission**

- 5.34 All tenders for the procurement of supplies, services and works will be submitted securely through the Council's e-procurement system. For the avoidance of doubt, the term "tenders" includes Quick Quotes (QQ) and Request for Quotation (RFQ).
- 5.35 For low value procurements (under £5,000), officers may obtain tenders without using the QQ system where it is expedient to do so. Prior authorisation must be obtained from the Head of Finance to obtain low value tenders without using the QQ system.

## **Submission of Tenders – Paper Submission**

- 5.36 Paper tenders shall only be used in below EU level procurements where the e-procurement system is unavailable. The Head of Finance will set out the requirements for submitting a paper tender where this is required.

## **Tender Opening – Electronic and Paper Tenders**

- 5.37 Tenders, QQs and RFQs will be opened through the e-procurement system within an hour of the time specified in the invitation to tender documentation.

- 5.38 No tender, QQ or RFQ received after the time and date specified in the invitation to tender documentation will be considered.
- 5.39 For tenders with a threshold of over £750,000 opening will be carried out by a representative nominated by the Head of Finance.
- 5.40 No person shall disclose the value, number or any other detail of the tenders received to any tenderer or anyone not involved in the tender evaluation procedure.

### **Tender Evaluation**

- 5.41 For low value procurement (under £5,000) the awarding officer shall evaluate the tenders received.
- 5.42 For procurement valued between £5,000 and £25,000 tenders shall be evaluated by at least two officers one of whom must not have been directly involved in the procurement previously.
- 5.43 For procurement valued between £25,000 and £75,000 tenders shall be evaluated by at least two officers, one of whom must be a representative from the Finance department.
- 5.44 For procurement valued above £75,000, tenders shall be evaluated by at least three officers including a representative from the Finance department and a representative from the Legal department.
- 5.45 In all cases tender evaluation shall be carried out in an equitable, fair, non-discriminatory and transparent manner in accordance with the award criteria set out in the tender documentation and the procedures contained in the Procurement Toolkit.
- 5.46 Where a tender contains errors or discrepancies affecting the tender sum or rates the relevant Head of Service may, during the tender evaluation providing no information is given to the tenderer regarding the effect of such action, give the tenderer the option to:
- (i) correct the prices or rate concerned;
  - (ii) continue without correcting the prices or rates; or
  - (iii) withdraw the tender.
- 5.47 If a tender is received with an abnormally low price in proportion to the contract requirement the Council officer leading the procurement shall require the tenderer to explain the costs proposed in the tender.
- 5.48 If, after consulting the tenderer, the officer is not satisfied that the evidence or explanation provided can satisfactorily account for the low level of price or

costs proposed, the officer must discuss what action should be taken with the Head of Finance.

- 5.49 Where QQ is used, the tenderer providing the cheapest quote will be awarded the contract and no qualitative assessment will be undertaken.
- 5.50 RFQ and EU procurement will be assessed using the most economically advantageous tender (MEAT) approach. MEAT uses both quality and price to evaluate tenders.
- 5.51 Where MEAT is to be used and prior to the tender being issued, the officer leading the procurement will, in conjunction with the Procurement Practitioner or Head of Finance, agree the criteria and weighting against which tenders will be assessed.

Criteria may include:

- (i) price;
- (ii) technical merit;
- (iii) aesthetic and functional characteristics;
- (iv) environmental characteristics;
- (v) running costs;
- (vi) cost effectiveness;
- (vii) after sales service;
- (viii) technical assistance;
- (ix) delivery date, delivery period and period of completion;
- (x) agility and ability to respond to contingencies;
- (xi) customer care;
- (xii) performance standards, quality monitoring and complaints;
- (xiii) accessibility; and
- (xiv) organisation, qualification and experience of staff.

**5.52 This list is not exhaustive. Further details concerning MEAT can be found in the Procurement Toolkit.**

## **Post Tender Negotiations**

5.53 Officers shall not enter into post tender negotiations with a tenderer in an open or restricted procurement procedure. This principle also applies to QQ and RFQs.

## **Acceptance of Tenders**

5.54 The authority to award contracts is set out in CSO 5.14 and is subject to:

- (i) the award being made to the cheapest tenderer where QQ is used or the most economically advantageous tender in all other cases; and
- (ii) all tender award notifications being conducted through the Council's e-procurement system.

## **Contract Notification and Standstill Period**

5.55 All successful and unsuccessful tenderers for a contract must be notified simultaneously and as soon as possible as to the outcome of the tender process via the e-procurement system.

5.56 For all contracts with a value exceeding the EU threshold the council will apply a standstill period for a minimum of 10 days to comply with the PCR 2015. The day of notification is considered day 0. This requirement applies to call offs from framework agreements which exceed the EU threshold.

5.57 For QQs and RFQs telephone debriefs, if requested by tenderers, are permissible.

5.58 Where the standstill period in CSO 5.56 applies, the Council will send a notification to all organisations submitting a tender stating as a minimum the following:

- (i) the award criteria;
- (ii) the sub criteria weightings;
- (iii) the ranking of the tenderer in the tender evaluation; and
- (iv) the name of the successful tenderer.

5.59 If the decision to award is challenged by an unsuccessful tenderer the contract will not be awarded and the matter shall be referred to the Head of Legal & Democratic Services for advice.

5.60 The advice of the Head of Legal & Democratic Services must be sought in any situation where a face to face debrief is being considered.

## **Commencement of Work**

- 5.61 No supply of works, supplies or services is to commence until a sufficiently binding contractual arrangement is in place between the Council and the contractor to the satisfaction of the Head of Legal & Democratic Services.

## **6 Contract Management**

- 6.1 The relevant Head of Service will maintain accurate and proper records of all contracts for which he/she is responsible
- 6.2 The relevant head of Service shall be responsible for ensuring that all contracts for which he/she is responsible are properly performed and managed.

### **Variations to Contracts**

- 6.3 Where a contract is varied by addition to, omission from or amendments to, such variations must be made promptly in writing noting that any variations must fall within the scope of the original contract.
- 6.4 All variations issued must include the scope and an estimate of the value of the variation and the method by which the final value of the variation will be determined. Where tender clarifications occur between the invitation to tender and the award, all such variations must be captured on the e-procurement system.
- 6.5 Where the total value of the contract including any variation is not more than £25,000 and the Council has an approved budget for this amount, the relevant Head of Service may agree the variation. In all other circumstances the Council's s151 officer's written approval must be obtained.
- 6.6 Where contract variations generate a lower contract value and no significant change to the contract specification is envisaged, no such authorisations are necessary.

### **Contract Storage and Audit**

- 6.7 As soon as possible, the relevant Head of Service must ensure that the original signed contract is passed to the Legal department for storage.
- 6.8 As soon as possible after completion of the procurement, the relevant Head of Service must inform the Procurement Practitioner of all contracts which must be registered on the Council's contracts register.
- 6.9 The relevant Head of Service must ensure that all relevant paperwork relating to the tender, the tender opening procedure, the tender evaluation and award of contract is retained, for at least 6 months, in case of legal challenge or for audit purposes.

## **7 Exemptions from Tendering**

7.1 These CSOs apply to all procurement undertaken by the Council unless the procurement is below the EU threshold and falls within one of the following categories:

- (i) call offs from framework agreements which have been tendered;
- (ii) the Council is acting as an agent for another organisation and is acting in accordance with that organisation's CSOs;
- (iii) employment contracts;
- (iv) disposal or acquisition of land (see CSO 9); and
- (v) legal advice and expert witnesses.

## **8 Waiver**

8.1 The requirement for the Council to conduct a competitive procurement process for contracts in excess of £5,000 but below the EU threshold may be waived in exceptional circumstances by a Director or Chief Executive.

8.2 All waivers from CSO are to be:

- (i) fully documented; and
- (ii) the subject of a written report in an approved format which is submitted in advance to the Monitoring Officer and s151 officer for approval and shall include the reasons why the waiver is sought.

8.3 All decisions on whether or not to grant a waiver must take into account:

- (i) probity; and
- (ii) best value for money principles.

8.4 Applications for waivers which are as a result of poor contract planning will rarely be considered genuinely exceptional.

8.5 The relevant Head of Service will inform the relevant committee when a waiver has been granted and an annual report setting out the waivers granted will be presented to the Audit, Crime & Disorder and Scrutiny Committee.

## **9 Disposal of Land and Other Assets**

### **Disposal of Land and Property**

9.1 All land and property which is considered to be surplus to the Council's service requirements must be notified to the Head of Legal & Democratic

Services who will be responsible for the disposal or other reallocation of such land and property in accordance with the Council's Asset Management Strategy.

### **Disposal of Other Council Assets**

- 9.2 Assets may be declared as being surplus to requirements by a Head of Service who shall assess the value of the assets using such expert assistance as they consider necessary and to dispose of the asset in accordance with this CSO.
- 9.3 The value of an asset shall be the estimated price for which the asset might reasonably be expected to be sold to a willing purchaser in the open market. Similar assets declared surplus to requirements at or about the same time shall be aggregated in value.
- 9.4 Assets having no realisable value or where the costs of disposal is likely to likely to exceed the price received may be disposed of as waste provided that the assets shall be recycled wherever reasonably practical and financially viable.
- 9.5 Assets with a value of £5,000 or less may be sold for the best price possible. Such assets may be advertised on internet based marketplaces (such as EBay). Where such sites are used, the Head of Finance will nominate a single council officer to be responsible for the disposal of assets using this method.
- 9.6 In the case of assets valued above £5,000, disposal shall be carried out by inviting bids for the assets through the open procedure or auction.
- 9.7 Council officers or members are not permitted to purchase any Council assets.
- 9.8 Assets which require secure disposal such as computers, tablets, mobile telephones and any other equipment containing personal or confidential material must be disposed of only to an approved contractor. The relevant Head of Service on in the case of IT equipment, the Head of ICT, must ensure that the personal information or confidential material is destroyed and documentation confirming this must be obtained from the contractor and retained by the Council.
- 9.9 Where items have to be written off and disposed of the write off must be approved in accordance with the following limits:
- (i) for items valued up to £5,000 Head of Service in consultation with the Director of Finance & Resources;
  - (ii) for items valued between £5,000 and £20,000, Director of Finance & Resources in consultation with the relevant committee chairman; and
  - (iii) for items valued over £10,000 the relevant committee.



## **10 Other Provisions**

### **Work for Third Parties**

10.1 The Head of Legal & Democratic Services must approve the contractual arrangements for any work carried out by the Council for third parties or external bodies.

### **Partnerships**

10.2 Partnerships with other local, public, private, voluntary and community sector organisations will be entered into subject to the approval of the relevant committee who shall agree:

- (i) the terms of reference; and
- (ii) where appropriate, a scheme of delegation to officers to operate within the partnership.

10.3 Unless specifically agreed by the relevant committee, partnership arrangements shall only be entered into in accordance with the provisions of these CSOs.

10.4 The heads of terms for all partnership arrangements shall be approved by the relevant committee and full terms and conditions by the relevant committee and the Head of Legal & Democratic Services.

10.5 The Head of Legal & Democratic Services shall be responsible for ensuring that adequate arrangements for governance are set up within each partnership entered into. Such arrangements shall include provisions for arranging contracts with external bodies.

### **Council Members and Contracts**

10.6 No member shall have authority to enter into any contract on behalf of the Council.

10.7 No member shall have authority to issue any instruction or variation to a contractor of the Council.

## **ANNEXE A: EU Threshold Levels**

The financial thresholds are amended on a regular basis, generally every 2 years.

The current thresholds set out below are valid from 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2017.

		<b>Supplies</b>	<b>Services</b>	<b>Works</b>
A	Local authorities	£164,176	£164,176	£4,104,394
		€209,000	€209,000	€5,225,000
B	Social and other specific services (sch 3 PCR 2015)	N/A	£589,148 €750,000	N/A

**Note:** The threshold for social and other specific services in row B of the table above is a higher threshold as the European Commission decided that these services are not likely to attract cross-border interest and this gives local authorities flexibility in procuring these services. Whilst in the past services were divided into Part A and Part B services this distinction no longer exists and instead there are services which are subject to the full extent of the regulations and other services which are subject to the light touch regime.

The new threshold in row B for social and other specific services applies to procurements of the following services:

Health, social and related services;  
 Administrative social, educational, healthcare and cultural services;  
 Compulsory social security services;  
 Benefit services;  
 Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership services;  
 Religious services;  
 Hotel and restaurant services;  
 Some legal services;  
 Other administrative services and government services;  
 Provision of services to the community;  
 Some prison related services, public security and rescue services;  
 Investigation and security services;  
 International services; and  
 Postal services

Where the officer is seeking to procure any of the above services you should contact a Procurement Practitioner in order to check if the service falls within one of these areas and is therefore subject to the higher threshold set out in row B.

## **SECTION G - Officer Employment Procedure Rules**

### **1 Recruitment and Appointment**

#### 1.1 Declarations

- (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew, or niece of an existing Councillor or Officer of the Council; or the partner of such persons;
- (b) No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Director or an officer nominated by him/her.

#### 1.2 Seeking support for appointment

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor or Officer for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (b) No Councillor or Officer will seek support for any person for any appointment with the Council.

### **2 Recruitment of Directors**

#### 2.1 Where the Council proposes to appoint a Director, the Chief Executive, in consultation with the Panel referred to in 2.2 below, will: -

- (a) draw up a statement specifying: -
  - (i) the duties of the Officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

- 2.2 The Chief Executive and HR Manager will, after consultation with the Panel, interview and select candidates for final interview by that Panel, consisting of the Chairman of the Strategy and Resources Committee, three other Councillors trained in interview techniques (to include appropriate minority group representation) together with the Chairman or Vice-Chairman of any other Committee concerned.
- 2.3 A panel of five members, composed of the Chairman of the Strategy and Resources Committee and four other members appointed by that Committee (to include appropriate minority group representation) will make all necessary arrangements for the recruitment and selection of the Chief Executive in accordance with the arrangements set out in 2.1 above.

### **3 Appointment of Directors**

- 3.1 The panel referred to in 2.2 above will have power to appoint Directors.

### **4 Appointment of Chief Executive**

- 4.1 The Full Council will approve the appointment of the Chief Executive following the recommendation of the panel referred to in 2.3 above.

### **5 Officers below Directors**

- 5.1 Appointment of Officers below Directors is the responsibility of the Chief Executive or his/her nominee and may not be made by Councillors (except that in the case of Division Heads, provision will be made for consultation with the appropriate Committee Chairman).

### **6 Disciplinary Action for Alleged Misconduct (including Dismissal)**

- 6.1 **Suspension:** The Chief Executive, Director of Finance and Resources and Monitoring Officer may be suspended by a decision of the Full Council whilst an investigation takes place into alleged misconduct. The suspension will be on full pay and last no longer than two months.
- 6.2 **Independent person:** No other disciplinary action may be taken in respect of any of those officers, except in accordance with a recommendation in a report made by a designated independent person under Regulation 7 of the Local Authorities (Standing Orders) Regulations 2001.
- 6.3 **Involvement of Councillors:** Councillors will not be involved in any disciplinary action against any officer below Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related appeals procedures, as adopted from time to time.

# **PART 5**

# **Codes and Protocols**

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## **SECTION A – Epsom and Ewell Borough Council Member Code of Conduct**

*Issued July 2012*

As a member or co-opted member of Epsom & Ewell Borough Council you shall have regard to the following principles of public life

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty

and

- Leadership

Accordingly, when acting in your capacity as a member or co-opted member -

- 1) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
- 2) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- 3) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit and must be impartial and seen to be impartial.
- 4) You must co-operate fully with whatever scrutiny is appropriate to your office.
- 5) You must be as open as possible about your decisions and actions and the decisions and actions of Epsom & Ewell Borough Council and should be prepared to give reasons for those decisions and actions.
- 6) You will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the commercial interests of the Council or

another person or organisation. This information must not be revealed without proper authority.

- 7) You should be mindful of the requirement to declare and record any disclosable pecuniary interests in a manner conforming to the procedures set out in the box below.
- 8) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 9) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.
- 10) In addition to compliance with the Member Code of Conduct, you are expected to comply with the following codes:
  - (a) Member/Officer Protocol
  - (b) Planning and Licensing Codes of Conduct and Best Practice

### **Registering and declaring pecuniary interests**

You must, within 28 days of taking office as a member or co-opted member, notify the authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'<sup>1</sup>.

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

### **Participating in decision making if you have a pecuniary interest**

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions the authority places on your involvement in matters where you have a pecuniary interest.

### **Registering and Disclosing Gifts and Hospitality**

In addition, you must notify the authority's monitoring officer of any gift or hospitality with a value of £100 or above which you have been offered in your role as a Member or Co-opted Member, within 28 days of accepting or refusing the offer and you must declare the acceptance of any such gift or hospitality at any discussion of, vote on, or discharge of any function relating to the donor.

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#### **Note (not forming part of the Code):**

Apart from the statutory requirements in relation to Disclosable Pecuniary Interests, and the requirement of this Council in respect of Gifts & Hospitality, there are currently no additional restrictions placed by the Council on your involvement in matters in which you have any other pecuniary or non-pecuniary interest. However, you should be aware that your involvement in a matter where you have any such interest could be regarded as being contrary to the spirit of the code of conduct, and might also leave a decision open to legal challenge.

## **SECTION B - Officers' Code of Conduct**

**Issued: December 2003; Revised November 2010.**

### **1 Introduction and Scope**

- 1.1 The public is entitled to expect the highest standards of conduct from all employees working for Epsom and Ewell Borough Council. Public confidence in employees' integrity would be shaken were the least suspicion to arise, however ill founded, that they could in any way be influenced by improper motives. The role of employees is to serve the Council in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity
- 1.2 The Council has approved this Code of Conduct after consultation with representatives of staff. The Code applies to all employees and draws together existing laws, regulations, standing orders, policies and conditions of service relating to conduct and provides further guidance to assist and protect staff in their day-to-day work. The Code is specifically linked to the following related Council policies:
- Gifts & Hospitality
  - Dress Code
  - Code of Conduct for Members and Co-opted Member
- It also relates to other Council policies including:
- Recruitment & selection
  - Confidentiality
  - ICT security
  - Data Protection
  - Whistleblowing
- 1.3 Unless otherwise stated, failure to follow the various guidelines and requirements set out in this Code could result in disciplinary action being taken, which could ultimately lead to dismissal. Equally, the Council's Grievance Procedure would apply if any member of staff were unhappy at the way the Code was applied in his/her case. It is therefore important that staff familiarise themselves with the contents of this Code.
- 1.4 Copies of the individual policies or terms and conditions of employment referred to in the Code are available for reference on IRIS, (the Council's Intranet), or from Human Resources and employees should feel free to refer to them to seek clarification on any point at any time or to speak to Human Resources in confidence on any specific matter arising from it. If in doubt on any matter arising from the Code, an employee should always seek advice as soon as possible.

1.5 The Code gives detailed advice and guidance in a number of specific areas as follows: -

<u>Section</u>	<u>Subject</u>
2	Standards in General
3.	Political Neutrality
4.	Disclosure of Information
5.	Relationships
6.	Financial Regulations and Standing Orders relating to Contracts
7.	Separation of Roles during Tendering
8.	Recruitment and other Employment Matters
9.	Outside Interests and Politically Restricted Posts
10.	Personal Interests
11.	Equality and Health and Safety Issues
12.	ICT Security
13.	Gifts and Hospitality
14.	Dress Code
15.	Whistleblowing

1.6 In particular, please note that employees are required to report full details of: -

- a) Personal friendships/relationships with Councillors, contractors or potential contractors (see section 5 of the Code)
- b) Personal interests in certain financial and non-financial matters, especially contracts (see section 10 of the Code)
- c) Hospitality received and offered (see section 13 of the Code)

1.7 The Monitoring Officer (within the Legal & Democratic Services division) holds two registers for these purposes. The forms are held as templates on IRIS or hard copies can be obtained by contacting the Monitoring Officer.

1.8 The Registers will not be open to public inspection but will be open to inspection by Members of the Council, the Monitoring Officer, the Chief Executive or members of staff authorised to do so by the Monitoring Officer in the course of their duties. Other than in these circumstances, the Registers can only be inspected with either your prior consent or under any statutory right of access.

## 1.9 **Scope**

The Code applies to all employees. You must:

- (a) maintain conduct of the highest standard so that public confidence in your integrity is sustained
- (b) treat others with respect
- (c) comply with this Code whenever you conduct the business of the Council or act, claim to act or give the impression you are acting as a representative of the Council
- (d) recognise your duty to discharge public functions reasonably and according to the law

## 2 **Standards in General**

2.1 You are expected to give the highest possible standard of service to the public and, where it is part of your duties, to provide appropriate advice to councillors and fellow employees with impartiality.

2.2 You will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. You must report any impropriety or breach of procedure. Normally this would be to your Line Manager but in exceptional cases, may be direct to a Director or the Chief Executive. Further information is contained in the Council's Whistle-blowing Policy.

2.3 Conversely, you should be aware that it is a serious criminal offence for you corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, something or for showing favour, or disfavour, to any person in your official capacity.

## 3 **Political Neutrality**

3.1 You serve the Council as a whole. It follows you must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected. The Member/Officer Protocol provides further guidance on the respective role of members and officers and principles governing general conduct.

- 3.2 If you are called upon to advise a specific political group within the Council, either as to the work of the group or as to the work of the Council, you may only do so with the prior consent of your Director. You must not attend any meeting of any such political group without the prior agreement of the Chief Executive.

## **4 Disclosure of Information**

- 4.1 It is generally accepted that open government is best in the dissemination of information and in decision-making. The law requires that certain types of information must be available to Councillors, auditors, government departments, service users and the public. Equally the Council has statutory and common law obligations to keep certain information confidential, or to divulge only certain restricted information.

You must not disclose information given in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where you have the consent of a person authorised to give it or they are required by law to do so. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions.

Equally, you must not prevent another person from gaining access to information to which that person is entitled by law.

- 4.2 The Council's practice has always been to make as much information available to the public as possible and, since 1 January 2005, there is a positive obligation to do so in accordance with the Freedom of Information Act 2000.
- 4.3 In preparing committee reports, items should not be made "exempt" even though this might be technically possible, unless disclosure would prejudice the position of the Council or the individual or organisation concerned. Whenever possible, such information should be restricted to an exempt appendix. Generally therefore you may release factual information unless it:
- (i) is (or is likely to be) the subject of an exempt report;
  - (ii) relates to the personal circumstances of an employee (or ex-employee, apart from references) or Councillor, a member of the public or organisation. Such information can only be released by first obtaining the person's or organisation's permission for the disclosure; or
  - (iii) is covered by restrictions under the Data Protection Act 1998 or an exemption under the Freedom of Information Act 2000.

Further guidance on the disclosure of information can be obtained from the Monitoring Officer.



- 4.4 You should pay particular attention to requests for information from the Press or Police. Enquiries from the police should be referred to your Head of Service and enquiries from the press should be referred to the communications team. Further guidance on publicity and the media is contained in the Member/Officer Protocol.
- 4.5 You should not use any information obtained in the course of your employment for personal gain nor should you pass it on to others who might use it in such a way.

## **5 Relationships**

5.1 You must:

- (a) treat others with respect;
- (b) not discriminate unlawfully against any person; and
- (c) treat members of the Council professionally

You should deal with other employees, the public and Councillors sympathetically, professionally, efficiently and without bias. Mutual respect between employees and Councillors is essential to good local government and working relationships should be kept on a professional basis.

### **Councillors**

5.2 Councillors are responsible to the Council through its Senior Managers. For some officers, their role is to give advice to Councillors and the Council. Mutual respect between them and Councillors is essential to good Local Government. Close personal familiarity with individual Councillors can damage that relationship and prove embarrassing to other employees and should be avoided. Any close personal friendships with Councillors should be declared to the Monitoring Officer and recorded in the Register of Interests. Please also refer to the Member/Officer Protocol for further guidance regarding working relationships with Councillors.

### **The Local Community and Service Users**

- 5.3 You should always remember your responsibilities to the community and ensure courteous, professional, efficient and impartial service delivery to all groups and individuals within that community.
- 5.4 You are reminded of the requirement to comply with the Council's policies.
- 5.5 You are strictly prohibited from soliciting tips.

### **Contractors**

5.6 Orders and contracts must be awarded on merit, by fair competition against other tenders, and no favouritism should be shown to businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.

- 5.7 All personal relationships with contractors, or contractors who could bid for Council work, i.e. any previous or current working relationship or friendship in a private capacity, should be declared to the relevant Director and recorded in the Register of Interests. In certain cases, not to divulge such information could contravene the law. This is particularly important if employees engage or supervise contractors or if they have an official relationship with contractors.
- 5.8 If you stand to gain financially from any contract or potential contract of the Council, you must declare it in writing to the appropriate Director, and you will be excluded from the process, particularly any decisions relating to the award of that contract. This applies whether the contract is let formally through the tendering process or in some less formal way.
- 5.9 The Director may require you to review your position and update information recorded at regular intervals depending on the circumstances.
- 5.10 No gifts or hospitality may be accepted from any person or organisation that is seeking to compete for Council work. This principle also applies in a Planning context where developers are in competition for a particular site in the Borough. For circumstances in which it is permissible to accept gifts and hospitality, see paragraph 13.

### **Work Colleagues**

- 5.11 You should always treat colleagues with fairness, dignity and respect. Mutual respect between colleagues is essential to good working relationships. The Council will not tolerate bullying, harassment or victimisation of anyone in any form. Please also see the Council's Bullying & Harassment policy and 'Dignity at Work' policy.
- 5.12 If you have a grievance or complaint about your employment e.g. working conditions or relationships with colleagues you should refer to the Council's grievance policy. If you have a grievance or complaint regarding a Councillor you should follow the procedure outlined in the Code of Conduct part 5, section C, 7.1, 7.4 and 7.5.

## **6 Financial Regulations and Standing Orders Relating to Contracts**

- 6.1 You must ensure that public funds are used in a responsible and lawful manner. You should strive to ensure value for money to the local community and to avoid legal challenge to the Council.
- 6.2 Standard procedures (Financial Regulations) have been agreed which govern the Council's financial matters and detail arrangements for handling money.
- 6.3 Likewise Contract Standing Orders detail the procedures to be followed in awarding contracts for work or services.

- 6.4 If your work involves the handling of money or awarding of contracts you must familiarise yourself with the requirements of the Council's Financial Regulations and appropriate Standing Orders. Failure to follow the correct procedures will be treated as a serious matter.
- 6.5 You must not utilise property, vehicles or other facilities of the authority for personal use unless specifically authorised to do so

## **7 Separation of Roles during Tendering**

- 7.1 If you are involved in the tendering process and dealing with contractors, you should be clear on the separation of client and contractor roles within the Authority. If you are a senior member of staff who has both client and contractor responsibility, you must be aware of the need for accountability and openness.
- 7.2 If you work in contractor or client units you must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 7.3 You should ensure that no special favour is shown to current or (recent) former members of staff, councillors or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **8 Recruitment and other Employment Matters**

- 8.1 If you are involved in recruitment decisions you should ensure that these are made on the basis of merit. It is unlawful to make an appointment that is based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a personal relationship (friendship or otherwise) outside work with him or her. You should declare any such relationship to your Director in advance.
- 8.2 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close personal friend. Such relationships with any other employee should be declared to your Director and registered in the Register of Interests. Please also see the Council's Recruitment policy and Casual policy.

## **9 Outside Interests and Politically Restricted Posts**

- 9.1 Your off-duty hours are your personal concern but you should never put yourself in a position where your duty as a Local Government Officer and your private interests conflict. The Council will not attempt to preclude you from undertaking additional employment provided that such employment does not, in the view of the Council, conflict with your job or have a detrimental impact on the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.

- 9.2 You are required to obtain written consent from your Director to take any other employment or occupation either paid or unpaid in addition to your post held with the Council. This includes directorships, consultancies and sponsorships by any company, organisation or individual. You should be clear about your contractual obligations to the Council and should not take outside employment, which conflicts, or might conflict in the future, with the Council's interests. Any employee undertaking additional work outside of the Council is required to complete a 'Declaration of Other Work' and submit to HR.
- 9.3 You may not carry out work arising from additional employment in Council time nor use Council resources or facilities (including typing) for those purposes.
- 9.4 Private use of Council facilities, other than prohibited by section 9.3 above, e.g. making telephone calls, using fax or photocopiers, should be declared.
- 9.5 You should follow the Council's policies on the ownership of intellectual property or copyright created during your employment i.e. all:
- (i) Creative designs, writings and drawings produced by you in the course of your duties, belong to the Council;
  - (ii) Inventions made by you are the property of the Council if made during the course of your normal duties (which includes those described in your notice of terms of employment, and any other duties arising from your Manager or other authorised officer of the Council).
- 9.6 Some posts are 'politically restricted,' by law, which means that the postholder is unable to take part in political activity or become an elected member of any public authority whilst in the employment of the Council. Your role is politically restricted if:
- (i) it is covered on the list of roles specifically restricted eg monitoring officer
  - (ii) your post meets the duties-related criteria for determining a "sensitive" post, irrespective of remuneration level, unless you appeal successfully against the determination. These posts are defined as those that give advice (excluding purely factual information) on a regular basis to the council, any committee or sub-committee of the authority or any joint committee on which the council is represented, or speak on behalf of the council on a regular basis to journalists and broadcasters
- 9.7 If this is applicable to you, your contract of employment will include an appropriate clause. In all other circumstances, you must record in the Register of Interests and declare to your Director any membership of a Local Authority. You should check your contract of employment if you are unsure if your post is politically restricted and the implications of this.

## **10 Personal Interests**

10.1 You must not:

- (a) allow your private interests or beliefs to conflict with your professional duty
- (b) misuse your official position or information acquired in the course of your employment to further your private interest or the interests of others

10.2 You must declare to your Director, and record in the Register of Interests, non-financial interests that you consider could bring about conflict with the Council's interests or activities. Examples might be membership of the committee of an organisation seeking or receiving grant aid from the Council or involvement with an organisation or pressure group that may seek to influence the Council's policies. Ordinary membership of organisations, whether local or national, will not usually be relevant.

10.3 You must also declare and register any financial interests which could conflict with the Council's interests e.g. any pecuniary interest in a business or company within Epsom and Ewell or with which the Council might do business.

10.4 You must declare and register any interest you have as a freeholder, lessee, licensee or tenant in any land or property in the Borough of Epsom and Ewell, apart from your main residence, which will already be recorded in your personnel records.

10.5 You must never become involved in dealing with or determining any application or request that you or a member of your family or personal friend make to the Council, for example, an application for planning permission, council tax or housing benefit.

## **11 Equality and Health and Safety Issues**

11.1 You must comply with policies relating to equality issues as agreed by the Council, in addition to the requirements of the law. All members of the local community, customers and other staff have a right to be treated with fairness and equity.

11.2 You should also ensure that policies relating to health and safety issues as agreed by the Council are complied with, in addition to the requirements of the law, in particular the Council's policy relating to smoking, drugs, alcohol and substance misuse.

## **12 ICT Security**

- 12.1 You must comply with policies relating to the security of the Council's computer systems as agreed by the Council. All new employees, agency workers and work experience students are required to sign their agreement and compliance.

## **13 Gifts and Hospitality**

- 13.1 Hospitality may sometimes be appropriate as part of a normal business arrangement. The Council requires you to declare all gifts and hospitality given or offered as part of your employment with the Council (however this does not apply to tea/coffee or small work related gifts, such as pens or diaries). Gifts of any description having a value in excess of £25 must be refused, unless your Director agrees that you can register and keep it.
- 13.2 You may accept being taken to lunch by contractors and suppliers where this lunch is part of legitimate dealings with the Council, and provided the Council is already doing business with that contractor or supplier. However, all such paid lunches must be recorded in the Register of Interests/Gifts and Hospitality if the value is £25 or more or if you consider that it should be recorded. This includes any corporate hospitality days.
- 13.3 In considering whether or not the gift or hospitality is appropriate, the question 'how will this look?' must be asked: if the hospitality could look like corruption to another party (e.g. to a councillor, council tax payer, another rival contractor), it should not be offered or accepted. For example, taking a contractor or supplier to lunch after a contract has been let could be a useful opportunity to talk through the details of the work and build a better working relationship. However, taking to lunch or accepting lunch from a supplier before a contract is let would be unacceptable as it could look as if that supplier was being unfairly favoured.

## **14 Dress Code**

Employees of the Council are expected to comply with the Council's Dress Code. Please see the Council's Dress Code policy for further details.

## **15 Whistleblowing**

Where an employee becomes aware of activities that he/she believes to be illegal, improper or unethical the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the Council's confidential reporting procedure. Please see the Council's Whistleblowing policy for further details.

## SECTION C - Protocol for Managing Member/Officer Relations

*Issued July 2002; Revised: December 2007; July 2018*

### 1 Introduction

- 1.1 This Protocol is primarily based on the model prepared by Birmingham City Council, which was referred to in the Nolan Committee report<sup>1</sup> as an example of good practice.
- 1.2 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure that a high standard of conduct is maintained and to ensure the business of the Council is transacted in a transparent, effective and efficient manner.
- 1.3 The Protocol is to a large extent a written statement of current practice and convention and given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It offers guidance on some of the issues that most commonly arise and serves as a guide to dealing with other circumstances as they arise.
- 1.4 This protocol seeks to reflect the principles underlying the Code of Conduct for Members and the Code of Conduct for Officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct by all parties.
- 1.5 This Protocol sits together with a number of other existing and evolving Council procedures and there may be some overlap between this document and those other procedures and rules both within and outside the Constitution.
- 1.6 This Protocol seeks to promote greater clarity and certainty as to working relationships between Members and Officers. If the Protocol is followed, it should ensure that Members receive objective and impartial advice and that Officers are not subject to accusations of bias, and any undue influence from Members.
- 1.7 Given the variety and complexity of Member/Officer relations, any protocol cannot seek to be entirely prescriptive or comprehensive. Although some of the references relate to regulatory matters, the document largely seeks to offer guidance on some of the issues that most commonly arise. All successful organisations need to be flexible to suit circumstances but, at the same time, it should be recognised that the guidance should, as far as is possible, be uniformly followed throughout the Council.

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<sup>1</sup> “**Standards in Public Life**”, the report of the Nolan Committee can be accessed at: <http://www.archive.official-documents.co.uk/document/parlment/nolan2/nolan.htm>

- 1.8 In appreciation that this will be an evolving document and recognising the rapid changes in working practices both statutory and social (e.g. new technology), the Protocol will need to be reviewed regularly.
- 1.9 This Protocol, where applicable, will also apply to lay or co-opted Members of Committees.
- 1.10 If a councillor is unsure about any matter, s/he should contact the relevant Group Chairman/Leader or the Monitoring Officer for appropriate advice and assistance. If an Officer is unsure about any matter, s/he should contact the Monitoring Officer.

## **2 The Respective Roles of Elected Members and Officers**

- 2.1 The Elected Members are responsible for:
- Initiation & direction of Policy;
  - Democratic accountability to the electorate for policies and for service delivery;
  - Scrutiny of Council services;
  - Community leadership; and
  - Promotion of partnership working
- 2.2 The Officers are responsible for:
- Providing the professional advice that Members must have before them when formulating policy and when taking decisions;
  - Implementing Members' decisions that have followed due process;
  - Running the Council's services and day-to-day administration;
  - Taking managerial and operational decisions in accordance with the Council's schemes of delegation; and
  - Providing information regarding Council services and approved Council policies

## **3 Access to Officers**

- 3.1 If Members wish to raise a request for service delivery (which is a matter covered by the CRM system), then they should raise this in line with the Council's standard processes, (e.g. through the Council's Contact Centre) rather than with individual officers.
- 3.2 If an issue or concern needs to be raised around the delivery of a service request or its failure, Members should, in the first instance, contact the relevant Head of Service or a nominated officer<sup>2</sup>. Members should seek to avoid, as far as possible, entering an Officer's work area and requiring immediate attention.

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<sup>2</sup> A list of contacts for Heads of Service and other nominated contact officers will be supplied to Members.



- 3.3 If any Member wishes to raise any matter which is either strategic in nature, or relates to a policy, they must do so in the first instance with the Chief Executive.
- 3.4 It is important to ensure timely response to correspondence and both Members and Officers should aim to respond to enquiries and requests they have raised, within one week from receipt of the enquiry/request.
- 3.5 If a Member wishes to follow up any unanswered correspondence, they should email the relevant service area's Head of Service to raise the matter.
- 3.6 Where a decision has been delegated to an Officer, whether or not in consultation with nominated Members, it will be notified to all Members through the Council's processes. To assist Members' understanding, Officers should, when requested, explain to a Member the guidelines they use when making a delegated authority decision.

## **4 Access to information and to Council Documents**

- 4.1 Members are entitled to such information as they may reasonably need to assist them in discharging their role as Members of the Council.<sup>3</sup> The legal right of Members to inspect Council documents is covered by:
- (i) Statutory right (Access to Information Act 1985, Freedom of Information Act 2000, Environmental Information Regulations 2004);
  - (ii) Common law (on a need to know basis).
- 4.2 Officers must treat all Members on an equal basis where there is an equal need to know. Officers must treat all such requests with care and respect and must not disclose any requests from one Political Group to another.
- 4.3 The courts have ruled that the test of a Member's need to know derives from the Member's committee responsibilities, but this will not be exclusively the case. A Member dealing with a Ward issue, casework or an issue raised by a ward resident, may have a legitimate need to know, which will enable him/her to have access to the relevant Council documents. The final decision on a Members 'need to know' will rest with the Chief Executive in consultation with the Monitoring Officer.
- 4.4 Members should be kept fully informed and consulted by Officers on all relevant matters affecting their Ward. If a matter is urgent or sensitive, Officers must ensure Members are made aware as soon as reasonably possible and before the matter is made public.

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<sup>3</sup> This is covered in more detail in Article 2 and Standing Orders of the Council's Constitution

- 4.5 It is important for Members and Officers to recognise that information disclosed to a Member on a need to know basis should not be disclosed to another Member, unless there is an equal need to know, or the first Member is notified that the information is being so disclosed.
- 4.6 Any correspondence to a constituent, from a Member or Officer, which raises an issue of policy or finance, should be sent to the relevant Head of Service.

## **5 Working Relationships**

- 5.1 Both Members and Officers are servants of the public and they are indispensable to one another. However, their responsibilities are distinct. Members are responsible to the electorate and Officers are responsible to the Council as a whole. The conduct of Members and Officers should be such as to instil mutual confidence and trust. This should be reflected in the behaviour and attitudes of each other, both publically and privately.
- 5.2 To ensure that the business of the Council is carried out effectively, Members and Officers should endeavour to create a cordial and collaborative working relationship with each other.
- 5.3 Members should recognise that, as the Head of Paid Service, the Chief Executive has key statutory responsibilities. These include setting the manner in which the Council's different functions are discharged, the organisation of the Council's staffing structure, as well as the appointment and proper management of the Council's staff. It is therefore important to ensure the Chief Executive is able to carry out these functions both independently and free from any pressure.
- 5.4 Members can expect the following from Officers:
- (i) a commitment to the Council as a whole and not to any political group;
  - (ii) a performance of their duties effectively and efficiently;
  - (iii) to work to their Service Delivery Plans;
  - (iv) a working partnership;
  - (v) an understanding and appreciation of respective roles and pressures;
  - (vi) timely responses to enquires and complaints;
  - (vii) impartial professional advice;
  - (viii) awareness of and sensitivity to the political environment;
  - (ix) courtesy and appropriate confidentiality;
  - (x) that they will not use their relationship with Members to advance their personal interests to influence decisions improperly;
  - (xi) that relationships between Members and Officers will never be so close, or appear to be so close as to bring into question the Officer's ability to deal impartially with other Members, individuals or organisations;

- (xii) compliance with the Officers' Code of Conduct;
- (xiii) that Officers will not go beyond the bounds of their specific or delegated authority;
- (xiv) that Officers named in a report to the Council (or any part of its formal decision-making structure) will always be fully responsible for the contents of it.

5.5 Officers can expect the following from Members:

- (i) a working partnership
- (ii) an understanding and appreciation of respective roles and pressures;
- (iii) courtesy and appropriate confidentiality;
- (iv) not to put Officers under undue pressure and to respect personal and professional boundaries;
- (v) the efficient and agreed use of Council resources;
- (vi) a respect for professional advice;
- (vii) not to use their relationship with Officers to advance their personal interests to influence decisions improperly;
- (viii) that relationships between Members and Officers will never be so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members, individuals or organisations;
- (ix) compliance with the Members' Code of Conduct;
- (x) to treat officers with respect at all times including during meetings whether public or otherwise, which includes not raising matters relating to the conduct or capabilities of an Officer;
- (xi) to inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work or role.

5.6 Nothing in this protocol shall prevent a Member or Officer expressing a relevant concern under the Council's Whistleblowing Policy.

5.7 Any Officer who is personally connected to a Member must notify the Monitoring Officer in writing. This would include a family, business or social connection.

5.8 Both Members and Officers should be guarded, as close personal familiarity, or the perception of such, can damage the relationship or undermine trust, as might a family or business connection. Close personal familiarity between individual Members and Officers may also cause embarrassment to other Members and Officers. Particular care should be taken around of the use of social media and the perception it could give in terms of close personal familiarity.

- 5.9 Members should not expect Officers to attend Members homes to conduct or discuss Council business. Nor should Officers expect to attend a Members' home. Generally, for most Officers, Members telephone contact with them should be during normal working hours.
- 5.10 Challenge in a constructive and non-confrontational way is important in ensuring that policies and service performance are meeting the Council's strategic objectives. Nothing in this protocol is therefore intended to stop Members holding Officers to account for decisions made under delegated powers. Nor is the protocol intended to inhibit constructive criticism delivered with courtesy and Officers should not feel their employment is at risk as a result of such intervention.
- 5.11 Correspondence between Members and Officers should not be copied to or by Officers to other Members. Nor should such correspondence be disclosed to any third parties be they members of the public, stakeholders or partners.
- 5.12 Under no circumstances should either a Member or an Officer blind copy any of their exchanges to any external third party, Member or Officer. If it is important to raise an issue, then, in the case of Members, such matter must be raised with the Chief Executive in the first instance and in the case of officers with their Head of Service.
- 5.13 As a rule, Members and Officers must not forward their correspondence to any other Member, Officers or external third parties. There may be service reasons where this may be necessary, therefore, before doing so, either the original author must have specifically requested it or has expressly consented to their correspondence being sent on to a named person. If there is any concern as to what steps should be taken, in the case of officers, advice should be sought from their line manager or for Members advice from the Monitoring Officer.
- 5.14 Members and Officers must take great care when including new parties to on-going existing correspondence. Particular care must be taken to avoid forwarding on email chains from Officers or Members as this could amount to breach of personal data or the unintended release of confidential or sensitive information.
- 5.15 Members should never forward Officer correspondence on to any constituent or other third party. If there is a need to forward contact details for an Officer, Members must only forward details of the relevant Head of Service, and only after they have discussed the matter with the Head of Service.

## **6 When Things Go Wrong**

- 6.1 Where a Member considers that he or she has not been treated with proper respect or courtesy by an Officer, or is otherwise concerned with the performance of an Officer, the Member should first discuss the complaint with the relevant Group Chairman or Leader. If the Member wishes to pursue the matter as a formal or informal complaint, then they will need to complete and submit a complaint form to the Chief Executive (which will be available from the Chief Executive). The complaint will remain confidential and cannot be discussed with, by, or with the relevant Group Chairman or Leader. As the Head of Paid Service, the Chief Executive has responsibility for staff and will take such action as is appropriate.
- 6.2 If an Officer considers that he or she has not been treated with proper respect or courtesy by a Member, he or she should raise the matter with the Monitoring Officer in the knowledge that the matter will be handled with sensitivity and in confidence. In such circumstances, the Monitoring Officer will take such action as is appropriate.
- 6.3 This protocol does not affect the rights of Officers and Members to raise the matters via the Council's usual procedures in cases where such processes apply.

## **7 Officer Advice to Party Groups**

- 7.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- 7.2 The assistance provided by Officers can take many forms ranging from a briefing meeting with a Committee Chair or other Members prior to a meeting, to a presentation, to a full political group meeting. It is an important principle that such assistance is available to all political groups and individual Members. All Officers must, in their dealings with political groups and individual Members, maintain political neutrality and treat them in a fair and even-handed manner.
- 7.3 Officers must not do any work that is designed to promote one political group within the Council rather than the whole Council.
- 7.4 If Members require the attendance of an Officer at a political group meeting, they must contact the Chief Executive or the Chief Operating Officer first. Any Officer invited to attend meetings organised by any political group should contact the Chief Executive or the Chief Operating Officer, as appropriate, as soon as possible. It is a matter for the Chief Executive to decide whether it is appropriate for an Officer to attend and if so who that Officer should be.

- 7.5 The Officer's role at any such meeting is limited to providing factual information only and may be called upon to provide a professional opinion. They must not provide a personal opinion. It is important when attending such a meeting, for an Officer to be advised of who else is at the meeting to avoid any confidential or information sensitive to the Council, being inadvertently released to third parties.
- 7.6 Officers must respect the confidentiality of any party group discussions at which they are present. When information is disclosed to an Officer during discussions with a party group, that information should not be passed on to other groups. However, Members should be aware that this would not prevent Officers from disclosing such information to other Officers of the Authority in so far as that is necessary to perform their duties.

## **8 Members and the Media**

- 8.1 Contact with the media on issues related to Council business is handled through the Communications Team who provide support, advice and training to Members and Officers.
- 8.2 Any Member who wishes to approach the media to speak on behalf of the Council on any item involving or affecting the Council, should first consult the relevant Committee Chairman, Chief Executive or Chief Operating Officer as appropriate.
- 8.3 If a member wishes to approach or is approached by the media for a comment or action involving Council business, the Member should make it clear to the media that any comments that are made are those of the Member personally and do not reflect the views or policies of the Council as a whole.
- 8.4 Requests for comments or opinion on Council policy or political matters should be referred to the appropriate Committee Chairman.
- 8.5 Councils are prohibited from publishing any material that appears to be designed to affect support for any political group.

## **9 Conclusion**

- 9.1 This Protocol is intended to build on the sound arrangements that have existed within the Council for years.
- 9.2 Mutual understanding, respect and openness on these sensitive issues are the greatest safeguard of the integrity of the Council, its Members and Officers.
- 9.3 This Protocol can be revised or amended at any time in accordance with Constitutional requirements.

## **SECTION D - Monitoring Officer Protocol**

*Issued: December 2007; Revised December 2008*

*This protocol is in addition to any other provisions in the Council's Constitution.*

### **1 Purpose of Document**

- 1.1 The purpose of this protocol is to explain the role of the Monitoring Officer and provide a guide for staff and members as to how it will be exercised in Epsom and Ewell.

### **2 The Monitoring Officer and Deputy Monitoring Officer**

- 2.1 The Council has designated the Head of Legal and Democratic Services as the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
- 2.2 The Monitoring Officer has designated the Democratic Services Manager as the Deputy Monitoring Officer under Section 5 (7) of the 1989 Act. The Deputy Monitoring Officer will perform the Monitoring Officer's duties where he is unable to act owing to absence or illness.
- 2.3 Both the Monitoring Officer's and Deputy Monitoring Officer's duties are required to be performed by them personally.

### **3 Statutory Duties and Functions of the Monitoring Officer**

- 3.1 These arise under the Local Government and Housing Act 1989, the Local Government Act 2000 (as amended by the Local Government Act 2003 and the Local Government and Public Involvement in Health Act 2007) and relevant regulations. In summary, they are as follows:

#### **Local Government and Housing Act 1989, Section 5**

- 3.2 It is the duty of the Monitoring Officer to make a report to the Council about any proposal, decision or omission by the Council, any of its Committees, Sub-Committees or Advisory Panels or any of its office holders or employees which would result in:
- (a) contravention of a statute or rule of law; or
  - (b) maladministration or injustice (but only if a Local Government Ombudsman has investigated the matter).
- 3.3 In preparing such a report, the Monitoring Officer must consult the Head of Paid Service (in Epsom and Ewell, the Chief Executive) and the Chief Finance Officer (in Epsom and Ewell, the Director of Finance).

- 3.4 As soon as he has prepared the report, the Monitoring Officer must send it to every Member of the Council.
- 3.5 The full Council must consider the report within 21 days of the Monitoring Officer having sent it to the Members.
- 3.6 Once the Monitoring Officer has sent out the report, the Council cannot implement any proposal or decision to which it relates until the end of the first business day after they have considered it.

## **4 Duties of the Council towards the Monitoring Officer**

- 4.1 Under Section 5 of the Local Government and Housing Act 1989, the Council must provide the Monitoring Officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties to be performed.
- 4.2 Under the Local Authorities (Standing Orders) (England) Regulations 2001, the Council cannot take disciplinary action against its Head of Paid Service, Monitoring Officer or Chief Finance Officer except in accordance with a recommendation made by a designated independent person who has investigated the matter. An officer can be suspended on full pay for a maximum period of two months while the investigation is carried out.

## **5 Provisions in the Council's Constitution**

- 5.1 The Monitoring Officer's functions are summarised in Article 11 of the Council's Constitution. He is also given the additional tasks of maintaining and reviewing the Constitution, supporting the Standards Committee, acting as the Proper Officer under the access to information legislation and advising members on matters of legality, maladministration, financial impropriety and probity.

## **6 Recommended Best Practice in relation to the Monitoring Officer**

- 6.1 The Association of Council Secretaries and Solicitors, the professional body to which most Monitoring Officers belong, recommends that the Monitoring Officer should:
  - (a) be a Chief Officer or at least have the right to receive agendas and minutes of all meetings and attend and speak at them;
  - (b) have a right of access to any meeting, including Members' Briefings;
  - (c) be recognised as the principal adviser to the Standards Committee and the point of reference for advice on the Council's Constitution and powers;
  - (d) have a protocol approved by the full Council setting out how they are expected to discharge their functions, the support and reporting arrangements required, and reporting duties of fellow officers; and



- (e) have a team with sufficient expertise to keep the Council's constitutional documents under review.

## **7 Operative Provisions of the Protocol**

### **The Monitoring Officer will receive:**

- 7.1 Advance notice of Corporate Board Meetings, copies of all agendas and reports;
- 7.2 Advance notice of meetings whether formal or informal, between the Chief Executive/Chief Officers and Group Leaders/Committee Chairmen where any procedural, vires or other constitutional issues are likely to arise;
- 7.3 Advance notice of all emerging issues of concern, including legality, probity, vires and constitutional issues;
- 7.4 Copies of all reports to members.

### **The Monitoring Officer has the right:**

- 7.5 To attend and speak at any Leadership Team Meetings;
- 7.6 To call for any relevant information, whether confidential or otherwise, and to give that information as appropriate to any body, including the Standards Committee, the Auditor or Ombudsman;
- 7.7 To withhold the identity of a complainant who has made an allegation of misconduct from the Member, in consultation with the Chairman of the Standards Committee and the independent member: such anonymity to last until preparation for the hearing of the complaint;
- 7.8 To withhold from a member, in consultation with the Chairman of the Standards Committee and the independent member the fact that a complaint has been received against them if it is decided that notification may prejudice any subsequent investigation.

### **The Monitoring Officer will:**

- 7.9 Ensure the Head of Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues;
- 7.10 Set up arrangements within the authority to ensure that any allegation made in writing that a member of the authority has or may have failed to comply with the authority's Code of Conduct is referred to him immediately upon receipt by the authority;
- 7.11 Maintain a register of such allegations to ensure that the authority can comply with its obligations under the relevant legislation;

- 7.12 Refer all substantive allegations of member misconduct to the Standards (Assessment) Sub-Committee and refer all other matters for action as appropriate;
- 7.13 Act as Chairman of the Corporate Governance Group and through this Group will meet the Head of Paid Service and Chief Financial Officer regularly (and in any event not less than quarterly) to consider and recommend action in connection with current governance issues and other matter of concern regarding probity;
- 7.14 In carrying out any investigation (whether under regulations or otherwise), have unqualified access to any information held by the Council and any employee who can assist in the discharge of his functions;
- 7.15 Have control of a budget sufficient to enable him to seek Counsel's opinion on any matter concerning his functions;
- 7.16 Be responsible for preparing a training programme for members on the ethical framework subject to the approval of the Standards Committee;
- 7.17 Report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation in particular with the Head of Paid Service and Chief Finance Officer;
- 7.18 Appoint a deputy who will be kept briefed on emerging issues. His nominated deputy will have all the rights and powers of the Monitoring Officer when discharging the role of Monitoring Officer.

**The Monitoring Officer may:**

- 7.19 in consultation with the Mayor and the Chairman of the Standards, defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved;
- 7.20 Make a report to the Council from time to time as necessary on the staff, accommodation and resources he requires to discharge his functions.

## SECTION E – Protocol on Use of Call-in Procedure

*Issued April 2008*

***This protocol is to be read in conjunction with Paragraph 14, Overview and Scrutiny Procedure Rules, Part 4, Epsom and Ewell Borough Council Constitution, ‘Call-in’.***

- 1.1 Requests for Audit, Crime & Disorder and Scrutiny Committee to consider use of the call-in procedure should be forwarded to the Scrutiny Officer or the Chairman of the Audit, Crime & Disorder and Scrutiny Committee either by e-mail or in person in the first instance. Each request should set out those principles of decision making of Article 12 of the Constitution which the person considers have not been met. All requests shall be logged by the Scrutiny Officer on Form SC/CI 1.
- 1.2 The Chairman of the Audit, Crime & Disorder and Scrutiny Committee shall consider the request regarding use of call-in. He/she shall reject those requests considered frivolous, as well as those outside the remit of the call-in procedure, i.e. those concerning quasi-judicial decisions. Remaining requests shall then be forwarded to the other members of the Audit, Crime & Disorder and Scrutiny Committee for consideration, together with the Chairman, as to whether they should wish to call-in a decision of a policy committee as per the requirements of the Constitution.
- 1.3 In the absence of the Chairman, requests for Audit, Crime & Disorder and Scrutiny Committee to use call-in should be forwarded to the Scrutiny Officer as per paragraph 1. The Scrutiny Officer shall pass the request for the Committee to consider call-in to all other members of the Audit, Crime & Disorder and Scrutiny Committee. The members shall decide whether they wish to instigate call-in as per the requirements of the Constitution.
- 1.4 To ensure openness, all requests for Audit, Crime & Disorder and Scrutiny Committee to consider call-in shall be reported to the formal meetings of the Audit, Crime & Disorder and Scrutiny Committee. Where the members of the Audit, Crime & Disorder and Scrutiny Committee do not call-in a decision of a policy committee, the Chairman of the Audit, Crime & Disorder and Scrutiny Committee shall inform the person requesting that Audit, Crime & Disorder and Scrutiny Committee consider the matter, the decision of the committee, together with its reasons. The reasons shall be recorded on F. SC/CI 1.

- 1.5 When call-in is instigated by a majority of the members of the Audit, Crime & Disorder and Scrutiny Committee, Form SC/CI 2, 'Record of Call-in', should be used (attached). This should be completed by the relevant members of Audit, Crime & Disorder and Scrutiny Committee before the expiry of five working days after the publication of the policy committee decision. It should be forwarded to the Scrutiny Officer either by e-mail or by use of a hard copy. Audit, Crime & Disorder and Scrutiny Committee members wishing to call-in a decision of a policy committee should set out the reasons for the call-in in detail on page 2 of Form SC/CI 2 with particular reference to Article 12 of the Constitution, 'Principles of Decision Making'.
- 1.6 To ensure openness and transparency, in addition to the members of the relevant policy committee (as required by the Constitution) the following shall, where possible, be informed of a decision of the Audit, Crime & Disorder and Scrutiny Committee to instigate a call-in, and of the Committee's final decision:
- (a) All Councillors
  - (b) Chief Executive
  - (c) Head of Legal and Democratic Services
  - (d) Democratic Services
  - (e) Relevant officers
  - (f) Member(s) of the public who requested the call-in.

## **SECTION F - Code of Conduct and Practice in Licensing Procedures and Hearings**

*Effective from 21 March 2005*

### **1 Introduction and status of code**

- 1.1 In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing. The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Committee, and also to Council Officers, where appropriate.
- 1.2 This code is based on guidance contained in the former National Code of Local Government Conduct, the Nolan Committee's recommendations and experience within the Council.

### **2 Definitions and interpretations effective from 7 February 2005**

- 2.1 "The (Licensing) Authority" means Epsom and Ewell Borough Council.
- 2.2 "Licensing Objectives" means the four objectives the Licensing Authority must have a view to promoting when carrying out its functions under the Licensing Act 2003. The Licensing Objectives are defined in Part 2, paragraph 4 (2) of the Licensing Act 2003.
- 2.3 "Premises" means any vehicle, vessel or moveable structure, or any place or a part of a premises.
- 2.4 "Applicant" means the applicant for the Conversion, Grant or Variation of a licence, or certificate.
- 2.5 "Application" means any application under the Licensing Act 2003, including:-
- (i) Conversion of an existing licence or registration
  - (ii) Grant of a licence, certificate or TEN
  - (iii) Transfer of a licence or certificate
  - (iv) Variation of a licence or certificate (including waiver or modification of a licence condition or to extend the licensed area, amend the licensable activities or extend the licensed hours).

- 2.6 "Authorised Person" is defined in Part 3, paragraph 13 (2) of the Licensing Act 2003, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, Fire Authority Inspectors, Environmental Health Officers and inspectors locally responsible for the enforcement of Health and Safety at Work etc Act 1974.
- 2.7 "Interested Parties" is defined in Part 3, paragraph 13 (3) of the Licensing Act 2003, and includes the bodies or individuals who are entitled to make representations to the Authority on applications for the grant, variation or review of a premises licence, or apply for the review of a licence. These include; a person living in the vicinity of the premises in question; a body representing persons living in that vicinity; a person involved in a business in the vicinity of the premises; and, a body representing persons involved in such business.
- 2.8 "Responsible Authorities" is defined in Part 3, paragraph 13 (4) of the Licensing Act 2003, and includes public bodies that must be fully notified of applications, and are entitled to make representations to the Authority on applications for the grant, variation or review of a premises licence. These include, The Chief Officer of Police, Surrey Fire and Rescue Service, Environmental Health Officers and inspectors locally responsible for the enforcement of Health and Safety at Work etc. Act 1974, Chief Planning Officer, Surrey Area Child Protection Committee and any Licensing Authority (other than Epsom and Ewell Borough Council) in whose area part of the premises are situated.
- 2.9 Party to the hearing" means a person to whom notice of the hearing is to be given in accordance with Regulation 6 (1) of the Licensing Act 2003 (Hearings) Regulations 2005, and "party" and "parties" shall be construed accordingly,
- 2.10 "Representation" means any person who has lodged a written objection to an application in accordance with these rules, and as defined in Part 3, paragraph 18 (6) of the Licensing Act 2003.
- 2.11 "Regulations" means Regulations made under the Licensing Act 2003
- 2.12 In these rules, the masculine always includes the feminine.

### **3 Composition of licensing hearings panels**

- 3.1 The Licensing Hearings Panel shall consist of three Members. No business shall be transacted unless at least three Members are present.
- 3.2 Councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises.

## **4 The need for guidance on licensing**

- 4.1 Licensing is unlike other local authority services (apart from Planning) in having a special responsibility to safeguard interests and balance conflicts. Licensing decisions have legal and judicial implications that are separate from the normal process that directs local authorities. Licensing involves the extensive exercise of the Council's discretionary powers.
- 4.2 Licensing applications are sometimes amongst the most contentious matters with which the Council deals. The successful operation of the licensing system relies amongst other things, upon ensuring that both Officers and Councillors act in a way that is not only fair and impartial but is also clearly seen to be so. Licensing decisions can affect land and property values, and it is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons.

## **5 General role and conduct of councillors in relation to the licensing system**

- 5.1 The determination of applications by the Licensing Hearings Panel is a quasi-judicial process. The role of Councillors taking licensing decisions has similarities to that of a court of law (and Licensing Justices). Decisions are made after a hearing at which the applicant and objectors are each given an opportunity to be heard and to put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and current government advice.
- 5.2 Whilst Councillors who are Members of the Licensing Hearings Panel can have regard to the views of their constituents, they should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, as their overriding duty in making decisions on licensing applications is to do so in a fair and impartial manner, in accordance with the Licensing Objectives, and taking into account any relevant Policy.

## **6 Training**

- 6.1 No members should be appointed to the Licensing and Planning Policy Committee or Licensing Hearings Panel without having agreed to undertake a period of training in licensing procedures and legislation as specified by the Council, either before serving on the committee or as soon as possible after their appointment to the committee with additional training as necessary.

## **7 Pre-application discussions**

- 7.1 Pre-application discussions or discussions whilst an application is being processed between Council Officers and applicants can be beneficial. It is often helpful for the Council's officers to be able to give advice at an early stage on relevant licensing policies and to provide details of other known factors, which are likely to be taken into account.

- 7.2 It is however, important that such discussions are not seen as part of a lobbying process, which could prejudice proper consideration of a licensing application. Hence, it should be made clear from the outset that the discussion will not bind the Council to making a particular decision on a licensing application and that any views expressed are personal, provisional and without prejudice. If a pre-application meeting is held this position should be confirmed in a standard letter.
- 7.3 Officer advice should be consistent and based on approved Council policies and known material considerations. It should, as with all officer advice, be politically impartial.

## **8 Lobbying**

- 8.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the application in accordance with the Rules of Procedure of the Committee (see paragraph 8.3 below). However, personal lobbying of the Members of a Committee, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Committee being challenged by way of Judicial Review.
- 8.2 A Member of the Licensing Hearings Panel who is lobbied by an applicant or objector in relation to an application which may come before a Licensing Hearings Panel on which he is sitting should accordingly refer the person lobbying to another Councillor.
- 8.3 In accordance with the procedural rules of the Panel, Members should ensure that written material or other evidence which they wish to be considered by the Licensing Hearings Panel is provided in advance to the relevant officers, and within the timescales prescribed in the Regulations.
- 8.4 Given that the point at which a decision on a licensing application is made cannot occur before the Licensing Hearings Panel meeting when all relevant information is available for consideration, any political meeting before the Licensing Hearings Panel meeting should not be used to decide how Councillors should determine an application. Such use of party “whips” is considered by the Ombudsman as contrary to the former National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.
- 8.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Committee determining the application.



## **9 Gifts and hospitality**

- 9.1 Councillors and officers should observe extreme caution in respect of any personal offer of a gift, favour or hospitality from someone who has or is likely to submit a licensing application to the Council. Further guidance on this matter is given in the Council's Code of Conduct for Members and co-opted Members.
- 9.2 All offers or receipt of gifts or hospitality must be reported to the Chief Executive and recorded in the register of gifts and hospitality.

## **10 Declaration of interests**

- 10.1 The responsibility for declaring an interest rests with Members. If in doubt, Members should seek advice well in advance of the meeting concerned. Guidance on the declaration of personal and prejudicial interests is contained in the National Code of Conduct and the Council's Code of Conduct for Members and co-opted Members. Advice is available from the Monitoring Officer.
- 10.2 Where the Member has a personal and prejudicial interest in an item on the agenda, it should, of course, be declared, and that Member will not be entitled to sit on the Licensing Hearings Panel deliberating the application in question. Where a prejudicial interest is declared, Standing Orders require the Member concerned to leave the meeting, unless the member has made representation in their own right, or, is elected to represent an objector who has made a valid representation. In these circumstances, of course, it will not be possible for the Member to take any part in the decision making process.

## **11 Licensing applications submitted by councillors and their close associates or licensing applications which may have an impact on councillors, their families or close associates**

- 11.1 Councillors will wish to have particular regard to the Code of Conduct for Members and co-opted Members e.g. where Members act as agents for people pursuing licensing issues.
- 11.2 Given the Code of Conduct for Members and co-opted Members, Councillors who have business or other interests that may bring them into contact with the Council's licensing system on a regular basis should not normally sit on the Licensing and Planning Policy Committee or the Licensing Hearings Panel.

## **12 Member and officer relations**

- 12.1 Good administration is dependent upon a successful relationship between Councillors and officers which can only be based upon mutual trust and understanding of each other's roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised. Accordingly, Councillors should not attempt in any way to influence the terms of the officers' report or recommendation on any application. Equally, officers should give firm independent advice.

### **13 The role of the Licensing Officer**

- 13.1 Licensing Officers fulfil two roles for the Panel hearing. Firstly, a role limited to an administrative one, and secondly, a role limited to consideration of the relevant representations from their knowledge of local licensing policy, guidance, statute and good practice.
- 13.2 Licensing Officers will make NO recommendations to the Licensing Hearings Panel in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:
- (i) Summary of the application;
  - (ii) Summary of the representations made;
  - (iii) Summary of how s/he views the provisions of the Licensing Policy;
  - (iv) Statement, Guidance of the Secretary of State, and the relevant legislation as relating to the application and any relevant representations;
  - (iv) Summary of any pre-application and pre-decision discussions held with the applicant or bodies making representations;
  - (v) Details of any site visits which took place prior to the application or Committee hearing;
  - (vii) Details of any lobbying activities which have been brought to their notice.

### **14 Period of time in which hearing to be held**

- 14.1 The Authority shall arrange for a Hearing to be scheduled in accordance with Regulation 5, and shall give a notice of a Hearing in accordance with Regulations 6 and 7 of the Licensing Act 2003 (Hearings) Regulations 2005.

### **15 Notice of hearing**

- 15.1 In the case of a hearing for cancellation of an interim authority notice following Police objection, or counter notice following Police objection to a Temporary Event Notice (TEN), the Authority shall give notice of hearing no later than two working days before the day or the first day on which the hearing is to be held.
- 15.2 In the case of a hearing for review of a premises licence following closure order; or determination of an application for conversion of existing licence; or determination of application for conversion of existing club certificate; or determination of application by holder of justices; licence for grant of personal licence; the Authority shall give notice of hearing no later than five working days before the day or the first day on which the hearing is to be held.

- 15.3 Annex 1 contains the schedule detailing the provisions under which the hearing is held, and the period of time within which the hearing must be commenced.
- 15.4 The Authority will, when giving notice of the Hearing, follow Regulation 7 of the Licensing Act 2003 (Hearings) Regulations 2005.

## **16 Action following receipt of notice of hearing**

- 16.1 A party shall give to the Authority within the period of time prescribed below, a notice stating:
- (i) whether he intends to attend or be represented at the hearing;
  - (ii) whether he considers a hearing to be unnecessary.
- 16.2 In the case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Authority in relation to the application, representations or notice of the party making the request.
- 16.3 In the case of a hearing for cancellation of an interim authority notice following Police objection, or counter notice following Police objection to a TEN, the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.
- 16.4 In the case of a hearing for review of a premises licence following closure order, or; determination of an application for conversion of existing licence, or; determination of application for conversion of existing club certificate, or; determination of application by holder of justices; licence for grant of personal licence; the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.

## **17 Right to dispense with hearing if all parties agree**

- 17.1 The Authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary and have done so by giving notice to the Authority that they consider a hearing unnecessary. In such circumstances the Authority must give notice to the parties that the hearing has been dispensed with.

## **18 Withdrawal of representations**

- 18.1 A party who wishes to withdraw any representations they have made may do so by giving notice to the Authority no later than 24 hours before the day or the first day on which the hearing is to be held or orally at the hearing.

## **19 The committee procedure**

- 19.1 The Licensing Hearings Panel is serviced by a number of officers. These include the Democratic Services Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Grants and Licensing Team acts as a presenting officer: introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.
- 19.2 The Licensing Hearings Panel agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the Panel will be the subject of a written report from officers.
- 19.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall consider any request made by a party under regulation 8(2) of the Licensing Act 2003 (Hearings) Regulations 2005 for permission for another person to appear at the hearing.
- 19.4 The Licensing Hearings Panel shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 19.5 The Licensing Hearings Panel shall allow parties an equal maximum time period in which to support their representation or application.
- 19.6 The Chairman of the Licensing Hearings Panel may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing, and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the Hearing, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

## **20 Power to extend time and adjourn hearings**

- 20.1 The Authority may extend a time limit provided for in the Licensing Act 2003 (Hearings) Regulations 2005 for a specified period where it considers this to be necessary in the public interest. In such circumstances, the Authority will issue a notice to the parties stating the period of the extension and the reasons for it.
- 20.2 The Authority may adjourn a hearing to a specified date, or arrange for a hearing to be held on specified additional dates where it considers this to be necessary for its consideration of any representations or notice made by a party. The Authority will issue a notice should it decide to use such power.

- 20.3 The Authority will not exercise this power in such a way that the effect will be that an application will be treated as granted or rejected under paragraph 4 (4), 7 (3), 16 (4), 19 (3) or 26 (4) of Schedule 8 (transitional provision etc), or; it would fail to reach a determination on the review under section 167 within the specified period.

## **21 Hearing to be public**

- 21.1 The Authority may exclude the public (which may include any person assisting or representing a party) from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing or that part of the hearing, taking place in public.

## **22 Right of attendance, assistance and representation**

- 22.1 Subject to 14 (2) and 25 of the Licensing Act 2003 (Hearings) Regulations 2005, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

## **23 Councillor representations**

- 23.1 Where a councillor wishes to express a view on an application either in their own right in the capacity as an interested party, or in a specific representative capacity, he/she must do so in accordance with the procedural rules of the Committee, and the Regulations made under the Licensing Act 2003.
- 23.2 To avoid conflicts of interest, councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises. A member of the relevant Licensing Hearings Panel who represents or lives in the ward, which may also be affected by a licensing application, may be in a difficult position if it is a controversial application that has generated opposition. Members in such a situation should therefore not publicly support or oppose a particular outcome unless they are prepared to make their own valid representation. The member would then become ineligible to take part in the deliberative and decision making process of the Licensing Hearings Sub-Committee concerned with determining that application.

## **24 Representations and supporting information**

- 24.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.
- 24.2 Anonymous representations will not be considered by the Authority.
- 24.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.

24.4 At the hearing a party shall be entitled to: -

- (i) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d) of the Licensing Act 2003 (Hearings) Regulations 2005, give further information in support of their application, representations or notice (as applicable),
- (ii) if given permission by the Authority, question any other party; and
- (iii) address the Authority.

24.5 Members of the Licensing Hearings Panel may ask any question of any party or other person appearing at the hearing.

24.6 In considering any representations or notice made by a party the Authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

24.7 The Authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to: -

- (i) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and
- (ii) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

## **25 Frivolous, vexatious or repetitious representations**

25.1 Where the authority considers that representations are frivolous, vexatious or repetitious, the person making the representation will be notified in writing either

- (i) Five working days before the Licensing Hearings Panel is to be held (due to relevant representations being made elsewhere), or;
- (ii) In any other case, before the determination of the application to which the representation relates.

## **26 Failure of parties to attend the hearing**

26.1 If a party has informed the Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

- 26.2 If a party who has not so indicated fails to attend or be represented at a hearing the Authority may: -
- (i) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
  - (ii) hold the hearing in the party's absence.
- 26.3 Where the Authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 26.4 Where the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

## **27 The committee decision making process**

- 27.1 The Licensing Hearings Panel shall normally adjourn from the Hearing to deliberate their decision. The Committee may require that the Legal Adviser withdraws with the Panel. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Panel has reconvened.
- 27.2 The decision on an application should be taken on all of the relevant factors in the case, and in particular the evidence submitted to the Licensing Panel meeting. Each application will be treated on its individual merits. The Panel shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.
- 27.3 Members may add extra conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition of such conditions would be necessary and reasonable.
- 27.4 The Licensing Hearings Panel must make its decision at the conclusion of the Hearing for cases under:
- (i) Section 35 or 39 which is in respect of an application made at the same times as an application for a conversion of an existing licence under paragraph 2 of scheduled 8 (determination of application under section 34 or 37)
  - (ii) Section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
  - (iii) Section 105 (2) (a) - counter notice following police objection to TEN
  - (iv) Section 167 (5) (a) - review of premises licence following closure order

- (v) Paragraph 4 (3) (a) of Schedule 8 - determination of application for conversion of existing licence
- (vi) Paragraph 16 (3) (a) of Schedule 8 - determination of application for conversion of existing club certificate, or;
- (vii) Paragraph 26 (3) (a) of Schedule 8 - determination of application by holder of a justices' licence for grant of personal licence

In any other cases, the Committee must make its determination within the period of five working days beginning with the day or the last day on which the Hearing was held.

- 27.5 Where a Hearing has been dispensed with in accordance with Regulation 9 of the Licensing Act 2003 (Hearings) Regulations 2005, the Authority must make its determination within the period of ten working days beginning with the day the Authority gives notice to the parties under Regulation 9 (2).

## **28 Record of proceedings**

- 28.1 Hearings will be recorded in a permanent and intelligible form, and retained for six years from the date of the determination, or, where an appeal is brought against the determination of the Authority, the disposal of the appeal.



## **SECTION G - Code of Conduct and Practice in Licensing Procedures and Hearings – Gambling Act 2005**

*Effective from April 2007*

### **1 Introduction and Status of Code**

- 1.1 In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing. The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Committee, and also to Council Officers, where appropriate.
- 1.2 This code is based on guidance contained in the National Code of Local Government Conduct, the Nolan Committee's recommendations and experience within the Council.

### **2 Definitions and interpretations**

- 2.1 "The Act" means the Gambling Act 2005
- 2.2 "The (Licensing) Authority" means Epsom and Ewell Borough Council
- 2.3 "Licensing Objectives" means the three objectives the Licensing Authority must have a view to promoting when carrying out its functions under the Gambling Act 2005. The Licensing Objectives are defined in Part 1, paragraph 1 of the Gambling Act 2005.
- 2.4 "Gambling" means gaming (within the meaning of section 6); betting (within the meaning of section 9) and; participating in a lottery (within the meaning of section 14 and subject to section 15).
- 2.5 "Application" means an application to the Licensing Authority under the Gambling Act 2005, including:
- (i) Premises Licence namely; Casino Premises Licence, Bingo Premises Licence, Adult Gaming Centre Premises Licence, Family Entertainment Centre Premises Licence and Betting Premises Licence, Conversion of an existing licence or registration.
  - (ii) Club Gaming Permit and Club Machine Permit
  - (iii) Small Lottery Registration Permit
  - (iv) Prize Gaming Permits
  - (v) Temporary Use Notice (TUN) and Occasional Use Notice (OUN)

- 2.6 "Authorised Person" is defined in Part 15, of the Gambling Act 2005, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, an Inspector appointed under section 18 of the Fire Precautions Act 1971, an Inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974, Environmental Health Officers, and a person who is within a class prescribed by the Secretary of State by Regulations.
- 2.7 "Interested Parties" is defined in Part 8, paragraph 158 of the Gambling Act 2005, and includes persons who (in the opinion of the Licensing Authority) live;
- (i) Sufficiently close to the premises to be likely to be affected by the authorised activities;
  - (ii) Has business interests that might be affected by the authorised activities, or;
  - (iii) Represents persons who satisfy paragraph (a) or (b).
- 2.8 "Responsible Authorities" is defined in Part 8, paragraph 157 of the Gambling Act 2005, and includes;
- (i) The Licensing Authority;
  - (ii) The Gambling Commission;
  - (iii) The Chief Officer of Police;
  - (iv) Surrey Fire and Rescue service;
  - (v) Chief Planning Officer;
  - (vi) Environmental Health;
  - (vii) Surrey Area Child Protection Committee (or other body designated in writing to advise the Authority about the protection of children from harm);
  - (viii) HM Commissioners of Customs and Excise;
  - (ix) Any other person prescribed under Regulations made by the Secretary of State.
- 2.9 "Representation" means any Interested Party or Responsible Authority person who has lodged a written objection to an application in accordance with these rules, and as defined in the Regulations.
- 2.10 "Regulations" means Regulations made under the Gambling Act 2005
- 2.11 In these rules, the masculine always includes the feminine.

### **3 Composition of Licensing Hearings Panel**

- 3.1 The Licensing Hearings Panel shall consist of three Members. No business shall be transacted unless at least three Members are present.
- 3.2 Councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises.

### **4 The need for Guidance on Licensing**

- 4.1 Licensing is unlike other local authority services (apart from Planning) in having a special responsibility to safeguard interests and balance conflicts. Licensing decisions have legal and judicial implications that are separate from the normal process that directs local authorities. Licensing involves the extensive exercise of the Council's discretionary powers.
- 4.2 Licensing applications are sometimes amongst the most contentious matters with which the Council deals. The successful operation of the licensing system relies amongst other things, upon ensuring that both Officers and Councillors act in a way that is not only fair and impartial but is also clearly seen to be so. Licensing decisions can affect land and property values, and it is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons.

### **5 General Role and Conduct of Councillors in Relation to the Licensing System**

- 5.1 The determination of applications by the Licensing Hearings Panel is a quasi-judicial process. The role of Councillors taking licensing decisions has similarities to that of a court of law (and Licensing Justices). Decisions are made after a hearing at which the applicant and objectors are each given an opportunity to be heard and to put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and current government advice.
- 5.2 Whilst Councillors who are Members of the Licensing Hearings Panel can have regard to the views of their constituents, they should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, as their overriding duty in making decisions on licensing applications is to do so in a fair and impartial manner, in accordance with the Licensing Objectives, and taking into account any relevant Policy.

### **6 Training**

- 6.1 Members appointed to the Licensing and Planning Policy Committee or Licensing Hearings Panel will undertake a period of training in Gambling Act procedures and legislation as specified by the Council, either before serving on the Committee or as soon as possible after their appointment to the Committee with additional training as necessary.

## **7 Lobbying**

- 7.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the application in accordance with the Rules of Procedure of the Panel. However, personal lobbying of the Members of a Panel, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Panel being challenged by way of Judicial Review.
- 7.2 A Member of the Licensing and Planning Policy Committee who is lobbied by an applicant or objector in relation to an application which may come before a Licensing Hearings Panel on which s/he is sitting should accordingly refer the person lobbying to another Councillor.
- 7.3 In accordance with the procedural rules of the Panel, Members should ensure that written material or other evidence which they wish to be considered by the Licensing Hearings Panel is provided in advance to the relevant officers, and within the timescales prescribed in the Regulations.
- 7.4 Given that the point at which a decision on a licensing application is made cannot occur before the Licensing Hearings Panel meeting when all relevant information is available for consideration, any political meeting before the Licensing Hearings Panel meeting should not be used to decide how Councillors should determine an application. Such use of party “whips” was considered by the Ombudsman as contrary to the former National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.
- 7.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Panel determining the application.

## **8 Gifts and Hospitality**

- 8.1 Councillors and officers should observe extreme caution in respect of any personal offer of a gift, favour or hospitality from someone who has or is likely to submit a licensing application to the Council. Further guidance on this matter is given in the Council’s Code of Conduct for Members and co-opted Members.
- 8.2 All offers or receipt of gifts or hospitality must be reported to the Chief Executive and recorded in the register of gifts and hospitality.

## **9 Declaration of Interests**

- 9.1 The responsibility for declaring an interest rests with Members. If in doubt, Members should seek advice well in advance of the meeting concerned. Guidance on the declaration of personal and prejudicial interests is contained Code of Conduct for Members and co-opted Members. Advice is available from the Monitoring Officer.
- 9.2 Where the Member has a personal and prejudicial interest in an item on the agenda, it should, of course, be declared, and that Member will not be entitled to sit on the Licensing Hearings Panel deliberating the application in question. Where a prejudicial interest is declared, Standing Orders require the Member concerned to leave the meeting, unless the member has made representation in their own right, or, is elected to represent an objector who has made a valid representation. In these circumstances, of course, it will not be possible for the Member to take any part in the decision making process.

## **10 Licensing Applications submitted by Councillors and their close associates or Licensing Applications which may have an impact on Councillors, Their families or close associates**

- 10.1 Councillors will wish to have particular regard to the Code of Conduct for Members and co-opted Members e.g. where Members act as agents for people pursuing licensing issues.
- 10.2 Given the Code of Conduct for Members and co-opted Members, Councillors who have business or other interests that may bring them into contact with the Council's licensing system on a regular basis should not normally sit on the Licensing and Planning Policy Committee or the Licensing Hearings Panel.

## **11 Member and Officer Relations**

- 11.1 Good administration is dependant upon a successful relationship between Councillors and officers which can only be based upon mutual trust and understanding of each others' roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised. Accordingly, Councillors should not attempt in any way to influence the terms of the officers' report or recommendation on any application. Equally, officers should give firm independent advice.

## **12 The role of the Licensing Officer**

- 12.1 Licensing Officers fulfil two roles for the Panel hearing. Firstly, a role limited to an administrative one, and secondly, a role limited to consideration of the relevant representations from their knowledge of local licensing policy, guidance, statute and good practice.

12.2 Licensing Officers will make NO recommendations to the Licensing Hearings Panel in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:-

- (i) Summary of the application;
- (ii) Summary of the representations made;
- (iii) Summary of how s/he views the provisions of the Licensing Policy Statement;
- (iv) Guidance of the Secretary of State, and the relevant legislation as relating to the application and any relevant representations;
- (v) Summary of any pre-application and pre-decision discussions held with the applicant or bodies making representations;
- (vi) Details of any site visits which took place prior to the application or Committee hearing;
- (vii) Details of any lobbying activities which have been brought to their notice.

### **13 Period of time in which hearing to be held**

13.1 The Authority shall arrange for a Hearing to be scheduled as soon as reasonably practicable following the day after the end of the period for people to make representations. Typically, applications for Premises Licences and Permits will be scheduled for a Hearing no more than 20 working days after the end of the representation period. Typically, 10 days notice will be given to the applicant and objector(s).

### **14 Notice of Hearing**

14.1 In the case of a hearing for an Application for a Temporary Use Notice (TUN) which has been subject to representation, the Authority will arrange for a Hearing to take place no later than six weeks from the date the Authority received the TUN. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.

14.2 In the case of a hearing for all applications for Premises Licences, Application for variation, Application for Transfer, Application for reinstatement or Application for Review other cases, the Authority will arrange for a Hearing to take place as soon as reasonably practicable following the day after the end of the period during which representations may be made. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.

## **15 Action following Receipt of Notice of Hearing**

- 15.1 A party shall give (no later than five working days before the hearing) notice to the Authority stating:
- (a) whether he/she intends to attend or be represented at the hearing
  - (b) whether he/she intends to call any witnesses at the hearing and their names and addresses, and;
  - (c) whether he considers a hearing to be unnecessary.
- 15.2 In the case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Authority in relation to the application, representations or notice of the party making the request.

## **16 Right to dispense with hearing if all parties agree**

- 16.1 The Authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary and have done so by giving notice to the Authority that they consider a hearing unnecessary. In such circumstances the Authority must give notice to the parties that the hearing has been dispensed with.

## **17 Withdrawal of Representations**

- 17.1 A party who wishes to withdraw any representations they have made may do so by giving notice to the Authority no later than 24 hours before the day or the first day on which the hearing is to be held, or; orally at the hearing.

## **18 The Committee Procedure**

- 18.1 The Licensing Hearings Panel is serviced by a number of officers. These include the Committee Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Grants and Licensing Team acts as a presenting officer, introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.
- 18.2 The Licensing Hearings Panel agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the Panel will be the subject of a written report from officers.

- 18.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall consider any request made by a party for permission for another person to appear at the hearing.
- 18.4 The Licensing Hearings Panel shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 18.5 The Licensing Hearings Panel shall allow parties an equal maximum time period in which to support their representation or application.
- 18.6 The Chairman of the Licensing Hearings Panel may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing, and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the Hearing, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

## **19 Power to adjourn hearings**

- 19.1 The Authority may adjourn a hearing to a specified date, or arrange for a hearing to be held on specified additional dates where it considers this to be necessary for its consideration of any representations or notice made by a party. The Authority will issue a notice should it decide to use such power.

## **20 Hearing to be public**

- 20.1 The Authority may exclude the public (which may include any person assisting or representing a party) from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing or that part of the hearing, taking place in public.

## **21 Councillor Representations**

- 21.1 Where a Councillor wishes to express a view on an application either in their own right in the capacity as an interested party, or in a specific representative capacity, he/she must do so in accordance with the procedural rules of the Panel, and the Regulations.
- 21.2 To avoid conflicts of interest, councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises. A member of the relevant Licensing Hearings Panel who represents or lives in the ward, which may also be affected by a licensing application, may be in a difficult position if it is a controversial application that has generated opposition. Members in such a situation should therefore not publicly support or oppose a particular outcome unless they are prepared to make their own valid representation. The member would then become ineligible to take part in the deliberative and decision making process of the Licensing Hearings Panel concerned with determining that application.



## **22 Representations and supporting information**

- 22.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.
- 22.2 Anonymous representations **will not** be considered by the Authority.
- 22.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.
- 22.4 At the hearing a party shall be entitled to call witnesses and address the Panel. The Panel will consider if it wishes to allow a party to question any party to the hearing or any witnesses.
- 22.5 The Panel will disregard any evidence produced by parties or witnesses which is not relevant.
- 22.6 The Panel will have discretion as to whether they wish to take into account any documentary or other evidence produced by a party in support of their application, representation or notice (as applicable), either before the hearing, or, with the consent of all the other parties, at the hearing.
- 22.7 Members of the Licensing Hearings Panel may ask any question of any party or other person appearing at the hearing.

## **23 vexatious and frivolous representations, and representations which will not influence the Authority's determination of the application**

- 23.1 Where the Authority considers that representations are vexatious, frivolous, would certainly not influence the Authority's determination of an application, or are repetitious, the person making the representation will be notified in writing typically, five working days before the Licensing Hearings Panel is to be held (due to relevant representations being made elsewhere), or, before the determination of the application to which the representation relates.

## **24 Failure of parties to attend the hearing**

- 24.1 If a party has informed the Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.
- 24.2 If a party who has not so indicated fails to attend or be represented at a hearing the Authority may:
- (i) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
  - (ii) hold the hearing in the party's absence.

- 24.3 Where the Authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 24.4 Where the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

## **25 The Committee decision making process**

- 25.1 The Licensing Hearings Panel shall normally adjourn from the Hearing to deliberate their decision. The Panel may require that the Legal Adviser withdraws with the panel. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Panel has reconvened.
- 25.2 The decision on an application should be taken on all of the relevant factors in the case and in particular the evidence submitted to the Licensing Hearings Panel meeting. Each application will be treated on its individual merits. The Panel shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.
- 25.3 Members may add or remove conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition or removal of such conditions would be necessary and reasonable.
- 25.4 The Licensing Hearings Panel will usually make its decision at the conclusion of the Hearing, or within 5 working days following the last day on which then hearing was held.

## **26 Record of proceedings**

- 26.1 Hearings will be recorded in a permanent and intelligible form, and retained for six years from the date of the determination, or, where an appeal is brought against the determination of the Authority, the disposal of the appeal.

## **SECTION H - Model Code of Practice in respect of Planning Matters: Probity in Planning**

*Incorporated into the Constitution in December 2007; Revised January 2018*

### **1 Introduction**

- 1.1 Planning matters have a significant impact on our lives and the area in which we live. It is important that the system operates and is seen to operate, in an honest, open and transparent manner.
- 1.2 The purpose of the planning system is to consider development proposals in the light of wider public interests, with the Government requiring a positive approach to be taken towards allowing substantial development. To succeed, the planning system relies on Councillors and Officers acting in a way, which is fair and is clearly seen to be fair. This includes acting in accordance with Planning Law in all instances and paying due regard to national and local policies in addition to all other “material planning considerations.”
- 1.3 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act 2011 are relevant to this code. Firstly, with regard to pre-determination the Act makes clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the Act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stages.

### **2 Status of the Code**

- 2.1 This Planning Code is contained in the Council’s Constitution and is complimentary to the Council’s Code of Conduct for Members. Members of the Planning Committee should apply both the general Code of Conduct and the Planning Code in dealing with planning issues. This is to help Members maintain the Council’s high standards of conduct, avoid placing the Council at risk of legal challenge or a finding of maladministration by the Local Government Ombudsman, and avoid putting an individual member at risk of a complaint. A breach of this Code whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council.
- 2.2 The purpose of this Planning Code is to:
  - Set the standards of conduct the Council requires all Members and Officers of the Council to follow when dealing with and determining planning applications including policy, development and enforcement

- Guide the way in which Members and Officers of the Council deal with all planning decisions, supporting their respective roles, and protecting their reputation for probity
  - Set the standard of conduct which other parties to the process can expect from Members and Officers when dealing with planning matters
- 2.3 This Code applies to all Members and Officers when making decisions on planning matters. It has been drawn up to:
- Support Members effective engagement in all aspects of the planning process and, in this context, to fulfil their democratic role
  - Ensure transparency and fairness in the way in which decisions are taken and that there are no grounds for suggesting that a decision has in any way been biased, partial or not well founded
- 2.4 A key purpose of this Code is to help Members of the Planning Committee make formal planning decisions that are safe from legal challenge. It is also intended to be helpful to members of other committees and to ward members in relation to various planning decisions.
- 2.5 The benefit of a detailed Code is that it sets out clear lines of engagement and expectations for each of the parties involved including members of the public and developers.

### **3 General Role and Conduct of Councillors and Officers**

- 3.1 Members and Officers have different but complimentary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.
- 3.2 Mutual trust, respect and understanding between Councillors and Officers are key to achieving effective local government. Officers' views, opinions and recommendations will be presented based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.
- 3.3 Officers, in their role of advising and assisting Members in their determination of planning matters in the public interest, do not represent either the landowner/applicant or the objector. They will:
- Provide impartial professional advice
  - Seek to ensure consistency of interpretation of national, regional and the Council's planning policies
  - Complete written reports with clear written recommendations and all necessary information for the decision to be made

- 3.4 The Code of Conduct for Officers is set out in full in Part 5 of the Council's Constitution. In addition, many professional staff within the planning service will be members of the Royal Town Institute (RTPI) and are required to comply with the RTPI Code for professional conduct. Planning officers, who are not RTPI members, are also expected to conduct themselves in the same manner.
- 3.5 It is important and best practice that Members recognise that Officers are part of a management structure and any concerns that they may have about the handling of a planning matter should be raised with the department manager. In general, officers and members should adopt a team approach and should recognise and respect each other's different roles.
- 3.6 Members must not put pressure on Officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views if submitted in written form will be placed on the planning file and considered together with other material planning considerations.
- 3.7 In reaching a decision, Members must ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.8 The Members of the Planning Committee should make all decisions in an open and transparent manner and this should not be compromised in any way. Such actions as messages being passed to Members of the Planning Committee during debate should be avoided as this could give an impression of undue influence from a third party. In an emergency, any communication should go through the Democratic Services Officer.
- 3.9 In order to ensure that decisions are taken on planning grounds and are sound, it is **imperative** that all Members of the Planning Committee read the reports prepared by Officers and familiarise themselves with all relevant National Planning Guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the Planning Committee itself. It is important that Members be **seen** to be meeting this provision of the Code. Information on specific applications will be available on the Council's website via "Public Access".
- 3.10 Councillors who are Members of the Planning Committee are responsible for the determination of planning applications for major and controversial applications. The Planning Committee must assess proposals against national and local planning policy, are restricted to planning considerations, and **cannot** seek to control non-planning issues or duplicate other legislative controls.

- 3.11 Members of the Planning Committee must always approach their decision making with an **open mind**; have regard to **all** material planning considerations and be prepared to change their views if persuaded that they should. Members should remember that planning law requires determination to be based on **planning consideration** and not on any political or other reasons.
- 3.12 If Members do anything, which would show they had closed minds and had predetermined an application, then they should **not take part**. Showing a predisposition towards a particular course of action does not in itself demonstrate bias and prevent Members from taking part in the decision making, however it may well encourage legal challenge.
- 3.13 Members should **not** vote or take part in the meeting's discussion on an item unless they have been present to hear the entire debate, including the officer's introduction to the item.
- 3.14 Members should ensure that if they are proposing, seconding or supporting a decision contrary to an officer's recommendations or the development plan, they **clearly identify** and understand the planning reason leading to this decision. The reason/s must be given **prior** to the vote and be recorded. Members must be aware that the resulting decision may have to be justified by evidence at a planning appeal in the event of challenge.

#### **4 Interests: Registration and Disclosure**

- 4.1 The Law and the Councillor's Code of Conduct set out rules and guidance on declaring their interests. Councillors **must** follow these rules and guidance and review their own situation regularly.
- 4.2 If a Member has a Code of Conduct interest in any matter, the existence and nature of the interest **must be disclosed** at any relevant meeting. This is best done at the beginning of the meeting.
- 4.3 The Members' Code of Conduct states that Members must, within 28 days of taking office as a member or co-opted member, notify the authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is that of the Member, their spouse or civil partner, or is the pecuniary interest of somebody with whom a Member is living with as a husband or wife, or as if they were civil partners.
- 4.4 If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.

- 4.5 If a Member does have a pecuniary interest, unless granted a dispensation, the Member **may not** participate in making the decision, either formally or informally. The Member should also avoid giving **any** impression of participation, as it is important to maintain public confidence in the impartiality of Councillors in decision-making. Taking part whilst having a pecuniary interest **is** a criminal offence.
- 4.6 In relation to planning decisions, any interest that does not amount to a pecuniary interest, but which would have a significant impact upon a member's judgement, should be declared by the Member at the meeting. In each case, this would be a matter for the Member's **own** judgement having full regard to the facts.
- 4.7 An example of this type of interest might be in relation to a planning application on a site very near to the member's home (where it may well be advisable for the member not to take part).
- 4.8 Even if a member considers a non-pecuniary interest would not have a significant impact on their judgement, there are likely to be situations where the public expectation would be for the member not to participate. Equally, there may be circumstances in which a member of the public would not regard it necessary for a member to declare an interest or involvement in a matter but for reasons of good practice and transparency, a member chooses to do so, simply to be as open as possible. In these circumstances, the declaration would have no impact on the Member's participation.
- 4.9 Councillors who are unsure whether an interest should be declared or need guidance, should do so before the Planning Meeting, by seeking advice from the Monitoring Officer or Deputy Monitoring Officer.

## **5 Predetermination, Predisposition and Bias**

- 5.1 Members of the Planning Committee must ensure that they do not fetter their ability to take part in the decision making process by making up their minds or clearly giving any appearance that an application or other matter referred to the Planning Committee has already been determined, before the Planning Committee has the opportunity to consider the merits or demerits of an application.
- 5.2 The Planning Committee should when considering an application, take into account **all views** that are expressed in such a way that they are **openly heard** and **fairly** considered in a **balanced** way before the Committee reach a decision.
- 5.3 The courts have sought to distinguish between situations that involve predetermination or bias, on the one hand **and predisposition** on the other.

- 5.4 **Predetermination** is indicative of a “**closed mind**” approach and could leave the committee’s decision open to challenge by Judicial Review. Such “pre-determination” has been held to amount to the “surrender by the decision-maker of its judgement by having a closed mind and failing to apply it to the task”.
- 5.5 Members of the Planning Committee can have a **predisposition** to an initial view, but **must make it clear** that they have an **open mind** and are willing to listen to **all material considerations** presented before deciding on how to vote.
- 5.6 A councillor who has **predetermined** their position should **withdraw** from being part of the decision making body. If the councillor takes part in the decision making process it will put the Council at risk of finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to take into account all of the factors enabling the application to be considered on its merits.
- 5.7 Members and Officers should also avoid the **appearance of bias**, that is, appearing to give undue weight to particular matters on the basis of personal attributes, or social acquaintance, that might influence their conduct generally and ties in with comments made in relation to declarations of interest above. Whilst it might remain possible for a Member to apply an open mind to the matter to be determined in such circumstances Members must avoid giving the impression or appearance that particular personal interests or attributes would lead them to consider aspects of an application more carefully or with more regard than other aspects unaffected by their own character and experience. It should be understood that the perception of justice *“is rooted in confidence, and that confidence is destroyed when right minded people go away thinking that the judge was biased”*.
- 5.8 For Planning Committee Members the aim is that they act, and are seen to act, impartially and honestly by approaching each planning decision fairly between the parties and with an open mind. Should a Member wish to take a particular stance in relation to a development, or feel that it would be difficult to demonstrate that they have followed a consistently fair approach between all parties in a case, then it is perfectly possible for them to decide not to be part of the decision making process on the particular issue or application but to act as a ward member in that instance.
- 5.9 From time to time, members are invited by prospective developers or objectors to attend meetings to discuss proposed development schemes and questions have been asked about the propriety of such attendance. Members and the Council could be challenged where they have expressed their opinion on proposals during or after such meetings, or in advance of Committee consideration.



- 5.10 The administrative system by which planning applications are determined in accordance with the law, and as necessary in a democratic society, would be brought into disrepute if it became evident that decisions favourable to an applicant or an objector could be obtained by lobbying members outside the procedural framework. On the other hand, members may be said to have a duty, particularly as Ward Councillors, to inform themselves of proposals that affect their wards and to be alive to public opinion. Members can play a constructive role in listening to and objectively gathering and reporting such views to the Councillors who will determine the application.
- 5.11 With these points in mind, it is suggested that the following guidelines may be helpful to members when considering whether to accept an invitation to a meeting:
1. Where members accept invitations to meetings from prospective developers or objectors when an application for planning permission has been received, even if the invitation is made to them ostensibly as a Ward Councillor, they should avoid expressing any fixed view on the matter.
  2. Councillors must not make any commitment to determine a matter in a particular way, for any reason .
  3. Ward Councillors (subject to paragraphs 1 and 2 above) should not accept invitations to meetings from prospective developers or objectors unless it is clear to them that the meeting is either a public meeting or one to which residents or other persons with an interest in the potential development have also been invited. If a Ward Councillor attends such a meeting in the belief that others have been invited but finds that no other persons are present, apart from the developer, s/he should decline to take part in any discussion of the scheme. There is no reason to distinguish between meetings in neutral premises and meetings in the prospective developer's or objector's own premises.
  4. There is nothing to stop members inspecting a site from the public highway if they choose to do so in order to better acquaint themselves with the details, but members should be aware of the risk of contact with the applicant or objector and inferences, which might be made. If access to a site is required, a formal site visit should be sought through the planning Case Officer.
  5. There is nothing to stop members responding to invitations to a meeting if properly convened through the Chief Executive or by officers in the planning service to which all relevant members (but not members of the public) have been invited, provided that if the merits and problems of the application are discussed Councillors make it clear that they have no fixed view of the matter at that stage.
- 5.12 It will, of course, remain open for the Council to sanction a departure from these guidelines in special circumstances.

## **6 The Decision Making Process and Decisions Contrary to Officer Recommendations and/or the Local Plan**

- 6.1 All Committee decisions are made by a simple majority.
- 6.2 In discussing, and determining a planning application or other planning matter, Councillors should try to confine their discussion to the policies of the Development Plan, and to those material considerations that should influence their decision. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 6.3 However, it is acknowledged that deputations by applicants or members of the public may refer to matters that should not properly be part of the reasoning of the members' decision. On such occasions, it may be difficult for members of the Planning Committee to confine their comments to the appropriate planning issues without appearing to disregard expressed concerns. Where it appears that the clarity of the decision-making process may be undermined, the Committee Chairman and officers may give guidance on any elements of the discussions that refer to irrelevant or immaterial considerations, and any elements that should be disregarded by the Committee in formulating its decision. Officers will clarify the weight to be given to the details of reports, or information that comes forward during deputations or in the course of debate.
- 6.4 If Councillors wish to refuse an application against officer advice, to impose additional conditions on a planning permission, or to approve an application contrary to officer recommendation, an officer should explain the implications of such action.
- 6.5 In circumstances where it seems likely that a planning application is likely to be refused against the officer's recommendation, the Chairman should consider whether it would be appropriate to require an adjournment of the meeting or even a deferral of that item to the next Planning Committee meeting to allow further discussions to be had. This is both to ensure that any potential reasons for refusal would be defensible at appeal and to give opportunity for any amendments that may overcome the potential ground for refusal.
- 6.6 Where they do not accord with the officer's recommendation, the Committee's reasons to grant an application or to refuse it or any additional conditions to be applied must be clearly stated by the member making the proposal.
- 6.7 If members cannot give sound and clear-cut reasons for a decision which may override the recommendations of the officers, it is not appropriate to require, or expect, that officers can explain such decisions to applicants, objectors or a planning inspector. When the Committee has made such a decision, the Chairman will allow brief discussion to ensure that officers have understood the intentions and reasons of the Committee. All conditions, including ones that the Committee may wish to impose on a planning permission, must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

- 6.8 If the report of the Head of Planning recommends approval of a departure from the Local Plan, the full justification for that recommended departure will be included in the report.

## 7 Lobbying

- 7.1 Lobbying is a normal part of the planning process and may not be restricted to members of the Planning Committee. If a Member, who is not on the Planning Committee wishes to support a particular viewpoint then that Member has a right to appear at Planning Committee and seek permission to address the meeting. This approach is recommended to protect the integrity of the members of planning committee against accusations of bias and/or predetermination as the public perception could be that the member added more weight to, or was swayed by views, of a colleague.
- 7.2 Since lobbying can lead to the impartiality and integrity of a Member being called into question it is clear that care should be taken, and all parties involved should exercise common sense. It is therefore important that Members protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties as long as they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.

## 8 Councillor “Call-in” Procedure

- 8.1 Most planning applications are determined by Planning Officers in line with the Council’s Scheme of Delegation. However even when the Scheme of Delegation authorises Officers to determine the application a Planning Committee Member or a member representing the Ward in which development is proposed, may wish for a planning application to be considered by the Planning Committee . In these circumstances, the following rules must be complied with. Failure to do so entitles Officers to refuse to put the application to committee and determine it under delegated authority.
- A “call-in” request must be received within **28 calendar** days following the date of public notification by the Planning Services. This gives the Councillors enough time to read the comments being received from other parties (who have 21 days to comment).
  - The request must be in writing (email is acceptable) to the Case Officer, copied to the Head of Planning and Planning Development Manager asking that the item being referred to, be “called-in” to the Planning Committee,
  - The request must be on **relevant planning grounds** or **merit** intervention to have the application placed before the Planning Committee.

- 8.2 It is not the case that just because a member of the public requests call-in of an application on their behalf, that this should be actioned. It is the responsibility of members to explain to their electorate that a call-in cannot be justified, as there are no planning grounds for doing so.
- 8.3 **All “call-ins” made by Councillors stating material planning grounds and within 28 calendar days will be valid.**
- 8.4 Where the “call in” is not made on material planning grounds, the “call-in” will be **invalid**. The decision as to whether the grounds are justifiable will be at the discretion of the Head of Planning, in consultation with the Chairman of Planning and the members concerned.
- 8.5 A Member who has a Disclosable Pecuniary Interest should **NOT** ask for an item to be called in or if there is a risk of the Member being seen as biased: for example if the Member has a very strong connection through a non-pecuniary interest.
- 8.6 Members who have asked for a call-in must ensure that they attend the committee meeting to which the item is being discussed to explain the planning reasons why the application merits consideration by the Planning Committee.

## **9 Planning Applications made by Members and Officers**

- 9.1 When a planning application is submitted by a Member or by a close relative of a Member, the Member will:
- Advise the Monitoring Officer of the application
  - Take no part in the processing and determination of the application
- 9.2 All such applications will be reported to the Planning Committee. The Committee will determine such applications. An Officer will not determine such applications under delegated authority.
- 9.3 The same considerations shall apply to planning applications submitted by Chief Executive, Chief Operating Officer or Heads of Service, including the Head of Planning, Planning Development Manager or Planning Policy Manager.
- 9.4 Officers and Members must not act as agents for people pursuing matters within Epsom & Ewell Borough.

## **10 Late Representations**

- 10.1 Late representations by the applicant or objectors regarding applications being presented to Committee will be considered up until midday on the Monday immediately before the Planning Committee meeting (Thursday) and will be summarised by the Case Officer and sent to the Planning Committee Members at least one day before the meeting on the Thursday.

- 10.2 Comments or any other information received after the deadline will only be taken into consideration in exceptional circumstances at the discretion of the Head of Planning. This process ensures the Planning Committee Members have sufficient time to read any additional papers.
- 10.3 **No** material will be handed out at committee by anyone other than the Officers presenting the item before committee.

## **11 Public Speaking at Planning Committee**

- 11.1 Certain members of the public or organisations that have a planning related interest or could be affected directly by the matter under consideration will be entitled to speak at the Planning Committee.
- 11.2 These individuals/organisations fall into the following categories:
- Ward councillors who are not members of the planning committee
  - applicants or their agents
  - local groups
  - neighbouring occupiers or
  - owners of any premises which is the subject of an enforcement report
- and may either support or oppose the application.
- 11.3 An individual or representative of a local group/organisation who wishes to speak at a Planning Committee must register their wish to do so between 6pm and 7pm on the evening of the meeting at the Town Hall reception desk.
- 11.4 Normally, in addition to the applicant/agent, only one member of the public may speak for or against a single application. Registration will normally be on a first come first served basis but an individual may choose to waive this right in favour of an individual who attempted to register at a later time. Alternatively, several members of the public may appoint one person to speak on their behalf provided they can reach agreement to this amongst themselves.
- 11.5 A speaker shall have a maximum of three minutes to address the Committee and must confine their remarks to the application upon which they requested to speak. The applicant/agent shall be given an amount of time equal to the amount of time allocated to the all the objectors. The address shall be in the form of a statement, not attempts to question the applicant or other persons but may address issues raised by other speakers.
- 11.6 Speakers should only raise issues concerning planning matters such as;

- appearance and character of the application
- traffic issues, highway safety and parking
- layout and density of buildings
- loss of light overshadowing and loss of privacy
- noise, disturbance and other loss of privacy
- other relevant planning considerations

11.7 There will be no opportunity for displaying any materials, such as maps, photographs or circulate any other materials or ask any questions of anyone at the meeting.

11.8 If the Chair considers that any remarks made are defamatory, no further representation will be allowed. Individuals or organisations will be invited to address the Committee following the presentation of the item by the Officer. The order of speakers will be:

- Ward councillors wishing to speak
- Objector
- Supporter
- Applicant or their agent

## **12 Monitoring and Review of Decisions**

12.1 Planning Committee Members should play an active part in regularly reviewing the outcome of planning decisions so that lessons can be learned and the future consideration and determination of planning applications can be improved as part of a broader commitment to continuous improvement.

12.2 Arrangements will be made for Members to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken.

12.3 The outcome of the review will be considered by the Planning Committee and may lead to the possible amendments to existing policies or practices

## **13 Training**

13.1 No Member (or Member substituting on a Planning Committee) may attend a Planning Committee meeting without first having received appropriate mandatory training as set out below.

- 13.2 The validity of this training will expire if the Member has not attended a meeting of the Planning Committee within 12 months of receiving it, or has had a gap in membership from the Committee of more than 6 months. Where the validity of the training has expired, the Member may not sit on the Planning Committee until they have received further training.
- 13.3 Given the complex legislative framework for determining planning applications and the constant reforms and changes within the planning system, the Head of Planning will provide a Planning Committee Training Programme to include:
- An annual training session that will provide an overview of the key role of planning and the role Members play in the planning process. This training will usually be held once the membership of the Planning Committee has been confirmed at Annual Council and should be attended by both new and continuing Members of the Committee. However, all members of the Council will be encouraged to attend to help them understand planning issues. If Members are appointed to the Planning Committee after the training has been held and have not received the necessary training, or act as a substitute for a Planning Committee Member, they will receive separate training.
  - A six month mandatory refresher session
  - Further training sessions as necessary on new Council and Central Government policy and legislation or other planning issues that are requested by Members or Officers. Again, all members of the Council will be encouraged to attend such sessions.
- 13.4 It is expected that Members will be available to attend training sessions and it will be the responsibility of each Member to ensure they have attended at least the annual training and the six-month refresher to enable them to sit on the Planning Committee. Democratic Services will maintain a register of Members who have received this training.

## **14 Complaints**

- 14.1 A complaint that a Member or Officer has breached this Code should be made in writing to the Monitoring Officer for investigation and determination
- 14.2 There is a specific right of appeal for applicants who are not satisfied with a planning decision. In all other cases, the Head of Planning will investigate a complaint made in writing regarding the determination of a planning application or a related planning matter and would deal with it in accordance with the Council's complaints procedure.
- 14.3 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 will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.

- 14.4 The same principles of good record keeping will be observed in relation to all enforcement and planning policy matters. The Planning Development Manager will regularly monitor record keeping.
- 14.5 A complaint may be made to the Local Government Ombudsman in the event that the complainant was not satisfied with the result of the investigation under the Council's complaints procedure. This must be done directly to the Local Government Ombudsman.

## **15 Site Visits**

- 15.1 Members and Officers must remember, in conducting a site visit anything said or done by them should be restricted to relevant planning considerations and should remain open minded.
- 15.2 The purpose of an organised Council site visit is for Councillors to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. The potential benefit of attending the site should be sufficient to justify the administrative expense and any consequential delay to determining the application.
- 15.3 The decision to hold a site visit prior to the Committee meeting is to be made by the Head of Planning in consultation with Chairman.
- 15.4 The purposes of a formal site visit prior to the Committee meeting are:
- to view the setting of the application,
  - to consider any other matters seen on site which may be material to consideration of the application, and
  - to find facts, especially when the application site is not visible from public land.
- 15.5 During a site visit members and officers should avoid any appearance of impropriety, and must not accept gifts or hospitality. Comments should be restricted to planning matters, and questions should be put through the planning officers attending the site visit. Officers and members must refrain from making comments that might be construed as supporting or opposing a particular view, and from making any personal comments.
- 15.6 The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. If, on a site visit, Members and Officers are approached by persons wishing to speak about the application, Officers will explain that any representations may be made to the Committee at the meeting, and explain the procedure.



- 15.7 Site visits should be requested by Members prior to the application being reported to Committee. Councillors should only request a site visit when the application has reached the determination stage if they consider it essential to clarify an issue that cannot be understood without such a visit, and which could not have been considered earlier. The Committee may decide to visit a site because particular factors to be seen on site are significant in terms of the weight to be afforded to them in determining the application and because, following discussion in Committee, members have reduced confidence that such factors can be fairly considered in the absence of a site visit to assess such details. In proposing a site visit, the member who wishes the Committee to have additional opportunity to do so should specify the factors to be noted if the site visit is agreed.
- 15.8 Members with a pecuniary interest in a planning application should not make representations seeking a site visit in respect of an application. Members with a pecuniary interest in a particular application or agenda item must not attend any related site visit.

## **16 Development proposed by the Council**

- 16.1 Parliament has decided that local planning authorities are, in the majority of circumstances, the appropriate body for determining planning applications affecting the area, including where the Council itself submits a planning application. There are separate statutory requirements for the Council in determining applications to develop its own land, or to develop it jointly with another body.
- 16.2 Members and Officers involved in reaching a determination of the application should treat proposals for the Council's own development (or development involving the Council and another party) in the same way as those by private developers. This means that not all applications on Council owned land need to be considered by Committee. However, the planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council be seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

## **17 Member/Officer Relations and Planning Decisions**

- 17.1 The Head of Planning or the Planning Development Manager will always attend meetings of the Planning Committee to ensure that procedures are properly followed and planning issues properly addressed.
- 17.2 Other senior officers with appropriate professional and technical experience will also be present when an application has aspects relating to their professional expertise. Where the Council's professional experts, such as environmental health officers or highway engineers, attend Committee to ensure that appropriate advice can be given and discussed with their assistance, Members must give due weight to such advice. It is the obligation of such officers to give considered and independent advice for the benefit of the Council.

## **18 Review of Protocol**

18.1 This Code will be reviewed as necessary and at least every four years to take account of:

- new planning legislation
- changes to national codes of conduct
- emerging examples of good practice

## **SECTION I - Whistleblowing Policy**

*Issued August 2003; Revised April 2011*

### **1 Introduction**

- 1.1 The Council supports whistleblowing and this policy is drafted to take account of the requirements of the Public Interest Disclosure Act (1998). If you raise a genuine concern in good faith, this policy means you will not be at risk of losing your job or suffering from any retribution, even if your concerns are not substantiated by an investigation. If however you do not make an allegation in good faith or you make an allegation for personal gain, disciplinary action may be taken against you.
- 1.2 The Council wishes to ensure that its money is spent appropriately on services for the local community. Any loss of funds as a result of fraud or corruption can reduce the amount of money available for services or lead to higher Council Tax.
- 1.3 Furthermore, the Council is committed to the highest standards of openness, probity and accountability. In line with that commitment we expect you, as an employee, and others we deal with, who have concerns, to come forward and voice them.
- 1.4 This policy applies to all employees and those contractors working for the Council on Council premises for example agency staff, builders, suppliers of services etc. It also covers suppliers and those providing services under a contract.
- 1.5 This Policy is designed to tackle potentially serious allegations and enables you, as an employee or contractor to raise genuine concerns about serious malpractice.
- 1.6 The Council will investigate all complaints received through the Whistleblowing process to protect its interests and that of local residents but untrue malicious allegations may be dealt with severely.

### **2 Aims and Scope of Policy**

- 2.1 This policy aims to:-
  - Make you feel able to raise a concern in confidence and without risk to your own job;
  - Provide avenues to raise concerns and receive feedback;
  - Provide a guarantee that you will receive a response to your concerns and ensure that you are aware of the processes to follow if you are not satisfied;
  - Reassure you that you will be protected from possible reprisals for victimisation;

- Provide other sources of reference for advice.
- 2.2 There are existing procedures in place if you have a grievance relating to your own employment or if you consider that you are harassed due to race, sex or age, or if you are concerned about health and safety issues. These are available on IRIS under HR.
- 2.3 This Policy is intended to cover concerns that fall outside the scope of other procedures. These include:-
- conduct which is an offence or a breach of law
  - disclosures related to miscarriages of justice
  - health and safety risks including risks to the public as well as other employees,
  - damage to the environment
  - the unauthorised use of public funds,
  - fraud and corruption;
  - sexual or physical abuse of clients
  - any attempt to prevent disclosure of any of the above, or
  - other conduct which gives you cause for concern.
- 2.4 This policy supplements and does not replace the Council's complaints procedure, or grievance procedures and other procedures in place to deal with harassment and with health and safety.

### **3 Safeguards**

- 3.1 The Council is committed to good practice and high standards and aims to be supportive of its employees. The Council recognises that the decision to report a concern can be a difficult one to make particularly when colleagues are involved or if there is a fear of reprisals. The Council will not tolerate any attempt on the part of an employee, councillor or contractor to apply any pressure, sanction, harassment or victimisation. The Council will take the necessary action required, including disciplinary action against an employee, action for breach of a contract against a contractor or report a Member to the Monitoring Officer for appropriate action.

### **4 Malicious Allegations**

- 4.1 The Council will take all allegations very seriously and, if you are employed by the Council, may take action against you if you deliberately make untrue malicious allegations.
- 4.2 If you make an allegation in good faith but it is not proven by investigation no action will be taken against you.

## **5 Guidance on Making a Complaint**

- 5.1 In order to deal with an allegation the earlier you raise your suspicions, the easier it is to take action.
- 5.2 As a first step, you should raise concerns with your immediate Manager or Director. Who you chose to raise your concerns with may depend on the seriousness and sensitivity of the issues involved and who is suspected of malpractice. For example if you believe that your manager is involved you should approach your Director or one of the Designated Whistleblowing Officers.
- 5.3 Your Manager or Director receiving notification of a concern under this policy must inform one of the Designated Whistleblowing Officers providing a copy of all relevant paperwork. The Council has two designated Whistleblowing Officers, who are the Director of Finance and the Director of Human Resource and Communication (the names of the individuals who currently hold the designated posts are set out at the end of this policy). If the matter relates to financial irregularities or failures of financial control, the Director of Finance must be informed. Further guidance on dealing with such matters can be found in the Fraud Response Plan available on the Council's intranet, IRIS.
- 5.4 When making a complaint you should provide accurate details such as background, names and, where possible, documentary evidence.
- 5.5 You may raise your concerns verbally or in writing. However, it is preferable for complaints to be raised in writing to provide more accurate details. You may find the proforma report form attached to this policy helpful, although it is not compulsory to use it.
- 5.6 Your complaint will be treated in confidence and you should also treat the matter as confidential whilst your complaint is on-going.
- 5.7 If you are a contractor working for the Council, the procedures for whistleblowing are similar but in the first instance, you should normally raise your concerns with your own manager who will then contact the Council's lead officer dealing with the particular contract. If you do not have a line manager, you should contact the Council's lead officer dealing with the particular contract or, alternatively, one of the Council's Designated Whistleblowing Officers.
- 5.8 If you are a Council employee you can obtain advice and guidance on how to raise matters of concern from the Director of Human Resource and Communication. If you are a contractor working for the Council, agency staff or a supplier, you can obtain confidential, independent advice from the charity Public Concern at Work (the contact details for this organisation are set out at the end of this policy document).

- 5.9 During initial investigations it may be necessary to conduct an interview to ascertain facts. You can invite your trade union or professional association representative or a work colleague to be present during any interviews in connection with the concerns you have raised.
- 5.10 If you are a council employee, you can leave a message on the 24 hour Whistleblowing/Fraud Hotline (0800 1974 520) operated by the Council's Internal Auditors RSM Tenon. This service is strictly confidential and you do not need to provide your name if you do not want to.

## **6 Guidance on the investigation process and feedback**

- 6.1 The action taken will be dependent on the nature of your allegation. In the first instance, the matter will be investigated internally, by or on behalf of the Designated Whistleblowing Officer, to establish the facts. Should it relate to a financial matter then the Fraud Response Plan may be implemented.
- 6.2 In order to protect you, and those about whom concerns are raised, initial enquiries will be made to decide whether an investigation is warranted and if so, what form it should take. If you have raised concerns or made an allegation which is the subject of its own policies and procedures, such as discrimination for example, such matters will normally be referred for consideration under the relevant policies and procedures rather than dealt with by the Designated Whistleblowing Officer. It may be possible at this stage to agree action without the need for further investigation. If urgent action is required this will be taken before any investigation is concluded.
- 6.3 The Designated Whistleblowing Officer dealing with the case will endeavour to acknowledge your complaint within 5 working days. Then, depending on the circumstances of your complaint, will formally respond in more detail within 21 working days or once the investigation is completed.
- 6.4 The initial written response will:
- Acknowledge that your complaint has been received;
  - Indicate how the Council proposes to deal with the matter;
  - Give an indication or estimate of how long it will take to provide a final report;
  - Outline what initial enquires have been made;
  - Supply you with information of staff support mechanisms.
- 6.5 Further action will depend on the results but the case may be: -
- Passed to an appointed independent person or body such as internal audit for further investigation.
  - Referred to Director of Human Resources & Communications for disciplinary action
  - Referred to the District Auditor
  - Referred to the Police

- 6.6 The amount of contact the Designated Whistleblowing Officer dealing with the allegation will have with you will depend upon the nature of the matters you raised. It may or may not be necessary to seek further information from you during the course of an investigation.
- 6.7 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcomes of any investigation. However feedback may be limited during an investigation.

## **7 How the matter can be taken further**

- 7.1 This policy is intended to provide you with an avenue within the Council to raise concerns and has been written to take account of the Council hopes that you will be satisfied with any action taken. If you are not satisfied with the outcome of your confidential report you can write to the Chief Executive and ask for the outcome to be reviewed. If you remain dissatisfied, you feel it is right to take the matter outside of the Council. In this case, you may wish to rely on your rights under the Public Disclosure Act 1998.
- 7.2 This Act protects you if you make certain disclosures regarding information in the public interest and those disclosures are made in accordance with the provisions of the Act. The provisions are quite complex and include a list of prescribed persons outside of the Council who can be contacted in certain circumstances. If in doubt, you should seek advice on the provisions of the Act. If you do take the matter outside the Council, you should ensure that you do not disclose information where you owe a duty of confidentiality as by doing so you may commit an offence by making such a disclosure. Where you are in any doubt you should obtain your own legal advice.

## **8 The Law**

- 8.1 The Employments Rights Act 1996 has been amended to incorporate the provisions of the Public Disclosure Act 1998. The Employment Rights Act 1996 already protected employees who took action over, or raised concerns about, health and safety at work. For the avoidance of doubt, financial issues are covered by Section 151 Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, The Local Government and Housing Act 1989 and Accounts and Audit Regulations 2003.

## **9 Contact Details**

- 9.1 The Council has two Designated Whistleblowing Officers, who are the:
- Chief Finance Officer (Lee Duffy, Tel: 01372 732210 or e-mail [lduffy@epsom-ewell.gov.uk](mailto:lduffy@epsom-ewell.gov.uk))
  - Monitoring Officer (also the Council's Chief Legal Officer), (Amardip Healy, Tel 01372 732148, or e-mail: [ahealy@epsom-ewell.gov.uk](mailto:ahealy@epsom-ewell.gov.uk))

9.2 Alternatively, you may wish to speak to one of the following individuals:

- Chief Executive (Kathryn Beldon, Tel 01372 732104, or e-mail: [kbeldon@epsom-ewell.gov.uk](mailto:kbeldon@epsom-ewell.gov.uk))
- Head of Corporate Governance (Gillian McTaggart, Tel: 01372 732224 or e-mail: [gmctaggart@epsom-ewell.gov.uk](mailto:gmctaggart@epsom-ewell.gov.uk))
- A local Councillor – Residents of the Borough of Epsom and Ewell can contact their local Councillor. A list of local Councillors is available on the Council's web site or by contacting the Council (01372 732000).

### **External Contact Details**

9.3 If you are relying on your rights under the Public Disclosure Act 1998, you may wish to contact:

- External Audit, Sarah Ironmonger (Associate Director, Grant Thornton UK LLP), Tel 01293 554072 or e-mail: [Sarah.L.ironmonger@uk.gt.com](mailto:Sarah.L.ironmonger@uk.gt.com))
- Your Trade Union or staff representative
- Public Concern at Work – [www.pcaw.co.uk](http://www.pcaw.co.uk). Tel 0207 404 6609
- The Police



# **PART 6**

# **COUNCILLORS' ALLOWANCES SCHEME**

<b>May 2018/May 2019</b>	<b>Number of Members Allowance payable to</b>	<b>Amount</b>
<b>Basic Allowance</b>	38	<b>£3,631</b>
<b>Special Responsibility Allowances</b>		
<b>Committee Chairmen</b>		
Strategy and Resources	1	<b>100%</b> of Basic Allowance
Environment	1	<b>70%</b> of Basic Allowance
Community and Wellbeing	1	<b>70%</b> of Basic Allowance
Licensing and Planning Policy	1	<b>70%</b> of Basic Allowance
Planning	1	<b>100%</b> of Basic Allowance
Audit, Crime & Disorder and Scrutiny	1	<b>70%</b> of Basic Allowance
<b>Panel Chairmen</b>		
Financial Policy	0	<b>30%</b> of Basic Allowance
Human Resources	1	<b>30%</b> of Basic Allowance
Health Liaison	1	<b>30%</b> of Basic Allowance
<b>Other Chairmen</b>		
Epsom and Walton Downs Conservators	1	<b>30%</b> of Basic Allowance
<b>Vice Chairman of Planning Committee</b>	0	<b>30%</b> of Basic Allowance
<b>Membership of Planning Committee</b>	7	<b>10%</b> of Basic Allowance
<b>Other posts</b>		
Majority Group Leader	1	£2,703
Minority Group Leader	2	<b>£200</b> <b>+ £50 per group member</b>

### Notes

1. Allowances paid in 12 monthly instalments June – May each year.
2. Councillors are not entitled to claim more than one Special Responsibility Allowance (should they hold more than one Special Responsibility) Committee.

3. A Vice Chairman may receive payment at the same rate as the Chairman if required to stand in for him/her during an absence of a month or more for the period of his her absence.
4. Travel expenses and subsistence will only be reimbursed for **pre-approved attendance** at conferences and seminars or other official Council business outside the Borough where reimbursement will be at the officer rate up to a maximum allowed under the Inland Revenue scheme. All other travel, subsistence and necessary costs are covered by the scheme of allowances.
5. A payment equivalent to the actual cost incurred may be made to Councillors to cover child-care or dependent care subject to the provision of receipts and filling in of a claim form, in respect of childcare and other dependent care respectively with the exception that claims will not be payable in respect of carers in the same household. In addition, the rate payable to carers who are not in the same household as, but are family members of, the Member, should be at the appropriate rate of the National Living Wage.
6. Allowances to be varied in May each year following the Annual Council Meeting in accordance with changes to the Consumer Prices Index.

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# **PART 7**

# **MANAGEMENT STRUCTURE**

