



# **The Council's Operating Framework**

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## **Annex 1.1 – Further Information on the Constitution**

### **1. The Constitution**

- 1.1. This Constitution, the core document and all its annexes, is the Constitution of the Borough Council of Epsom and Ewell (hereafter referred to as ‘the council’).

### **2. Powers of the council**

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

### **3. Purpose of the Constitution**

- 3.1. The purpose of the Constitution is to:
- i. Enable the council to provide clear leadership to the community in partnership with residents, businesses and other organisations.
  - ii. Support the active involvement of citizens in the process of local authority decision-making.
  - iii. Help councillors to effectively represent the people who live, work and study in the Borough.
  - iv. Enable decisions to be taken efficiently, effectively and transparently, and with due regard to probity and equity.
  - v. Create a powerful and effective means of holding decision-makers to public account.
  - vi. Ensure that no one will scrutinise a decision in which they were directly involved.
  - vii. Ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions.
  - viii. Provide a means of improving the delivery of services to the community.

### **4. Interpretation and review of the Constitution**

- 4.1. 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 Constitution (**Section 7**).

### **5. Suspension of the Constitution**

- 5.1. Limit to suspension: The Constitution, including its annexes, may not be suspended. The rules specified below may be suspended by Full Council or committees to the extent permitted within those rules and the law.
- 5.2. 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 Full 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 above.
- 5.3. Rules capable of suspension: The following rules may be suspended in accordance with the sections below:
  - i. Council procedure rules (as specified in Annex 4.3 and Annex 4.4).
  - ii. Financial Regulations (**Annex 5.1**).
  - iii. Contract Standing Orders (**Annex 5.2**).

## **6. Interpretation**

- 6.1. The ruling of the Mayor as to the construction or application of this Constitution, or as to any proceedings of Full Council, shall not be challenged at any meeting of the council. Such interpretation will have regard to the purposes of this Constitution contained above, and to any advice given by the Monitoring Officer.

## **7. Publication**

- 7.1. The Chief Executive will ensure each councillor has access to the council's Constitution at the point they declare their acceptance of office, that is, when first being elected as a councillor.
- 7.2. The Monitoring Officer will make available copies for inspection at the council offices (Town Hall, Epsom), and for purchase by members of the local press and the public on payment of a reasonable fee.
- 7.3. The Monitoring Officer will ensure that the Constitution is made available, by electronic means, within the Borough and is updated as necessary.

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

- 8.1. 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. A report will be brought to Full Council on this at least once every year.

## **9. Changes to the Constitution**

- 9.1. Changes to the Constitution will only be approved by Full Council, after consideration of a proposal from the Standards and Constitution Committee

(in respect of the council's rules of procedure and matters relating to the ethical framework or as deemed appropriate by the Monitoring Officer), 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 **Annex 4.3 and 4.4**. Non-substantive changes, that is those that do not change a process or meaning of a section / paragraph, can be updated by the Monitoring Officer in consultation with the Chair of Standards and Constitution Committee.

- 9.2. If at any time the council decides to change from its current committee form of governance, to a cabinet system, it must take reasonable steps to consult local electors and other interested persons in the Borough when drawing up proposals.

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## Annex 1.2 – Glossary of Terms

- 1.1. In this Constitution 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.
- 1.2. For the avoidance of doubt, as long as the context of a passage allows:
- i. Singular expressions include plural meanings.
  - ii. Plural expressions include singular meanings.

Advisory Panels	Refers to bodies which report as required to the appropriate committee as set out in their terms of reference.
Annual Meeting	Means the first meeting of the Full Council of each municipal year, where specific items of business are conducted.
Budget Decision	For the purposes of the standing orders of Full Council and Committees ( <a href="#">Annex 4.3</a> and <a href="#">Annex 4.4</a> ), a budget decision is any decision defined as such under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 or such successor provision.
Budget and Policy Framework	The “Framework” is made up of the council's policies, plans and strategies, some mandatory and others discretionary. For more information see <a href="#">Annex 4.8</a> .
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 Epsom and Ewell Borough Council. The CPR may also be referred to as the committees’ ‘standing orders’.
Chair	Means the councillor currently appointed or elected to Chair of a committee, sub-committee or Advisory Panel or appointed as such for a meeting.
Chief Executive	Refers to the council’s Head of Paid Service, designated under Section 4 of the Local Government and Housing Act 1989.

Chief Finance Officer	Refers to the council's Chief Finance Officer designated under section 151 of the Local Government Act 1972.
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 9P of the Local Government Act 2000.
Council and Full Council	<p>Council: means Epsom and Ewell Borough Council; or one or more of its committees, sub-committees, Advisory Panels; or officers acting on the council's behalf, using powers which have been lawfully delegated as the context requires.</p> <p>Full Council: any reference to Full Council, or if the context so refers, shall be a meeting to which all councillors have been called.</p>
Deputy Mayor	The councillor elected to be the Deputy Mayor of Epsom and Ewell Borough Council.
FCR	Means Full Council Rule of Procedure, the rules which regulate the proceedings and business of meetings of the Full Council and which may be referred to as 'Standing Orders'.
Group	Means a political group as defined in the Local Government (Committees and Political Groups) Regulations 1990.
Independent Person	Means an Independent Person appointed by the council to meet the duties of the Localism Act 2011. The Independent Person's role is to assist in promoting and maintaining high standards of conduct amongst councillors, and they may be consulted by the council on relevant matters.
Mayor	The councillor elected to be Mayor of Epsom and Ewell Borough Council. The Mayor presides at meetings of Full Council



Meeting	Means a meeting of the Full Council, a committee, sub-committee or advisory panel.
Member	<p>Means a member of any committee, sub-committee, advisory panel or joint committee or any outside body as appropriate.</p> <p>It means a person who has been appointed to such a body, whether or not they are entitled to vote.</p> <p>Where the context so requires, the reference will refer to the appointed member of such committee, sub-committee, advisory panel or joint committee and not a councillor who may be substituting for such absent member. It also includes co-opted members.</p>
Monitoring Officer	Means the person designated as Monitoring Officer under section 5 of the Local Government and Housing Act 1989. If that person is unable to act owing to absence or illness, the expression means a person nominated as their deputy under subsection (7) of that section.
Officer	Means an employee of the council, or someone performing that role under a contract for services.
Operating Framework	A collection of protocols, policies and process that the council operates by. Significant changes require approval by the Full Council.
Petition	Means a petition falling within the Petition Scheme (Annex 6.1).
Policy Committee	Is a collective term for one or more of the council's policy committees as described Annex 4.1.
Proper Officer	The appropriate officer(s) to act in the circumstances, as guided by the appropriate legislation.
Standing Orders	Refers to the FCR or CPR as the context may require.
Sub-committee	Refers to a sub-committee of a committee.

Vice Chair	Means the councillor currently appointed or elected to vice chair of a committee, sub-committee or advisory panel.
Working Day	Means any day on which the Town Hall (Epsom) is open to the public, excluding Saturdays, Sundays and Bank Holidays.

## **Annex 2.2 – Further Information on Councillors**

### **1. Composition and eligibility**

- 1.1. Composition: the council comprises all of the councillors 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.
- 1.2. Eligibility: to be eligible to hold the office of councillor, one for the four criteria must be met:
  - i. Registered as an elector in the Borough
  - ii. Living in the Borough.
  - iii. Working in the Borough.
  - iv. Owning land in the Borough.

### **2. Election and terms of councillors**

- 2.1. Election: the regular election of councillors will be held normally on the first Thursday in May (or whatever date is fixed by law) every four years (from 2003).
- 2.2. 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.

### **3. Roles and functions of all councillors**

- 3.1. Key roles that all councillors fulfil, to:
  - i. Collectively set the policy and strategic direction of the council, taking a Borough-wide view.
  - ii. Actively encourage engagement with their local communities and represent these communities; bringing their views into the council's decision-making process, where appropriate.
  - iii. Represent the interests of their ward and where necessary balance different interests.
  - iv. Deal with individual casework and act as an advocate for constituents with their particular concerns or grievances in so far as they relate to the functions and responsibilities of the council.
  - v. Be involved in decision-making.
  - vi. Be available to represent the council on other bodies.

- vii. Maintain the highest standards of conduct and ethics, showing respect for fellow councillors, officers and the community (see **Annex 2.1**).

#### **4. Rights and duties**

##### **4.1. Councillors will:**

- i. Have such rights of access to only 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.
- ii. 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 councillor or officer entitled to know it
- iii. Not issue an order for works to be carried out by or on behalf of the council and nor will they, unless specifically authorised to do so, claim any right to inspect or enter any land.

##### **4.2. For these purposes, 'confidential' and 'exempt' information are defined in the Access to Information Rules (**Annex 4.7**).**

#### **5. Role description**

##### **5.1. Councillors are volunteers and bring a wide variety of skills and experience to the role of councillor. Councillors receive an allowance to cover expenses (Section 7 and **Annex 2.4**). The multi-councillor 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.**

##### **5.2. Representing the local ward community**

- i. Seeking, and listening to, the views of individuals, voluntary groups and businesses within the ward and representing local ward community views.
- ii. Balancing conflicting views and expectations to present a considered view to the council or other agencies which have an impact on that community.
- iii. 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.

##### **5.3. Representing individuals and groups**

###### **5.3.1. Whenever appropriate:**

- i. Helping individuals, groups and businesses, to secure the appropriate services of the council.
- ii. Helping individuals and groups to articulate their needs and have their case or their complaint heard, and when appropriate, presenting their case for them.

#### **5.4. Representing the whole community**

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

#### **5.5. Representing the Council**

- i. Acting as an ambassador of the council in the wider community.
- ii. 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.
- iii. Building and maintaining relationships with the council's partners.

#### **5.6. Committee role**

- i. As a member of the Full Council, to set the corporate plan and to monitor the performance of its committees.
- ii. As a member of a council committee, sub-committee or panel, to monitor 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.
- iii. To review the council's performance in the provision of its policies and services and identify opportunities to provide better value to the community.

### **6. Conduct**

- 6.1. Councillors will at all times observe the Councillors' Code of Conduct (**Annex 2.1**) and will have regard to other documents such as the codes of conduct for planning (**Annex 4.11**) and licensing (**Annex 4.10**) matters and the councillor / officer protocol (**Annex 2.5**).
- 6.2. The council is required to maintain and update a Register of Interests of its councillors. The register is available for public inspection at the council's offices and on the council's website.

## **7. Allowances**

- 7.1. Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme (**Annex 2.4**).

## **8. Champions**

- 8.1. The main purpose of councillor champions is to:
- i. Promote the cause for which they are a champion.
- 8.2. Councillor champions achieve this through:
- i. Being outward-facing, enthusiastic, and focused on raising the profile of the area they champion.
  - ii. Developing in-depth knowledge and understanding of the issue(s) they champion.
  - iii. Using their in-depth knowledge to support the relevant committee Chair(s) and Vice Chair(s).
  - iv. Represent their area both within and outside the council, in line with council policies.
  - v. Engaging relevant stakeholders to include them in the council's work.
  - vi. Acting as an advocate or spokesperson for the council's business and activities.
  - vii. Providing positive support, and on occasions, constructive challenge to officers in driving forward the council agenda on relevant issues.
  - viii. Acting as the council's representative on relevant external bodies where appointed to by the council.
  - ix. Encouraging communications and positive action over the issue(s) they represent.

### **8.3. Role of councillor champions**

- 8.3.1. All councillor champions must, in their role, work towards achieving the agreed priorities and policies adopted by the council. As such the councillor champion must (a) work with and communicate regularly with the relevant committee Chair, (b) produce an annual statement to the relevant policy committee.
- 8.3.2. A councillor champion cannot make decisions and must not commit the council in any way, or in a manner that could be interpreted as being contrary to established policy and practice. They may however confirm a position as stated in a published policy.

#### **8.4. Conditions of being a councillor champion**

- 8.4.1. A councillor champion can be any member of the council who is not a committee Chair.
- 8.4.2. If a councillor champion is a member of the Audit and Scrutiny Committee, and it conducts a review of the area they champion, they must declare a non-pecuniary interest.
- 8.4.3. A councillor champion may be called to provide information to the Audit and Scrutiny Committee, and would be expected to attend as requested.

#### **8.5. Committee Chairs**

- 8.5.1. The Chairs of committees will:
  - i. Acknowledge the right of councillor champions to be consulted on matters relating to their area of interest.
  - ii. Take full account of any views offered by the councillor champions prior to making decisions relating to their area of interest.
  - iii. Co-operate with councillor champions in the formulation of action plans that have been developed with lead officers.
  - iv. Consider nominating champions to represent the council at relevant conferences / seminars on the subject matter of the councillor's interest.

#### **8.6. Allowances**

- 8.6.1. Councillor champions are not entitled to receive Special Responsibility Allowances.
- 8.6.2. Any change to this position would require recommendation by an Independent Remuneration Panel and the approval of Full Council.

#### **8.7. Appointment and Term**

- 8.7.1. All councillor champions will be appointed, and have an allocated area of responsibility agreed, at the Annual Meeting of Full Council.
- 8.7.2. A councillor champion will normally be expected to serve for a minimum 2-year term.
- 8.7.3. In year changes and additions - where necessary, and after consultation with the Chair of the majority group and relevant policy committee Chair - to be appointed at the next available Full Council meeting.

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## **Annex 2.3 – Further Information on the Mayor**

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

- 1.1. There are two distinct facets to the Office of Mayor: ceremonial and civic, because the Mayor is:
  - i. The First Citizen of the Borough of Epsom & Ewell.
  - ii. The Chair of Epsom & Ewell Borough Council.
- 1.2. The Mayor, and in their absence the Deputy Mayor, will be the first citizen of the Borough and have the following roles and functions, to:
  - i. Uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary.
  - ii. Preside impartially over meetings of Full Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community.
  - iii. Be the representative for the council, the community and local democracy, and to work to ensure that the dignity and impartiality of the Office of Mayor is upheld.
  - iv. Ensure that Full Council meetings are a forum for the debate of matters of concern to the local community.
  - v. Promote public involvement in the council's activities.
  - vi. Attend appropriate civic and ceremonial functions.
  - vii. Promote the council as a whole and act as a focal point for the community.

### **2. Contact details**

- 2.1. The Mayor's contact details can be found on their page on the council's website.

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## **Annex 2.5 - Protocol for Managing Councillor / Officer Relations**

### **1 Introduction**

- 1.1 This protocol is primarily based on the guidance and examples referred to in the Nolan Principles and LGA Councillor Workbook.<sup>1</sup>
- 1.2 The purpose of this protocol is to guide councillors 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 codes of conduct for councillors and officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of local government. Therefore the codes 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 councillors and officers. If the protocol is followed, it should ensure that councillors receive objective and impartial advice and that officers are not subject to accusations of bias, and any undue influence from councillors.
- 1.7 Although some of the references in this protocol 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.
- 1.8 This protocol, where applicable, will also apply to co-opted members of committees.

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<sup>1</sup> HM Government (1995) The Seven Principles of Public Life. Online available: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2> [last accessed 07/12/2022]. Local Government Association (2018) Councillor workbook: councillor/officer relations. Online available: <https://www.local.gov.uk/publications/councillor-workbook-councillorofficer-relations> [last accessed 07/12/2022].

- 1.9 If a councillor is unsure about any matter, s/he should contact the relevant Group Chair / 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 Councillors and Officers**

2.1 Elected councillors are responsible for:

- Initiation and direction of council policy.
- Democratic accountability to the electorate for policies and for service delivery.
- Scrutiny of council services.
- Community leadership.
- Promotion of partnership working.

2.2 Officers are responsible for:

- Providing the professional advice that councillors must have before them when formulating policy and when taking decisions.
- Implementing councillors' 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 scheme of delegation.
- Providing information regarding council services and approved council policies.

## **3 Access to Officers**

- 3.1 If councillors wish to raise a request for service delivery (which is a matter covered by the customer relationship management 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, councillors should, in the first instance, contact the relevant Head of Service or a nominated officer.<sup>2</sup> Councillors must seek to avoid, as far as possible, entering an officer's work area and requiring immediate attention, unless they require assistance with urgent ICT or democratic services issues.

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<sup>2</sup> A list of contacts for Heads of Service and other nominated contact officers will be supplied to councillors.

- 3.3 If any councillor 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 any member of the Corporate Management Team.
- 3.4 It is important to ensure timely response to correspondence, both councillors and officers should aim to respond to enquiries and requests they have received within one week from receipt of the enquiry / request.
- 3.5 If a councillor wishes to follow up any unanswered correspondence, they should email the relevant member of the Corporate Management Team to raise the matter.
- 3.6 Where a decision has been delegated to an officer, whether or not in consultation with nominated councillors, it will be notified to all councillors through the council's processes. To assist councillors' understanding, officers should, when requested, explain to a councillor the guidelines they use when making a delegated authority decision.

#### **4 Access to Information and to Council Documents**

- 4.1 Councillors 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 councillors 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 councillors 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, or from one councillor to another.
- 4.3 The courts have ruled that the test of a councillor's need to know derives from the councillor's committee responsibilities, but this will not be exclusively the case. A councillor 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 councillor's 'need to know' will rest with the Chief Executive in consultation with the Monitoring Officer.

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<sup>3</sup> This is covered in more detail in **Annex 4.3, 4.4 and 4.7.**

- 4.4 Councillors 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 councillors are made aware as soon as reasonably possible and before the matter is made public.
- 4.5 It is important for councillors and officers to recognise that information disclosed to a councillor on a 'need to know' basis should not be disclosed to another councillor, unless there is an equal need to know, or the first councillor is notified that the information is being so disclosed.
- 4.6 Any correspondence to residents, from a councillor or officer, may need to be clarified with the relevant Head of Service to ensure accuracy.

## **5 Working Relationships**

- 5.1 Both councillors and officers are servants of the public and they are indispensable to one another. However, their responsibilities are distinct. Councillors are responsible to the electorate and officers are responsible to the council as a whole. The conduct of councillors 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 publicly and privately.
- 5.2 To ensure that the business of the Council is carried out effectively, councillors and officers should endeavour to create a cordial and collaborative working relationship with each other.
- 5.3 Councillors 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 can carry out these functions both independently and free from any pressure.
- 5.4 Councillors can expect the following from officers:
  - (i) A commitment to the Council as a whole and not to any political group.
  - (ii) An effective and efficient performance of their duties.
  - (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) Not using their relationship with councillors to advance their personal interests or influence decisions improperly.
- (xi) That the relationship will never be so close, or appear to be so close, as to bring into question either parties ability to deal impartially with other councillors, officers, 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 councillors:

- (i) A working partnership.
- (ii) An understanding and appreciation of respective roles and pressures.
- (iii) Courtesy and appropriate confidentiality.
- (iv) Not to be put 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 the relationship will never be so close, or appear to be so close, as to bring into question either parties ability to deal impartially with other councillors, officers, individuals or organisations.
- (ix) Compliance with the **Councillors' 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 councillor or officer expressing a relevant concern under the council's Whistleblowing Policy.

5.7 Any officer who is personally connected to a councillor must notify the Monitoring Officer in writing. This would include a family, business or social connection.

- 5.8 Both councillors 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 councillors and officers may also cause embarrassment to other councillors 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 Councillors should not expect officers to attend their homes to conduct or discuss council business. Nor should officers expect to attend a councillor's home. Generally, for most officers, councillors 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 councillors 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 Under no circumstances should a councillor or an officer blind copy any of their exchanges to any external third party, councillor, or officer. If it is important to raise an issue, then, in the case of councillors, such matter must be raised with the Chief Executive in the first instance, and in the case of officers, with their Head of Service.
- 5.12 As a rule, councillors and officers must not 'copy to' or forward their correspondence to any other councillor, officers or external third parties. Nor should such correspondence be disclosed to any third parties be they members of the public, stakeholders, or partners. 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; councillors should seek advice from the Monitoring Officer. The council's policies on data protection and information governance should also be given due consideration.
- 5.13 Councillors 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 councillors, as this could amount to breach of personal data or the unintended release of confidential or sensitive information.



- 5.14 Councillors should never forward officer correspondence on to any resident or other third party. If there is a need to forward contact details for an officer, councillors must only forward details of the relevant officer or Head of Service, after the officer has given their consent.

## **6 When Things Go Wrong**

- 6.1 Where a councillor considers they have not been treated with proper respect or courtesy by an officer, or is otherwise concerned with the performance of an officer, the councillor should first discuss the issue with the relevant Group Chair or Leader. If the councillor 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 the relevant Group Chair 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 councillor, 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 councillors 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 councillors 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 councillor.
- 7.2 The assistance provided by officers can take many forms ranging from a briefing meeting with a committee Chair or other committee 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 councillors. All officers must, in their dealings with political groups and individual councillors, 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 councillors require the attendance of an officer at a political group meeting, they must contact the Chief Executive. Any officer invited to attend meetings organised by any political group should contact the Chief Executive 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 they may be called upon to provide a professional opinion. Officers 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 material 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, councillors should be aware that this would not prevent officers from disclosing such information to other officers of the council 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 councillors and officers.
- 8.2 Any councillor 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 Chair or Chief Executive as appropriate.
- 8.3 If a councillor wishes to approach, or is approached by the media, for a comment or action involving council business, the councillor should make it clear to the media that any comments that are made are those of the councillor 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 Chair.
- 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 Mutual understanding, respect and openness on these sensitive issues are the greatest safeguard of the integrity of the council, its councillors, and officers.
- 9.2 This protocol can be revised or amended at any time in accordance with Constitutional requirements.

## **Annex 2.6 - Indemnities to Councillors and Officers**

1. The 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 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 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.
2. **Exceptions**
  - 2.1. The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
    - i. Fraud, dishonesty or a criminal offence on the part of the employee.
    - ii. Any neglect, error or omission by the employee otherwise than in the course of his duties.
    - iii. Liability in respect of losses certified by the District Auditor as caused by wilful misconduct.
  - 2.2. The indemnity will not apply if an employee, without the written authority of the 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.
  - 2.3. 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.

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## **Annex 3.1 – Further Information on Officers**

Please note: 'Officers' means all employees and staff engaged by the council to carry out its functions.

### **1. Officer roles**

1.1. The Full Council will appoint the following:

- i. Chief Executive, designated the Head of Paid Service
- ii. Director of Corporate Services
- iii. Director of Environment, Housing and Regeneration
- iv. Section 151 Officer
- v. Monitoring Officer

1.2. The following are statutory posts:

- i. Chief Executive: Head of Paid Service (Local Government & Housing Act 1989, Section 4)
- ii. Monitoring Officer (Local Government & Housing Act 1989, Section 5)
- iii. Chief Finance Officer: Chief Finance Officer (Local Government Act 1972, Section 151; Local Government Finance Act 1988)

1.3. The posts will have the functions described below.

### **2. Structure of the council and statutory officer functions**

2.1. 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 below in **Section 6**.

2.2. Functions and responsibilities of the Chief Executive (Head of Paid Service) are as follows:

- i. Discharge of functions by the council. The Head of Paid Service has overall responsibility for the management, appointment, and coordination of officers, and day to day running of the council.
- ii. Overall corporate management and operational responsibility for all services.
- iii. The Chief Executive (Head of Paid Service) is the Proper Officer for all statutory purposes unless otherwise determined by them.
- iv. Provision of professional advice to all political groups and individual councillors.

- v. Together with the Monitoring Officer, responsibility for a system of record keeping for all the council's decisions.
- vi. Representing the council on partnership and external bodies (as required by statute or the council).

2.3. Functions of Chief Finance Officer (Section 151 Officer) are as follows:

- i. 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.
- ii. Ensuring lawfulness and financial prudence of decision making. After consulting the Chief Executive and the Monitoring Officer, the Chief Finance Officer will report to the Full Council and the council's external auditor if they consider that any proposal, decision or course of action: will involve incurring unlawful expenditure; is unlawful; likely to cause a loss or deficiency; or, if the council is about to enter an item of account unlawfully.
- iii. Responsibility for the administration of the financial affairs of the council.
- iv. Contribute to the corporate management of the council, in particular through the provision of professional financial advice.
- v. Providing advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all councillors and supporting and advising councillors and officers in their respective roles.
- vi. Provide financial information to the media, members of the public, the community, and councillors.

2.4. Functions of the Head of Legal Services (Monitoring Officer):

- i. To act as the council's Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989 as amended.
- ii. To ensure that an up-to-date version of the Constitution is maintained, in consultation with the Standards and Constitution Committee, and that it is available to councillors, officers and the public.
- iii. Ensuring lawfulness and fairness of decision making. After consulting the Chief Executive and Chief Finance Officer, the Monitoring Officer has a duty, by virtue of Section 5 of the Local Government and Housing Act 1989, to report to the Full Council if they consider 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 Full Council.

- iv. Contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards and Constitution Committee.
- v. Conduct investigations into allegations against councillors made to the council and arrange, if necessary, for the Standards and Constitution Committee to receive reports or recommendations in respect of them.
- vi. 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.
- vii. Provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all councillors and to support and advise councillors and officers in their respective roles.

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

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

### **4. Conduct**

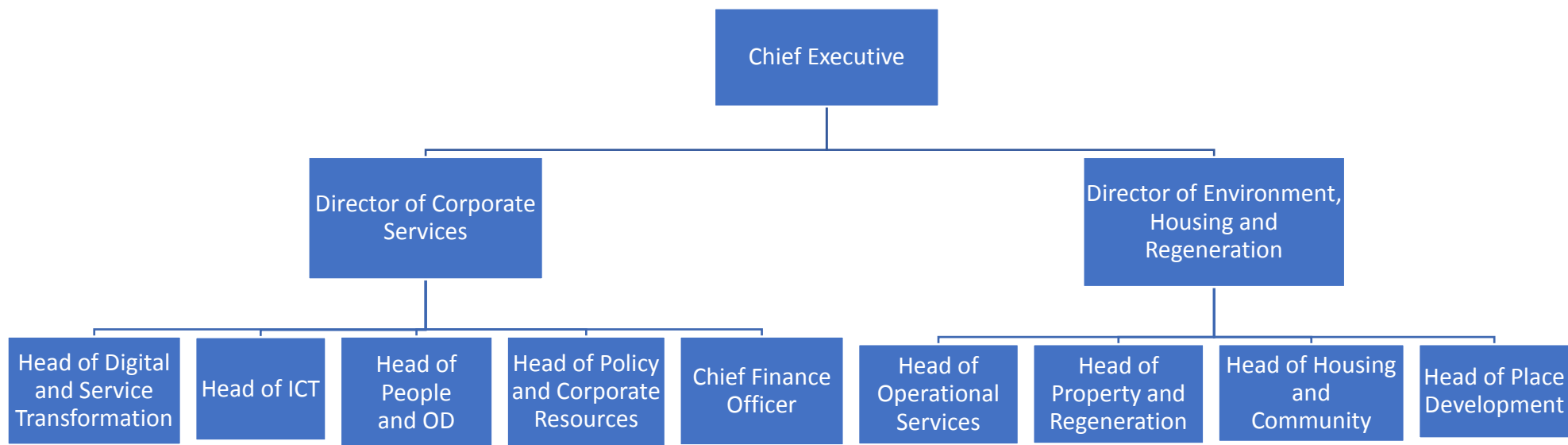
- 4.1. Officers will comply with the **Officers' Code of Conduct**, **located in the council's employment policies**, and other relevant codes and protocols; in particular, the councillor / officer protocol set out in **Annex 2.5**.

### **5. Employment**

- 5.1. The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in **Annex 3.3**.

### **6. Management structure chart**

- 6.1. The chart below illustrates the current management structure of the council:





## **Annex 3.3 Officer Employment Procedure Rules**

### **1. Recruitment and Appointment**

#### **1.1. Declarations**

- i. 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.
- ii. 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 them.

#### **1.2. Seeking support for appointment**

- i. 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.
- ii. No councillor or officer will seek support for any person for any appointment with the council.

### **2. Recruitment of Chief Executive**

- 2.1. The Full Council will approve the appointment of the Chief Executive following the recommendation of the panel referred to in 2.2 below.
- 2.2. For the recruitment of a Chief Executive (Head of Paid Service), a panel of five councillors, composed of the Chair and Vice Chair of Strategy and Resources Committee and three other councillors, drawn from councillors across the council, appointed by that committee, trained in interview techniques (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 3.1 below.

### **3. Recruitment of Statutory Officers and Directors**

- 3.1. Where the council proposes to appoint a statutory officer or Director, the Chief Executive, in consultation with the Panel referred to in 3.2 below, will draw up a statement specifying:
  - i. The duties of the officer concerned.
  - ii. Any qualifications or qualities to be sought in the person to be appointed.

- iii. 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.
  - iv. Arrangements for a copy of the statement mentioned in paragraph 2.1 to be sent to any person on request.
- 3.2. The Chief Executive and Head of People and Organisational Development will, after consultation with the Panel, interview and select candidates for final interview by that Panel. The Panel will consist of the Chair of Strategy and Resources Committee, three other councillors trained in interview techniques (to include appropriate minority group representation).
- 3.3. The panel referred to in 3.2, will have the power to recommend appointments of statutory officers to Full Council, and appoint Directors directly.
- 4. Officers below Directors**
- 4.1. Appointment of officers below Directors is the responsibility of the Chief Executive or their nominee and may not be made by councillors.
- 5. Disciplinary Action for Alleged Misconduct (including dismissal)**
- 5.1. Involvement of councillors: Councillors will not be involved in any disciplinary action against any officer below Director / statutory officer, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the council's disciplinary, capability and related appeals procedures.
- 6. Indemnity to Staff**
- 6.1. Information on the indemnities the council has in place for officers and councillors is available in **Annex 2.6**.

## **Annex 3.4 – Monitoring Officer Protocol**

### **1. Purpose of Document**

- 1.1. The purpose of this protocol is to explain the role of the Monitoring Officer (“MO”) and provide a guide for officers and councillors as to how it will be exercised in Epsom and Ewell Borough Council.

### **2. The Monitoring Officer and Deputy Monitoring Officer**

- 2.1. The council has a MO under Section 5 of the Local Government and Housing Act 1989.
- 2.2. The MO has designated the Principal Solicitor as the Deputy MO under Section 5 (7) of the 1989 Act. The Deputy MO can perform all the MO’s duties and deputise for the MO when required.
- 2.3. Both the MO’s and Deputy MO’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.
- 3.2. In preparing a Section 5 report, the MO must consult, as far as practicable the council’s Head of Paid Service (the Chief Executive) and the Section 151 Officer (Chief Finance Officer).
- 3.3. As soon as the MO has prepared the report, they must send it to every councillor.
- 3.4. The Full Council must consider the report within 21 days of the MO having sent it to councillors.
- 3.5. Once the MO 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 the Full Council have considered it.

### **4. Duties of the Council towards the Monitoring Officer**

- 4.1. Under Section 5 (1)(b) of the Local Government and Housing Act 1989, the council must provide the MO with such staff, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.

## **5. Functions of the Monitoring Officer**

- 5.1. The MO will ensure that an up-to date version of the Constitution is maintained and will ensure that it is available to councillors, officers and the public.
- 5.2. The MO will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards & Constitution Committee.
- 5.3. The MO will conduct or arrange for investigations to be conducted into allegations against councillors made to the council and arrange, if necessary, for the Standards & Constitution Committee to receive reports or recommendations in respect of them.
- 5.4. The MO is the proper officer for access to information and 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.
- 5.5. The MO will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all councillors and officers in their respective roles.
- 5.6. The MO will support the overview and scrutiny work of the Audit and Scrutiny Committee as set out in **Annex 4.9**.
- 5.7. The MO 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 Full Council on this at least once every year.
- 5.8. The MO must establish and maintain the register of the councillors' and co-opted members' interests including disclosable pecuniary interest which must be available for inspection on the council's website.
- 5.9. The MO shall keep the Common Seal of the council in some safe place secured by a lock and the keys.
- 5.10. The MO may attest documents that the Common Seal has been affixed to.
- 5.11. The MO or any other officer authorised by them may authenticate any document that may be required for legal proceedings.
- 5.12. The MO may grant dispensations to councillors where the council would not be able to discharge business unless a dispensation was granted (Section 33 Localism Act 2011).
- 5.13. The MO may instruct external legal support as and when necessary, in connection with a matter concerning the council.
- 5.14. The MO may settle legal proceedings in the best interests of the council.

5.15. The MO shall act as the ‘proper officer’ to receive complaints that councillors have breached the Councillors’ Code of Conduct.

## **6. Operative Provisions of the Protocol**

6.1. The MO will receive:

- i. Advance notice of Strategic Management Team meetings, copies of all agendas and reports.
- ii. Advance notice of meetings whether formal or informal, between the Chief Executive / Directors / Heads of Service and Group Leaders / committee Chairs where any procedural, vires or other constitutional issues are likely to arise.
- iii. Advance notice of all emerging issues of concern, including legality, probity, vires and constitutional issues.
- iv. Copies of all reports to councillors.

6.2. The MO has the right:

- i. To attend and speak at any Strategic Management Team and Corporate Management Team meetings.
- ii. To call for any relevant information, whether confidential or otherwise, and to give that information as appropriate to any body, including the Standards and Constitution Committee, Internal or External Audit, or the Local Government and Social Care Ombudsman.
- iii. To withhold the identity of a complainant who has made an allegation of misconduct against a councillor, in consultation with the Chair of the Standards and Constitution Committee and the Independent Person. Such anonymity will last until preparation for the hearing of the complaint.
- iv. To withhold from a councillor, in consultation with the Chair of the Standards and Constitution Committee and the Independent Person the fact that a complaint has been received against them if it is decided that notification may prejudice any subsequent investigation.
- v. To make non-substantive changes / updates to the Constitution, that is those that do not change a process or meaning of a section / paragraph, in consultation with the Chair of Standards and Constitution Committee. The MO can also make any changes agreed by the Full Council.

6.3. The MO will:

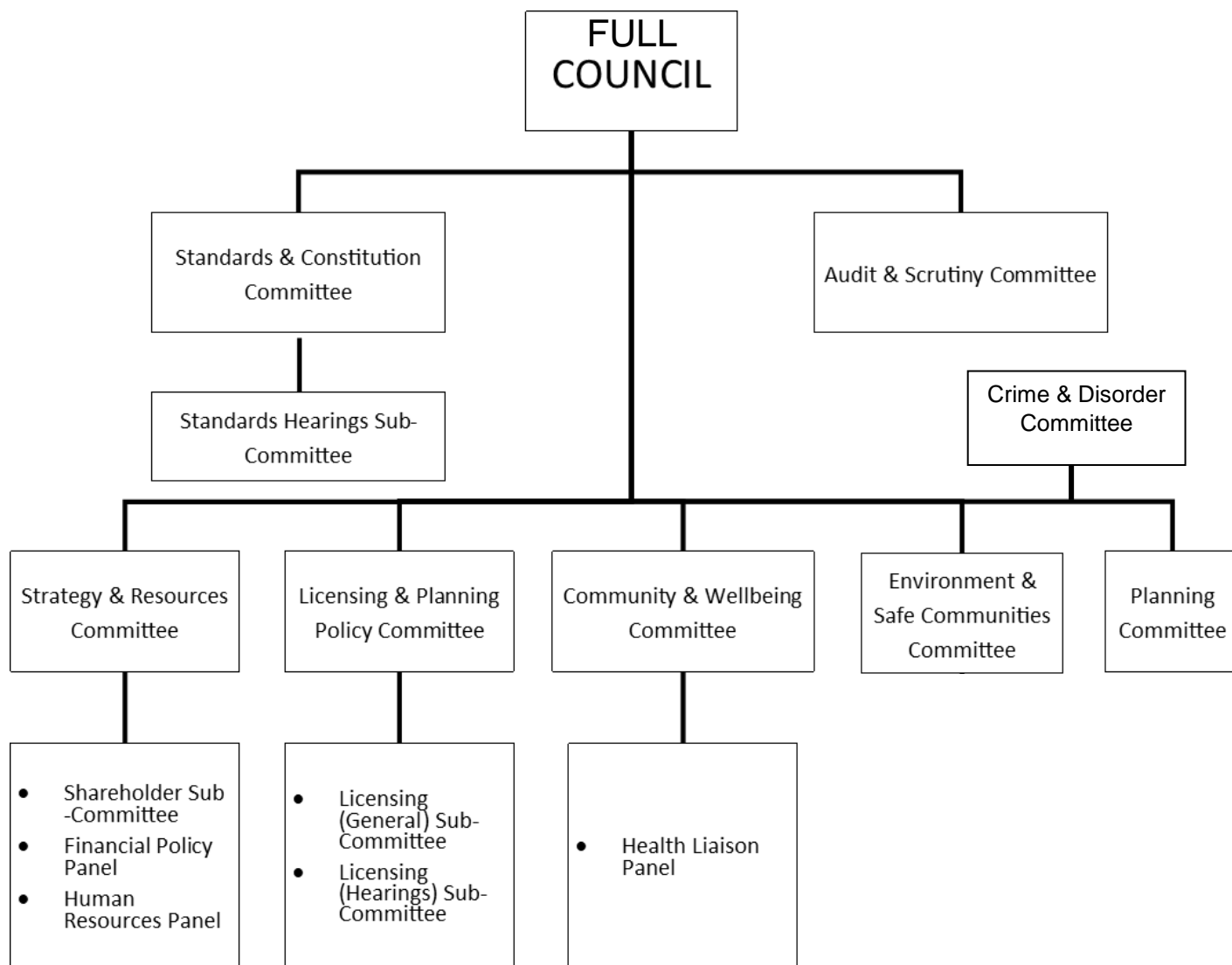
- i. Ensure the Head of Paid Service and the Section 151 Officer have up-to-date information regarding emerging issues.
- ii. Set up arrangements within the authority to ensure that any allegation, made in writing, that a councillor has or may have failed to comply with the authority's codes of conduct, is referred to the MO immediately upon receipt by the council.
- iii. Maintain a register of such allegations to ensure that the council can comply with its obligations under any legislation.
- iv. Refer all substantive allegations of member misconduct to the Standards Hearing Sub-Committee and refer all other matters for action as appropriate.
- v. Act as Chair of the Statutory Officer Group and through this Group will meet the Head of Paid Service and Section 151 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.
- vi. 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 their functions.
- vii. Have control of a budget sufficient to enable them to seek Counsel's opinion on any matter concerning the MO's functions.
- viii. Be responsible for preparing a training programme for councillors on the ethical framework.
- ix. Report to the Standards and Constitution Committee from time to time on the Constitution and any changes.
- x. Appoint a deputy who will be kept briefed on emerging issues. The nominated deputy will have all the rights and powers of the MO when discharging the role of MO.

6.4. The MO may:

- 6.4.1. In consultation with the Mayor and the Chair of the Standards and Constitution Committee, defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved.
- 6.4.2. Make a report to the council from time to time as necessary on the staff, accommodation and resources required to discharge the MO's functions.

## Annex 4.1 - Further Information on the Council's Committees

### 1. Diagram of Committee Structure



## **2. The Role of the Full Council**

- 2.1. The Full Council acts as a forum where **all** councillors can meet on a regular basis, act as a focus for the council, discuss and debate issues of importance to the Borough and decide the council's Budget and Policy Framework.

### **2.2. Budget and Policy Framework**

- 2.2.1. Information on the council's Budget and Policy Framework can be found in **Annex 4.8**.

### **2.3. Functions of the Full Council**

- 2.3.1. The functions of the Full Council are included in its terms of reference, which are available in **Annex 4.2**.

### **2.4. Full Council meetings**

- 2.4.1. There are three types of meetings of the Full Council, and they will be conducted in accordance with its standing orders, available in **Annex 4.3**:
- i. The Annual Meeting.
  - ii. Ordinary meetings.
  - iii. Extraordinary meetings.

## **3. Policy Committees**

- 3.1. Full Council appoints five policy committees, whose terms of reference are available in **Annex 4.2**. The committees are:
- i. Community and Wellbeing
  - ii. Environment and Safe Communities
  - iii. Strategy and Resources
  - iv. Licensing and Planning Policy
  - v. Crime and Disorder
- 3.2. In accordance with the aims and objectives set by the Full Council in its corporate plan, the principles of best value, and within the approved budget and policy framework, policy committees will:
- i. Deal with all policy and operational matters, including statutory responsibilities.
  - ii. Develop strategies and policies and put them to the Full Council for approval.



- iii. Draw up revenue budgets and develop proposals for capital projects, and submit these to the Strategy and Resources Committee for recommendation to Full Council where these form part of the policy framework.
- iv. Implement approved capital projects.
- v. Develop and maintain communication and consultation with the public, local businesses, voluntary and other relevant organisations, and form partnerships and influence partners.
- vi. Distribute grant aid or award rate relief in accordance with conditions laid down by Full Council.
- vii. Determine the level of delegation to officers.

#### **4. Sub-Committees and working groups**

- 4.1. Committees may also appoint sub committees and working groups, and if appropriate agree their terms of reference, a chair and, if considered necessary, a vice chair and substitute committee members of the sub-committee or working group. The Full Council may also set up time-limited sub-committees for specific purposes.

4.2. The terms of reference for all the sub-committees are set out in **Annex 4.2.**

#### **5. Remit of committees**

- 5.1. For the avoidance of doubt, if a particular matter or project falls under the terms of reference of more than one committee, the Full Council may designate one committee as the lead committee for a matter. The lead committee will have all the powers and functions it needs to make decisions on that matter, even if some fall within the remit of another committee. A lead committee has the power to refer the matter to another committee for decision; or for comment or recommendation to Full Council.
- 5.2. No committee, sub-committee, panel, working group or officer shall take action requiring expenditure unless suitable budgetary provision has been approved.
- 5.3. Decisions of committees and sub committees taken in exercise of any delegated functions are the decisions of the council for all purposes unless rescinded. Most decisions cannot be implemented until five working days after publication of the Decision Notice, this is to allow for a possible scrutiny call in.
- 5.4. Each committee can determine the content of any representations to be made to central government, local authority associations, members of parliament, any national organisation, concerning any matter within that committee's remit.

- 5.5. The council has the following committees, in addition to the policy committees, which help it to discharge the functions described in the Full Council's terms of reference (Annex 4.2); they are:
- i. Audit and Scrutiny Committee
  - ii. Planning Committee
  - iii. Standards and Constitution Committee
- 5.6. 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 Full Council if it they do not have such authority. It is also open to a majority of committee members present, and able to vote, at a meeting to agree to refer a matter to Full Council.
- 5.7. The committees, their terms of reference and number of councillors on each committee, is set out in Annex 4.2.
- 6. Appointment of councillors to committees**
- 6.1. The Full Council will appoint the committee members, Chairs and Vice Chairs to serve on the committees, subject to the right of any political group within the meaning of the Local Government & Housing Act 1989 and any regulations thereto, to make nominations to those appointments.
- 7. Conflicts**
- 7.1. A Chair of a policy committee cannot be a member of or a substitute on Strategy and Resources Committee.
- 7.2. Members of the Audit & Scrutiny Committee may not scrutinise any decision in which they were involved as a member of a policy committee.
- 8. Arrangements for meetings**
- 8.1. There are currently four cycles of meetings in each municipal year: June - July; September - December; January - February; March - April for policy committees. Each policy committee 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.
- 9. Details relating to committees, sub-committees, area committees, advisory panels and joint arrangements**
- 9.1. Details and further information on the council's committees, sub-committees, area committees, advisory panels, and joint arrangements can be found in Annex 4.2.
- 10. Arrangements to promote wellbeing**

10.1. The council, in order to promote the economic, social or environmental wellbeing of its area may, subject to the other provisions of this Constitution:

- i. Enter into arrangements or agreements with any person or body.
- ii. Co-operate with, or facilitate or coordinate the activities of any person or body.
- iii. Exercise on behalf of that person or body any functions of that person or body.

## **11. Access to Information**

11.1. The Access to Information Procedure Rules is available in **Annex 4.7**.

11.2. If the joint committee contains councillors 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.

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

12.1. The council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority. The reverse also applies, whereby the council may accept such a delegation from another local authority.

12.2. 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.

## **13. Contracting out**

13.1. 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.

13.2. 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.

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## **Annex 4.5 – Protocol for Members of the Public Speaking at Committees**

### **1. Questions and statements from the public**

- 1.1. At ordinary meetings of the council's committees and sub-committees, up to 30 minutes will be set aside for questions and statements:
  - i. On matters within the terms of reference of the body in question.
  - ii. From any member of the public who lives, works, attends an educational establishment, or who owns or leases land in the Borough.
- 1.2. This protocol is not applicable to advisory panels, regulatory committees, Epsom Walton Downs Conservators and Epsom Walton Downs Consultative Committee.
- 1.3. The topic of the question or statement may not relate to:
  - i. Specific planning or licensing cases, see **Annex 4.11 and Annex 4.10** respectively for guidance on these.
  - ii. The personal affairs of an individual.
  - iii. A matter which is exempt from disclosure or confidential under the Local Government Act 1972.
- 1.4. Questions and statements which in the view of the Chair are defamatory, offensive, vexatious or frivolous will not be accepted.
- 1.5. Each question or statement will be limited to 3 minutes in length.
- 1.6. This protocol does not cover questions and statements from the public for meetings of the Planning Committee or licensing sub-committees, which are not permitted. The protocols for public speaking at those committees are set out in **Annex 4.10** (licensing) and **Annex 4.11** (planning). For the avoidance of doubt, questions and statements from the public relating to planning or licensing committees matters can only be made at those specific committees with the consent of the Chair of that committee.

### **2. Procedure for Questions**

- 2.1. The chair of the committee shall indicate the item on the agenda at which questions may be put by individual members of the public. Questions are welcomed from the members of the public and must satisfy the conditions below.

- 2.2. All questions must consist of one question only they cannot consist of multiple parts. This does not preclude a member of the public from asking another question on a separate topic, time permitting.
- 2.3. A person who wishes to ask a question must submit their question in writing (either in hard copy or by email) to the Democratic Services Manager at [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk). The written question must arrive by noon on the third working day before the day of the meeting.
- 2.4. The member of the public submitting a question must set out:
  - i. the wording of the question they wish to ask.
  - ii. an address, email address or telephone number at which they can be contacted before and after the meeting.
  - iii. The details of where they live, work, attend an educational establishment, own or lease land in the Borough.
- 2.5. Following receipt of a written question, the Democratic Services Manager will ensure that the member of the public asking the question is contacted and told whether their request complies with the conditions above. 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.
- 2.6. At the committee meeting, questions must be addressed to the Chair of the relevant committee / sub-committee. The Chair will invite the questioner to put the question at the meeting.
- 2.7. The Chair may decline to answer a question, 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.
- 2.8. Questions regarding items on the agenda for the meeting may not receive an answer, as the matter will not yet have been considered.
- 2.9. At the meeting the Chair 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 arise from the reply given. The Chair may decline to answer a supplementary question or invite other councillors or officers of the relevant body to contribute to a response.
- 2.10. If a member of the public wishes to ask more than one question, their second question shall be taken after all other individuals who wish to ask a question have been given the opportunity to do so.

### **3. Procedure for statements**

- 3.1. As an alternative to submitting a written question, a member of the public may address a meeting of a committee or sub-committee for up to three minutes.
- 3.2. A person wishing to make a statement at a meeting must provide written notice (via hard copy or email) including a summary of the subject matter, to the Democratic Services Manager. The written notice must arrive by noon one working day before the day of the meeting.
- 3.3. Speakers may not engage in further debate once their statements have been made.

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## **Annex 4.6 – Protocol for Non-Committee Members Speaking at Committees**

### **1. Introduction**

- 1.1. Rights for non-committee members to attend and speak at meetings are set out below. The rules of procedure for committees, also known as ‘standing orders’, are located at **Annex 4.4**.
- 1.2. This protocol does not apply to Licensing Sub-Committees and Standards Hearing Sub-Committee and Planning Committee, which have specific protocols. Any member of the council may attend the meetings of all other committees and advisory panels as an observer and may speak if permission is given by the Chair. Permission to speak will not normally be refused by the Chair.

### **2. Procedure**

#### **2.1. Before the meeting**

- i. Attendance only: All non-committee members wishing to be present at a committee, sub-committee or advisory panel meeting are requested to inform the Chair (with a cc to Democratic Services) prior to the meeting.
- ii. To speak: All non-committee members wishing to speak at a committee, sub-committee or advisory panel meeting, must inform the Chair - with a cc to Democratic Services - that they wish to speak at a meeting, and identify the agenda item on which they wish to speak. This notification must be made by noon on the day before the meeting. The right to speak will be to express an opinion on the contents of a report on the agenda.

#### **2.2. At the meeting**

- i. The Chair will inform the Committee if a non-committee member has requested to speak, and on which agenda items, and outline the procedure that will be followed.
- ii. The Chair of the meeting has discretion regarding the arrangements for non-committee members speaking. The Chair will determine the point in committee debate when the councillor may speak. Arrangements agreed by the Chair should be consistently applied throughout the meeting.
- iii. It will not be permissible to ask questions of officers or of the Committee at the meeting.

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## **Annex 4.7 - Access to Information Procedure Rules**

### **1. Scope**

- 1.1. These rules apply to all meetings of Full Council, its committees, sub-committees, advisory panels that are held in public (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 to the exclusions shown in Section 9.

### **4. Notices of meeting**

- 4.1. The council will give at least five clear working days' notice of any meeting by posting details of the meeting on its website and 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 working 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 agenda has been published, the Chief Executive will ensure such reports are available as soon as possible.

### **6. Supply of copies**

- 6.1. The council will supply paper copies of any of the following, to any person on payment of a charge for postage and any other costs.
  - i. Agenda and reports which are open to public inspection.
  - ii. Further statements or particulars necessary to indicate the nature of the items in the agenda.
  - iii. If the Chief Executive thinks fit, any other documents supplied to councillors in connection with an item.

### **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:

- i. 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.
- ii. 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.
- iii. The agenda for the meeting.
- iv. Reports relating to items when the meeting was open to the public.

## **8. Background papers**

### **8.1. List of background papers**

8.1.1. 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 their opinion:

- i. Discloses any facts or matters on which the report or an important part of the report is based.
- ii. Have been relied on to a material extent in preparing the report.

8.1.2. Papers will not include published works or those which disclose exempt or confidential information (as defined in Section 9).

### **8.2. Public inspection of background papers**

8.2.1. The council will make available for public inspection for four years after the date of the meeting, a copy of each of the documents on the list of background papers.

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

### **9.1. Confidential information - requirement to exclude public**

9.1.1. 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.

9.1.2. 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

### **9.2. Exempt information - discretion to exclude public**

9.2.1. 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.

- 9.2.2. 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.
- 9.2.3. 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 person (including the authority holding that information)
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.
6.	Information which reveals that the authority proposes: <ul style="list-style-type: none"> <li>a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>b) to make an order or direction under any enactment.</li> </ul>
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

- 9.3. Information falling within any of paragraphs 1 - 7 in the table above, 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.

## **10. Summary of public's rights**

- 10.1. 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.

## **Annex 4.8 – Budget and Policy Framework Procedure Rules**

### **1. The Budget and Policy Framework**

- 1.1. The Full Council will be responsible for the adoption of its Budget and Policy Framework (“Framework”) for decision-making, as set out below. Once the Framework is in place, it will be the responsibility of the policy committees to implement it.
- 1.2. The Budget and Policy Framework should not be confused with the Council’s Operating Framework. The former is a part of the latter, which contains operational protocols, policies and processes by which the council operates.
- 1.3. The Framework is made up of the council's policies, plans and strategies, some mandatory and others discretionary. The framework is subject to any variation that may from time to time be made in response to legislation. Any change to the framework, which is necessary as a result of changes in legislation, will be incorporated into this Constitution by the Monitoring Officer without the need for the agreement of Full Council.
- 1.4. The Framework includes the mandatory plans and strategies below, which are required by law, while the council's discretionary plans and strategies, including the corporate plan, are available on its website:

#### **1.4.1. Mandatory**

- i. Local Development Framework and Local Area Action Plans
- ii. Statement of Licensing Policy
- iii. Statement of Gambling Policy
- iv. Crime & Disorder Reduction Strategy
- v. Pay Policy Statement

#### **1.4.2. [Discretionary strategies and plans](#)**

#### **1.4.3. The budgetary elements of the Framework include:**

- i. The allocation of financial resources to different services and projects.
- ii. Any proposed contingency funds.
- iii. Setting the Council Tax for the Borough.
- iv. Decisions relating to the control of the council's borrowing requirement.
- v. The control of capital expenditure.

- vi. The setting of limits to the amounts by which committees and officers can transfer expenditure between different budget heads (virement).
  - vii. Medium Term Financial Strategy (MTFS).
  - viii. Treasury Management Strategy
  - ix. Capital Strategy
  - x. Budget Book
  - xi. Financial Regulations (**Annex 5.1**)
  - xii. Any additional budget targets that Strategy and Resources Committee agree each year.
- 1.5. Note: any operational policies not listed above are not considered part of the Framework in relation to Section 4 below, concerning in-year changes. Amendments and updates to said operational policies can be approved by the Strategic Management Team.

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

- 2.1. The process by which the Budget and Policy Framework shall be developed is:
- i. Each year the Strategy and Resources Committee will recommend to Full Council a programme for establishing the Budget and Policy Framework for the following year. Once agreed by Full Council, there will be 4 weeks for public consultation. Following any amendments, the framework will be published.
  - ii. Within the overall programme, any strategic policy or resource issues that are requested as studies by the Audit and Scrutiny Committee, will be identified. These studies include those identified by each policy committee, and which relate to policy issues on which the committee would like to make recommendations to Full Council, and which form part of the Budget and Policy Framework.
  - iii. Policy studies undertaken by the Audit and 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, who will then develop proposals to be submitted to Full Council.
  - iv. In approving the Policy and Budgetary Framework, presented to it by the Strategy and Resources Committee, Full Council will also specify the extent of virement within the budget, and the degree of in-year changes to the policy framework which may be undertaken by policy



committees, in accordance with sections 3 and 4 of these Rules (virement and in-year adjustments). Any other changes to the Budget and Policy Framework are reserved to Full Council.

### **3. Virement**

- 3.1. The Full 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 Full 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 for changes:

- i. Necessary to meet a budgetary constraint.
- ii. Necessary to ensure compliance with the law, ministerial direction or government guidance.
- iii. In relation to the policy framework, in respect of a policy which would normally be agreed annually by the Full Council following consultation, but where the existing policy document is silent on the matter under consideration.
- iv. That apply to operational policies as per paragraph 1.4.

- 4.2. The Full 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:

- i. On the recommendation of a policy committee.
- ii. In response to a report from the Chief Executive.
- iii. On a motion, after proper notice in accordance with the Full Council standing orders set out in **Annex 4.3**.

- 4.2.1. In all cases above, changes need to be after a period of consultation with citizens and stakeholders appropriate to the nature of the changes proposed.

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## **Annex 4.9 – Overview, Audit and Scrutiny (including Call-in Procedure and Councillor Calls for Action)**

### **1. Arrangements for scrutiny at the council**

- 1.1. The Council will appoint a committee to discharge the scrutiny and review functions conferred by the Local Government Act 2000 (Section 9JA) in relation to the following matters:
  - i. Local democracy and the achievement of effective, transparent and accountable decision making by the council.
  - ii. The council's budget, the management of its budget, capital programme, revenue borrowing and assets and its audit arrangements.
  - iii. The social, economic and environmental well-being of the Borough.
  - iv. The provision, planning, management and performance of all council services.
  - v. The council's compliance with its duty concerning Best Value, in accordance with the Local Government Act 1999.
- 1.2. The functions detailed in 1.1 are discharged by the council's Audit and Scrutiny Committee ("Committee"). The Committee will arrange all overview and scrutiny functions on behalf of the council, including those 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.
- 1.3. The Audit and Scrutiny Committee will be responsible for:
  - i. Arranging the overview and scrutiny functions on behalf of the council.
  - ii. Ensuring that the council complies with its duty concerning Best Value, in accordance with the Local Government Act 1999.
  - iii. Approving an annual overview and scrutiny Work Programme.
  - iv. Monitoring the council's financial and audit arrangements and considering regular reports from the auditors on the outcome of audits.
  - v. Putting in place a system to ensure that referrals from the Committee to Full Council and to the policy committees, either by way of report or for reconsideration, are managed efficiently.

- vi. Monitoring progress on the council's corporate plan, and scrutinise the application of the council's Risk Management Strategy.

1.4. The Committee's terms of reference can be found in **Annex 4.2**.

## **2. Who may sit on the Audit and Scrutiny Committee?**

2.1. All councillors, apart from policy committee Chairs, may be members of the Audit and Scrutiny Committee.

2.2. No councillor may be involved in scrutinising a decision in which they have been directly involved, that is, as a member of the decision-making committee.

## **3. Co-optees**

3.1. The Audit and Scrutiny Committee may seek to co-opt other councillors to constitute sub-committees, or panels, provided that no councillor may scrutinise a decision in which they been involved (see 2.2).

3.2. The 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 and Scrutiny Committee**

4.1. There shall be at least four ordinary meetings of the Audit 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 Chair, by any three members of the Committee or by the scrutiny officer, at present the Business Assurance Manager, if they consider it necessary or appropriate.

## **5. Quorum**

5.1. The quorum for the Audit and Scrutiny Committee shall be as set out for committees in **Annex 4.4**.

## **6. Chair of the Audit and Scrutiny Committee**

6.1. The Chair of the Committee will be appointed by the Full Council, from among the councillors sitting on the Committee.

## **7. Work programme and Annual Report**

7.1. The Committee will be responsible for setting its own work programme and in doing so it shall take into account, along with other considerations, the wishes of its committee members, including those who are not members of the largest political group on the council.

7.2. The Committee will report annually to Full Council on its workings and make recommendations for future work programmes and amending working methods if appropriate.

## **8. Agenda items**

- 8.1. Any councillor who wishes to have an item included on the agenda of the Committee, should give written notice of the item to the scrutiny officer. If the scrutiny officer receives such a notification they will, in consultation with the Committee Chair and Vice Chair, include it on the first available agenda of the Committee for consideration by the Committee. The reports and documents associated with the agenda item should be submitted to the scrutiny officer to upload to the committee report system and committee forward plan. However, where the notification is deemed to be a Councillor Call for Action, the Councillor Call for Action Protocol shall be implemented (see **Section 15**).
- 8.2. The Committee shall also respond, as soon as its work programme permits, to requests from the Full Council, and if it considers it appropriate the policy committees, to review particular areas of council activity. Where it does so, the Committee shall report its findings and recommendations back to Full Council and / or the relevant policy committee. The Full Council and / or the relevant policy committee shall consider the report of the Audit and Scrutiny Committee at its next available meeting.

## **9. Policy and development overview**

- 9.1. The role of the Audit 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 (**Annex 4.8**).
- 9.2. In relation to the development of the council's approach to other matters not forming part of its Budget and Policy Framework (**Annex 4.8**), the Audit and 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 Audit and Scrutiny Committee may hold enquiries and investigate the available options for future direction in policy development. The Committee may appoint advisers and assessors to assist them in this process. The Committee 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: in line with the council's Budget and Policy Framework (**Annex 4.8**), **Procurement Strategy** and Contract Standing Orders (**Annex 5.2**).

## **10. Reports from the Audit and Scrutiny Committee**

- 10.1. Once the Audit and Scrutiny Committee has completed its deliberations on any matter it will prepare a formal report and submit it, via the scrutiny officers, for consideration by the relevant policy committee; if the proposals are consistent with the existing Budget and Policy Framework (**Annex 4.8**), or to the Full 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 Audit and Scrutiny Committee cannot agree on one single final report to the Full Council or the relevant policy committee, as appropriate, then up to one minority report may be prepared and submitted for consideration by the Full Council or policy committee with the majority report.
- 10.3. The Full Council or the relevant policy committee shall consider the report of the Audit and Scrutiny Committee at its next available meeting.
- 10.4. When the Full Council meets to consider any referral from the Audit and Scrutiny Committee on a matter which would impact on the Budget and Policy Framework (**Annex 4.8**), it shall also consider the response of the relevant policy committee to the Audit and Scrutiny Committee's proposals, and shall if necessary, defer consideration of those proposals until after the next meeting of the relevant policy committee.

## **11. Rights of Audit and Scrutiny Committee members to documents**

- 11.1. All members of the Audit and Scrutiny Committee ("Members") have the right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules (**Annex 4.7**). Members, 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 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 the Chair of a policy committee, the Chief Executive and / or any Head of Service to attend before it to explain matters within its remit, as follows:
  - i. Any particular decision or series of decisions.
  - ii. The extent to which the actions taken implement council policy or the performance of the council.

- 12.2. It is the duty of those persons named in Section 12.1 to attend if so required. Save in exceptional circumstances, and in agreement with the Chief Executive, no officer below Director or Head of Service shall be required to appear before the Audit and Scrutiny Committee.
- 12.3. If any councillor or officer is required to attend the Audit and Scrutiny Committee under the Section 12.1 provision, the Chair of Audit and Scrutiny Committee will inform the scrutiny officer. The scrutiny officer shall inform the councillor or officer in writing, giving at least five working days' notice of the meeting at which they are 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 councillor or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 12.4. If, in exceptional circumstances, the councillor or officer is unable to attend on the required date, the Audit and Scrutiny Committee shall, in consultation with the councillor 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 Audit and Scrutiny Committee may invite people other than those people referred to in Section 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 councillors 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 procedure**

#### **14.1. Introduction**

- 14.1.1. When a decision has been made by policy committees, five clear working days must pass before that decision can be implemented, subject to the conditions below. During this period, councillors may use the procedure set out in this Section to "call in" that decision. If a request is made to call in a decision, and that request is valid, a meeting of the Audit and Scrutiny Committee will be held where that decision will be subject to review on scrutiny. The Committee will then be able to make recommendations to the relevant policy committee as to whether the decision should be implemented

unamended, implemented with changes, or withdrawn entirely. This Section explains the call-in process in more detail.

- 14.1.2. Call-in should only be used in exceptional circumstances. In a committee system authority, councillors have the opportunity to influence decisions on a cross-party basis in policy committees.
- 14.1.3. It is recommended that councillors wishing to make a request for a call-in contact the Monitoring Officer before doing so to ensure that advice and support can be given.
- 14.1.4. The power to call decisions in, does not apply to decisions made by quasi-judicial or regulatory committees. Separate procedures apply for planning and licensing matters, [Annex 4.11](#) and [Annex 4.10](#) respectively. However it does apply to officer delegated decisions as per [Annex 3.2](#) (Section 4).

## **14.2. The call-in procedure**

- 14.2.1. When a decision or series of decisions is / are made by a policy committee or under joint arrangements, notice of those decisions shall be published electronically by Democratic Services to a group e-mail address which includes the scrutiny officers and members of the Audit and Scrutiny Committee, normally within two working days of the meeting when they are made. The notice of decisions shall also be available on request in hard copy from the Town Hall.
- 14.2.2. The decision notice will:
  - i. Bear the date on which it is published.
  - ii. State whether any decision made and referred to in the notice is urgent (in the opinion of the Chief Executive or their nominee), and will therefore not be subject to call-in.
  - iii. Specify that the decisions set out in the notice which are subject to call-in may be implemented on the expiry of five clear working days after the publication of the decision, unless it is called in. The five clear working days will not include the date of publication of the notice or the date of implementation. This period can be referred to as the “call-in period”.
  - iv. 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 meeting’s minutes).”
- 14.2.3. During the call-in period, any councillor can instigate a call-in. To instigate a call-in, a councillor needs to submit a ‘valid’ call-in, see Section 14.2.4, to the scrutiny officer (Business Assurance Manager). Note: a valid call-in request



will result in the convening of a meeting of the Audit and Scrutiny Committee in line with the arrangements set out below

14.2.4. For the purposes of this section, a valid call-in request is one that:

- i. Is made in writing and sent by e-mail, or in hard copy, to the scrutiny officer.
- ii. Makes clear the specific decision that those councillors wish to call in. A request to collectively call in all decisions made at a particular meeting will not be valid, although requests to call in those decisions on an individual basis may be.
- iii. Cites the reason or reasons why the decision should be called in. Relevant reasons will be:
  - a. That, in making the decision, the committee or decision-making body has not had regard to public views on the topic.

and / or

- b. That, in making the decision, the committee or decision-making body has not had regard to certain relevant evidence – either because it was not brought to the attention of the committee at the time or because it was not available.
- iv. Cites evidence to suggest that a committee took the decision not in accordance with one or more of the principles set out in the other sections of this Constitution, such as paragraph 5.2 of the Constitution.
- v. Should not be contrary to the Nolan principles<sup>1</sup>, and Councillors' Code of Conduct (Annex 2.1).

14.2.5. On receipt of a call-in request, the scrutiny officers will inform the Chair and Vice Chair of Audit and Scrutiny Committee ("Chairs"), who will, in consultation with the scrutiny officer and, if necessary, the Monitoring Officer, consider whether the request is valid.

14.2.6. If a request is deemed invalid, the requesting councillor will be informed in writing by the Chair of Audit and Scrutiny Committee, who will set out why the request has been denied.

14.2.7. If a request is deemed valid, the Chairs will inform the Monitoring Officer. The Chairs will also inform the requesting councillor that their request has been deemed valid and submitted to the Monitoring Officer.

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<sup>1</sup> HM Government (1995) *The Seven Principles of Public Life*. Online available: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2> [last accessed 12/12/2022].

- 14.2.8. If the scrutiny officer receives more than one request for a call-in on a particular decision, they will inform the Monitoring Officer and Chairs. The Monitoring Officer will liaise with the requesting councillors to manage those requests collectively.
- 14.2.9. Democratic Services may issue a form which can be filled in by councillors to make the process of calling in decisions more straightforward, but nothing in that form or in this Section should be taken as requiring that such a form be filled in for a call-in request to be valid.
- 14.2.10. When the Monitoring Officer receives a valid request for a decision to be called in from the Chairs, they shall:
- i. Notify the Chair and Vice Chair of the decision-making committee, in the first instance, that a valid request for a call-in has been received. After which the Monitoring Officer will inform the other members of the decision-making committee.
  - ii. Notify any other councillors and officers of the council they think necessary.
  - iii. Call a meeting of the Audit and Scrutiny Committee on such date as they (the Monitoring Officer) may determine, where possible after consultation with the Chair of that committee, and in any case within ten working days of decision to call in. If an ordinary meeting of the Audit and Scrutiny Committee is due to be held within ten working days of the decision to call in, the call-in may be considered at that meeting as the first substantive item on the agenda. More than one call-in may be considered at a single meeting of the Audit and Scrutiny Committee.
  - iv. Ensure that the agenda for that meeting includes such reports and information as might be considered necessary for the Audit and Scrutiny Committee to be able to hold a full and informed debate on the decision, having particular regard to the reasons given by councillors as to why the decision should be called in.
  - v. Issue invitations to relevant councillors and officers to attend. Call-in meetings should be attended by the Chair of the relevant policy committee and by a relevant senior officer.

### **14.3. Procedure for debate on call-ins at committee**

- 14.3.1. Whether a call-in is considered at a special meeting or an ordinary meeting of the Audit and Scrutiny Committee, the general rules of procedure for committees will apply (**Annex 4.4**), with the following exceptions:

- i. The Chair will begin discussion on the item by identifying the councillors calling the decision in and summarising the reasons for the decision to be called in.
- ii. The Chair will invite the councillor or councillors requesting the call-in to address the Committee to provide further information on the reasons for the call-in, and to set out whether they wish the decision to be amended or withdrawn.
- iii. Members of the Committee, through the Chair, may question any councillors and officers present to speak to the decision.
- iv. There will be no time limit on the debate. The Chair will have regard to the need for the debate to focus on the reasons for the call-in, and to ensure that all committee members have the opportunity to express a view, and to ask questions of witnesses, on those reasons.
- v. At the end of the committee's consideration of the item, the Chair will ask the committee to resolve:
  - a. That the decision stand unamended, and that no recommendation be submitted to the relevant policy committee. If such a resolution is passed the decision may be immediately implemented.

Or

- b. That the decision be referred to the relevant policy committee for amendment. In this case, the committee should agree the terms of such an amendment.

Or

- c. That the decision be referred to the relevant policy committee with a view to its being withdrawn / rescinded.
- vi. In the case of (b) and (c) above no action to implement the decision may be taken until the policy committee has had the opportunity to consider the recommendation / resolution of the Audit and Scrutiny Committee.

14.3.2. Immediately following the conclusion of the meeting, the Monitoring Officer will communicate the Audit and Scrutiny Committee's resolution / recommendations to whichever councillors and officers they consider necessary.

#### **14.4. Consideration of recommendations by policy committee**

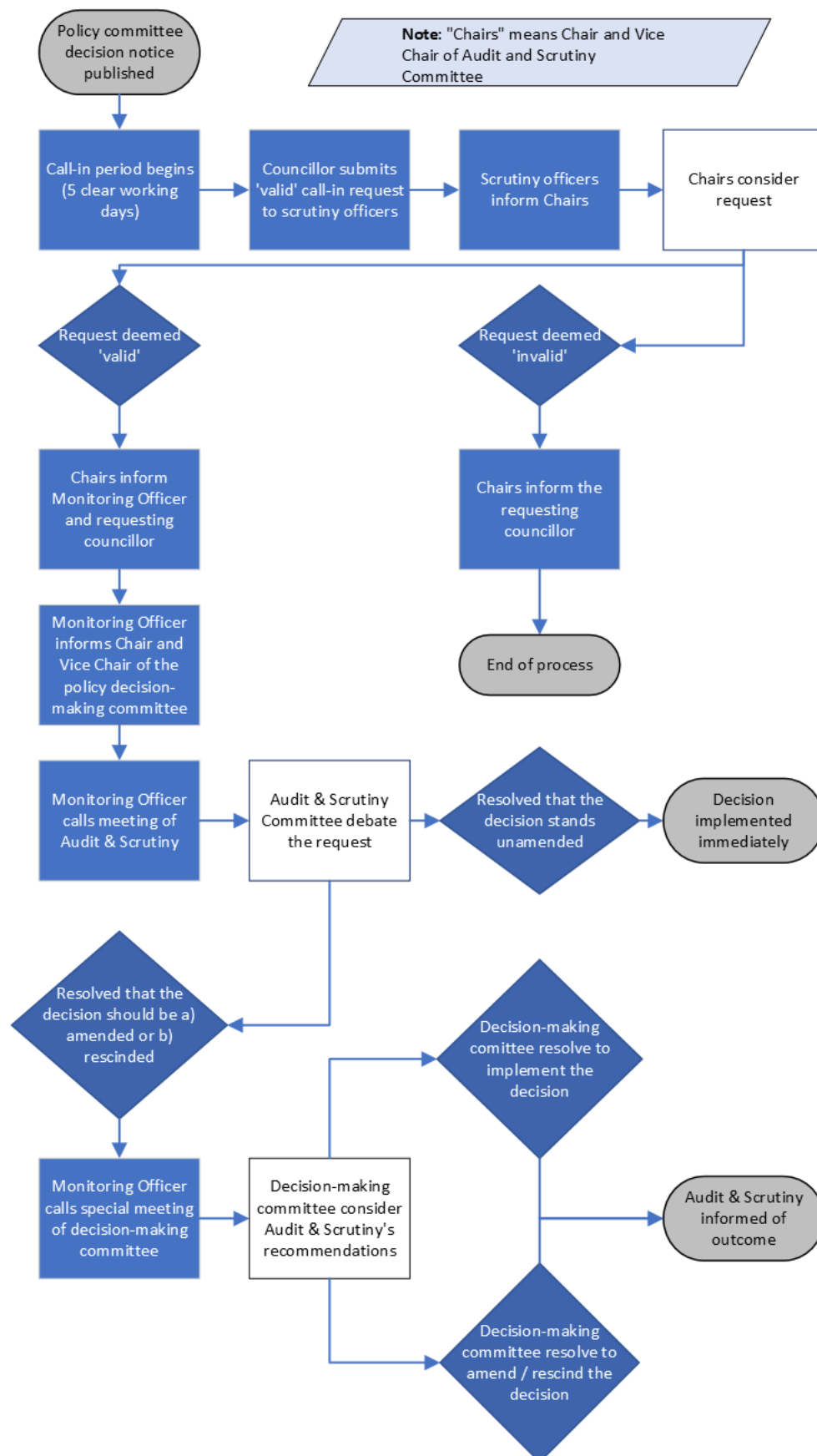
- 14.4.1. Where the Audit and Scrutiny Committee makes a resolution under 14.3.1(v.) (b) or (c) above, the Monitoring Officer will convene a special meeting of the relevant committee to consider that resolution on the earliest possible date, while complying with legal requirements relating to the convening of council committee meetings.
- 14.4.2. The policy committee considering the resolution shall consider whether to accept the Audit and Scrutiny Committee's recommendations. The recommendations may be accepted or rejected as they are presented and shall not be subject to amendment.
- 14.4.3. If the policy committee decides to implement the decision notwithstanding recommendations from the Audit and Scrutiny Committee, the policy committee will state reasons for doing so. These reasons will be communicated to the Audit and Scrutiny Committee. The decision will be implemented immediately.

#### **14.5. Call-in and urgency**

- 14.5.1. 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 would seriously prejudice the council's or the public's interest. Urgent decisions will be notified within the original report and the decision notice.
- 14.5.2. Decisions taken as a matter of urgency must be reported to the next available meeting of the Full Council, together with the reasons for urgency.
- 14.5.3. The operation of the provisions relating to call-in and urgency shall be monitored annually by the Chief Executive or their nominee, and a report submitted to Full Council with proposals for review if necessary.

#### **14.6. Flowchart for call-in procedure**

- 14.6.1. The flowchart below illustrates the call-in process. If any further details are required, please review the Sections above.



## **15. Councillor Call for Action**

### **15.1. What is Councillor Call for Action (CCFA)?**

- 15.1.1. CCFA is the name given to a statutory mechanism in place at the council which enables councillors to seek assistance from the Audit and Scrutiny Committee in resolving outstanding Ward matters.
- 15.1.2. CCFA does not guarantee satisfactory resolution will be secured at the end of the process.

### **15.2. When can a councillor request a CCFA?**

- 15.2.1. CCFA is a means of last resort. Emphasis is placed on the need for a councillor to resolve a Ward matter themselves. Only those matters where it is shown that the councillor has exhausted all other possible steps by which to secure resolution will be considered by the Committee.

### **15.3. What type of issues can form a CCFA?**

- 15.3.1. To be considered for CCFA, the subject matter must be relevant to the functions of the Audit and Scrutiny Committee. Local crime and disorder matters should be referred to the Crime and Disorder Committee.
- 15.3.2. Only those matters which affect all or part of the councillor's Ward or any person who lives or works in the Ward can be considered. Matters which affect the Borough as a whole are to be handled through other means.

### **15.4. Are any matters excluded from the CCFA?**

- 15.4.1. Several exceptions exist, vexatious, discriminatory and unreasonable requests are excluded from the process. In addition, those matters where a specific alternative route exists by which to secure resolution are excluded, e.g. the complaints process and licensing and planning decisions.

### **15.5. How does a councillor register a Call for Action?**

- 15.5.1. For further advice or to make a CCFA request, please speak to either the Chair of the Audit and Scrutiny Committee or the scrutiny officer.

## **16. Procedure at Audit and Scrutiny Committee meetings**

- 16.1. Where the Committee asks people to attend to give evidence at Committee meetings they are to be conducted in accordance with the following principles, that:
  - i. 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.
  - ii. Those assisting the Committee by giving evidence be treated with respect and courtesy.

- iii. The investigation be conducted so as to maximise the efficiency of the investigation or analysis.

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

## **17. Scrutiny Training**

17.1. Councillors will receive scrutiny training as part of their induction programme.

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## **Annex 4.10 - Code of Conduct and Practice in Licensing Procedures and Hearings (including the Gambling Act 2005)**

### **1 Introduction and status of the code**

- 1.1 The purpose of this Code is to assist councillors 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 and hearing sub-committees (**Annex 4.2**), and also to council officers, where appropriate. It should be read in conjunction with the Councillors' Code of Conduct (**Annex 2.1**), and councillors should apply this Code in light of it.

### **2 Definitions and interpretations**

- 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 which are:
- i. The prevention of crime and disorder.
  - ii. Public safety.
  - iii. The prevention of public nuisance.
  - iv. The protection of children from harm.
- 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 Grant or Variation of a licence, or certificate as defined by section 16 of Licensing Act 2003.
- 2.5 "Application" means any application under the Licensing Act 2003, including:
- i. Grant of a premises licence, club premises certificate or Temporary Event Notice (TEN).
  - ii. Transfer of a premises licence or club premises certificate.
  - iii. Review of a premises licence.
  - 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 "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 Surrey Chief Officer of Police, Fire and Rescue Service, Environmental Health Officers, Trading standards, the Home Office, Public health authority, the Licensing Authority 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.
- 2.8 "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,
- 2.9 "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.
- 2.10 "Regulations" means Regulations made under the Licensing Act 2003
- 2.11 In these rules, the masculine always includes the feminine.

### **3 Licensing sub-committees**

- 3.1 The Council's Licensing & Planning Policy Committee discharges the Council's functions related to Licensing matters, through two Licensing Sub Committees. The Licensing (Hearings) Sub Committee determines matters specific to the Licensing Act 2003 and the Licensing (General) Sub Committee determines all other licensing matters.
- 3.2 This Code applies to both Licensing Sub Committees, but is specifically directed to the Licensing (Hearings) Sub Committee, in light of the specific requirements of the Licensing Act 2003.
- 3.3 The Licensing (Hearings) Sub Committee must consist of at least three Members. No business shall be transacted unless at least three members are present from those trained members of Licensing and Planning Policy Committee.

- 3.4 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 has a special responsibility to safeguard interests and balance conflicts.
- 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 Members 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 members in relation to the licensing system**

- 5.1 The determination of applications by the Licensing (Hearings) Sub Committee is a quasi-judicial process. The role of members 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 put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and government advice. The decision should have regard to the Secretary of State guidance issued in accordance with section 182 of the Licensing Act 2003.
- 5.2 Members of the Licensing (Hearings) Sub Committee 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 or government guidance.
- 5.3 The Licensing (Hearings) Sub Committee must adhere to European Convention of Human Rights. In particular Article 6, the right to fair and public hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions.

## **6 Training**

- 6.1 No members may sit on a Licensing (Hearings) Sub Committee without having undertaken training in licensing procedures and legislation as specified by the Council.

## **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 Committee (see paragraph 7.3 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 Sub Committee being challenged by way of Judicial Review.
- 7.2 A Member who is lobbied by an applicant or objector in relation to an application which may come before a Sub Committee on which that Member may sit, should (a) inform the person lobbying that such approach should only be made to officers or councillors who are not a member of the Licensing Committee; (b) notify the Monitoring Officer of the fact that such an approach had been made and (c.) declare the fact and nature of such approach at the Sub Committee.
- 7.3 Any Member wishing to rely upon any written material or other evidence which they wish to be considered by a Licensing Sub Committee, must provide such evidence in advance to the relevant officers, and within the timescales prescribed in any Regulations or Council procedures.
- 7.4 Members of any Licensing Sub Committee must make decisions based on the facts of the case. Their decisions must not be predetermined or be subject to a party “whip”. The use of the party whip 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.
- 7.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Sub Committee 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. Even gifts of nominal value should be refused.

- 8.2 All offers or receipt of gifts or hospitality must be reported to the Monitoring Officer on the prescribed form and they will be 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 in the Council's Code of Conduct for Members. Advice is available from the Monitoring Officer.
- 9.2 Where the Member has a Disclosable Pecuniary Interest (DPI) , a personal or prejudicial interest in an item on the agenda, it should, be declared. A Member with a DPI or a prejudicial interest will not be entitled to sit on a Licensing Sub Committee deliberating the application in question. Where a prejudicial interest is declared, the Member concerned is required 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, it will not be possible for the Member to take any part in the decision making process and have no more rights than a member of the public.

## **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 Councillors' Code of Conduct (**Annex 2.1**), for instance where councillors act as agents for people pursuing licensing issues.
- 10.2 Given the **Annex 2.1**, 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 its Sub Committees.

## **11 Councillor and officer relations**

- 11.1 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. Further information on councillor / officer relations is located at **Annex 2.5**.

## **12 The role of the Licensing Officer**

- 12.1 Licensing Officers fulfil two roles at a meeting of a Licensing Sub Committee. 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 do not make recommendations in reports to a Licensing Sub Committee 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 they view 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.
  - 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.
- 12.3 Licensing authorities can also make representations about applications or call for reviews. Where it is necessary for a Licensing Officer to act in the role of a responsible authority intending to make representations there should be a separation between this officer and the licensing authority officer processing the application.

## **13 Licensing (Hearing) sub-committees**

### **13.1 Action following receipt of notice of hearing**

- 13.1.1 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.
- 13.1.2 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.

13.1.3 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.

13.1.4 In the case of a hearing for review of a premises licence following:

- i. A closure order.
- ii. Determination of an application for conversion of an existing licence.
- iii. Determination of application for conversion of existing club certificate.
- iv. Determination of application by holder of justices.
- v. 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.

## 13.2 **Right to dispense with hearing if all parties agree**

13.2.1 The Authority may dispense with holding a hearing if all persons required by the Act 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.

## 13.3 **The committee procedure**

13.3.1 The Licensing Sub Committee is serviced by a number of officers. These include a Committee 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 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.

13.3.2 The Licensing Sub Committee agenda may comprise a single report, or set of reports concerning specific licensing applications. Applications to be considered by the sub committee will be the subject of a written report from officers. Each report summarises the main issues raised by the application and details the representations received.

13.3.3 At the beginning of the hearing, the Chair shall explain to the parties, the procedure which they propose to follow at the hearing, and shall as

appropriate, 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.

- 13.3.4 The Licensing (Hearings) Sub Committee shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 13.3.5 The Licensing (Hearings) Sub Committee shall allow parties an equal maximum time period in which to support their representation or application.
- 13.3.6 The Chair of a Licensing Sub Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the meeting 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 of their matter, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

#### **13.4 Power to extend time and adjourn hearings**

- 13.4.1 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.
- 13.4.2 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.
- 13.4.3 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.

#### **13.5 Hearing to be public**

- 13.5.1 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.

#### **13.6 Right of attendance, assistance and representation**

- 13.6.1 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.

#### **13.7 Councillor representations**



- 13.7.1 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, they must do so in accordance with the procedural rules of the committee, and the regulations made under the Licensing Act 2003.
- 13.7.2 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 Sub Committee 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.
- 13.8 Representations and supporting information**
- 13.8.1 Anonymous representations will not be considered by the Authority.
- 13.8.2 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.
  - iii. Address the Authority.
- 13.8.3 Members of the Licensing Hearings Sub Committee may ask any question of any party or other person appearing at the hearing.
- 13.8.4 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.
- 13.8.5 The Authority shall disregard any information given by (i) a party, or (ii) 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.

- 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.

### **13.9 Frivolous, vexatious or repetitious representations**

13.9.1 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) Sub Committee is to be held (due to relevant representations being made elsewhere).
- ii. In any other case, before the determination of the application to which the representation relates.

### **13.10 Failure of parties to attend the hearing**

13.10.1 If a party has informed the Authority that they do not intend to attend or be represented at a hearing, the hearing may proceed in their absence.

13.10.2 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.
- ii. Hold the hearing in the party's absence.

13.10.3 Where the Authority holds the hearing in the absence of a party, the Licensing Sub Committee shall consider at the hearing the application, representations or notice made by that party.

13.10.4 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.

### **13.11 The committee decision making process**

13.11.1 The Licensing Sub Committee shall normally adjourn from the Hearing to deliberate their decision. The Committee may require that the Legal Adviser withdraws with the Sub Committee. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Sub Committee has reconvened.

13.11.2 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 Sub Committee meeting. Each application will be treated on its individual merits. The Sub Committee 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.

13.11.3 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.

13.11.4 The Licensing (Hearings) Sub Committee must make its decision at the conclusion of the Hearing for cases under:

- i. Section 105 (2) (a) - counter notice following police objection to TEN.
- ii. Section 167 (5) (a) - review of premises licence following closure order.

In any other cases, the Sub 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.

13.11.5 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).

## **13.12 Record of proceedings**

13.12.1 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.

# **14 Code of Conduct and Practice in Licensing Procedures and Hearings – Gambling Act 2005**

## **14.1 Introduction and status of the Code**

14.1.1 See paragraph 1.1. above, which applies.

## **14.2 Definitions and interpretations**

14.2.1 “The Act” means the Gambling Act 2005

14.2.2 “The (Licensing) Authority” means Epsom and Ewell Borough Council

14.2.3 “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, and are:

- A) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- B) ensuring that gambling is conducted in a fair and open way, and
- C) protecting children and other vulnerable persons from being harmed

or exploited by gambling.

14.2.4 "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).

14.2.5 "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).

14.2.6 "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.

14.2.7 "Interested Parties" is defined in Part 8, Section 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.
- iii. Represents persons who satisfy paragraph 14.2.7 (i) or (ii).

14.2.8 "Responsible Authorities" is defined in Part 8, Section 157 of the Gambling Act 2005, and includes:

- i. The Licensing Authority.
- ii. The Gambling Commission.
- iii. The Surrey 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 Revenue & Customs.
  - ix. Any other person prescribed under Regulations made by the Secretary of State.
- 14.2.9 "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.
- 14.2.10 "Regulations" means Regulations made under the Gambling Act 2005
- 14.2.11 In these rules, the masculine always includes the feminine.
- 14.3 **Composition of the Licensing General Sub-Committee**
- 14.3.1 The Licensing General Sub Committee shall consist of three Members. No business shall be transacted unless at least three Members are present.
- 14.3.2 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.
- 14.4 **The need for guidance on licensing**
- 14.4.1 See Section 4 above, which applies.
- 14.5 **General role and conduct of councillors in relation to the licensing system**
- 14.5.1 The determination of applications 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. The Committee must have regard to guidance to local authorities issued by the Gambling Commission.
- 14.5.2 Members 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.

**14.6 Training**

14.6.1 Members appointed to the Licensing Sub Committee will undertake a period of training in Gambling Act procedures and legislation as specified by the Council, with additional training as necessary.

**14.7 Lobbying**

14.7.1 See Section 7 above, which applies.

**14.8 Gifts and hospitality**

14.8.1 See Section 8 above, which applies.

**14.9 Declaration of interests**

14.9.1 See Section 9 above, which applies.

**14.10 Licensing applications submitted by councillors and their close associates, or licensing applications which may have an impact on councillors, their families or close associates**

14.10.1 See Section 10 above, which applies.

**14.11 Councillor and officer relations**

14.11.1 See Section 11 above, which applies.

**14.12 The role of the Licensing Officer**

14.12.1 See Section 12 above, which applies.

**14.13 Period of time in which hearing to be held**

14.13.1 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).

**14.14 Notice of Hearing**

14.14.1 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.

- 14.14.2 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.
- 14.15 **Action following Receipt of Notice of Hearing**
- 14.15.1 A party shall give (no later than five working days before the hearing) notice to the Authority stating:
- i. Whether they intend to attend or be represented at the hearing.
  - ii. Whether they intend to call any witnesses at the hearing and their names and addresses.
  - iii. Whether they consider a hearing to be unnecessary.
- 14.15.2 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.
- 14.16 **Right to dispense with hearing if all parties agree**
- 14.16.1 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.
- 14.17 **Withdrawal of representations**
- 14.17.1 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.
- 14.18 **The committee procedure**
- 14.18.1 The Licensing Sub Committee 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 Licensing Team acts as a presenting officer, introduces the report and answers Members' questions. In addition, other officers such as Gambling Commission Officers may attend to address specific technical matters raised by applications included in the agenda.

- 14.18.2 The Licensing Sub Committee 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 Sub Committee will be the subject of a written report from officers.
- 14.18.3 At the beginning of the hearing, the Chair shall explain to the parties, the procedure which they propose to follow at the hearing, and shall consider any request made by a party for permission for another person to appear at the hearing.
- 14.18.4 The Licensing Hearings Sub Committee shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 14.18.5 The Licensing Sub Committee shall allow parties an equal maximum time period in which to support their representation or application.
- 14.18.6 The Chair of the Licensing Sub Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the meeting, 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.
- 14.19 **Power to adjourn hearings**
- 14.19.1 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.
- 14.20 **Hearing to be public**
- 14.20.1 See Section 13.5 above, which applies.
- 14.21 **Councillor representations**
- 14.21.1 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, they must do so in accordance with the



procedural rules of the Sub Committee, and the Regulations.

- 14.21.2 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 Sub Committee 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.

14.22 **Representations and supporting information**

- 14.22.1 Anonymous representations **will not** be considered by the Authority.
- 14.22.2 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.
- 14.22.3 The Sub Committee will disregard any evidence produced by parties or witnesses which is not relevant.
- 14.22.4 The Sub Committee 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.
- 14.22.5 Members of the Licensing Sub Committee may ask any question of any party or other person appearing at the hearing.

14.23 **Vexatious and frivolous representations, and representations which will not influence the Authority's determination of the application**

- 14.23.1 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 Sub Committee is to be held (due to relevant representations being made elsewhere), or, before the determination of the application to which the representation relates.

14.24 **Failure of parties to attend the hearing**

- 14.24.1 See Section 13.10 above, which applies.

**14.25 The committee decision making process**

- 14.25.1 The Sub Committee shall normally adjourn from the Hearing to deliberate their decision. The Sub Committee may require that the Legal Adviser withdraws with the Sub Committee. In such cases, any advice given by the Legal Adviser shall be relayed in open session.
- 14.25.2 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 Sub Committee. Each application will be treated on its individual merits. The Sub Committee 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.
- 14.25.3 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.
- 14.25.4 The Sub Committee 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.

**14.26 Record of proceedings**

- 14.26.1 See Section 13.12 above, which applies.

## **Annex 4.11 - Model Code of Practice in respect of Planning Matters: Probity in Planning**

### **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 that is fair and is clearly seen to be fair. This includes acting in accordance with planning law in all instances and having due regard to national and local policies, in addition to all other “material planning considerations.” It is worth noting that a large proportion of judicial challenges to local authorities, as well as complaints to the Ombudsman, are as a result of planning matters.
- 1.3. This model code of good practice for planning (“Code”) 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, regarding 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 if they are involved in decision making about the matter. Secondly, and related to pre-determination, the Act introduced a requirement for developers to consult local communities before submitting planning applications for certain developments. This gives councillors 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 Code is contained in the council’s Constitution and is complementary to the Councillors’ Code of Conduct (Annex 2.1). Members of the Planning Committee (“Members”) should apply both the general Councillors’ Code of Conduct and this 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 and Social Care Ombudsman, and avoid putting an individual Planning Committee 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 reputation of the Council. For the avoidance of doubt, references to Members in this Code includes substitutes.

2.2. The purpose of this Code of practice is to:

- i. Set the standards of conduct the council requires Members and officers of the council to follow when dealing with and determining planning applications including policy, development and enforcement.
- ii. 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
- iii. 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:

- i. Support Members effective engagement in all aspects of the planning process and, in this context, to fulfil their democratic role.
- ii. 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 made on the correct considerations.

2.4. A key objective of this Code is to help Members make formal planning decisions that should be safe from legal challenge.

2.5. This Code 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 Members of the Planning Committee and Officers**

3.1. Members and officers have different but complementary 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. **Annex 2.5** of the constitution provides additional information on councillor / officer relations. 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 Planning Committee.

- 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:
- i. Provide impartial professional advice.
  - ii. Seek to ensure consistency of interpretation of national, regional and the council's planning policies.
  - iii. 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 their employment policies. In addition, many professional staff within the planning service will be members of the Royal Town Planning 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. Members of the Planning Committee and all other councillors 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 of, or submitting preliminary 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. If councillors have factual questions about a forthcoming application, they should ask those questions in advance of the meeting so that the situation can be clarified.
- 3.6. Members should make all decisions in an open and transparent manner in accordance with material planning considerations and this should not be compromised in any way. Messages should not be passed to Members during debate and Members should not use their mobile phones during a meeting, as this could give an impression of undue influence from a third party. In an emergency at a meeting any communication should go through the Democratic Services officer. During a Planning Committee meeting a Member should not leave the chamber to discuss the item on the agenda with anyone else whether inside the Chamber or outside. For the avoidance of doubt, this includes the applicant or their representatives, an objector or someone in the public gallery.
- 3.7. In order to ensure that decisions are taken on planning grounds and are legally 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 planning considerations, well in advance of the relevant Planning Committee meeting.

It is important that Members be **seen** to be meeting this provision of the Code.

- 3.8. 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 determinations to be based on **planning considerations** and not on any political or other reasons.
- 3.9. The Planning Committee should, when considering an application, take into account **all views on material planning considerations** 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. This does not mean that the same points need to be repeated if they are raised by more than one party.
- 3.10. Members **cannot 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.
- 3.11. Members should ensure that if they are proposing, seconding or supporting a decision contrary to an officer's recommendations or the development plan, they, not officers, clearly **identify** and understand the planning reasons leading to this decision. Their reason/s must be given **prior** to the vote and will be recorded. Members must be aware that the resulting decision may have to be justified by evidence about their reasoning at a planning appeal in the event of challenge, and members may be called upon to provide this evidence themselves.

#### **4. Interests: Registration and Disclosure**

- 4.1. The law and the Councillor's Code of Conduct (**Annex 2.1**) set out rules and guidance on declaration of interests. Councillors **must** follow these rules and guidance and review their own situation regularly. These are set out in the Code of Conduct and so are not repeated here.
- 4.2. A Member of the Planning Committee with a disclosable pecuniary interest relating to an item of business will not be able to take part in the debate or vote on that item. A councillor with a disclosable pecuniary interest may be permitted to address the Committee in a private capacity if registered to speak at the meeting. The councillor must then leave the Chamber and must not participate further in the debate or participate in any vote or further vote on that matter.
- 4.3. In relation to planning decisions, any interest that does not amount to a disclosable pecuniary interest, but which may 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. Advice on this can be sought in advance from the Monitoring Officer.

- 4.4. 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; and Members should consider whether the perception of such an interest would mean it is better for them not to participate. Advice may be sought in advance from the Monitoring Officer.
- 4.5. 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.
- 4.6. Members who are unsure whether an interest should be declared should seek advice and guidance 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 restrict 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 decided by them before the Planning Committee has the opportunity to consider the application.
- 5.2. The courts have sought to distinguish between situations that involve bias, **predetermination** (which is a form of bias), on the one hand and **predisposition** on the other.
- 5.3. **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" (*R (on application Persimmon Homes) v Vale of Glamorgan Council* [2010] EWHC 535).
- 5.4. Members of the Planning Committee can and indeed may well have a **predisposition** to a view about a matter but **must make it clear** that despite this they have an **open mind**, one which is capable of being swayed and that they are willing to listen to **all material considerations** presented before them at the decision-making meeting before deciding on how to vote.

- 5.5. Members and officers should also avoid the **appearance of bias**. 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); or an application by a family member or close friend or business acquaintance. It may also arise where a Member is closely involved with an organisation which may have an interest in the application.
- 5.6. In relation to planning decisions, any interest which may have a significant impact upon a Member's judgement, should be declared by the Member at the meeting. In each case, whilst this would be a matter for the Member's **own** judgement having full regard to the facts, the decision they make should be a reasonable one, as the courts will consider apparent, as well as actual bias.
- 5.7. 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".<sup>1</sup>
- 5.8. Members who are unsure on their position on predetermination should seek advice from the Monitoring Officer or Deputy Monitoring Officer before the Planning Meeting.
- 5.9. A Member who has **predetermined** their position or who has a biased or apparently biased situation should **withdraw** from being part of the decision-making body. If the Member takes part in the decision-making process it will put the council at risk of a finding of maladministration and of legal proceedings.
- 5.10. For Planning Committee Members the aim is that they not only act, but 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 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. However, in such cases they need to clearly identify that they are leaving the membership of the committee for

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<sup>1</sup> Metropolitan Properties Co (FGC) Ltd v Lannon [1969] 1 QB 577.



the item and do not seek to participate in the debate as they would normally do as a committee member.

- 5.11. Members can attend meetings to discuss proposed development schemes and questions have been asked about the propriety of such attendance. This is different from lobbying (see below). 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. At the start of any such meetings and throughout, the Member of the Planning Committee should make it clear that the discussion will not bind the Council or councillor and that any view expressed is personal and provisional.
- 5.12. 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 (see Section 6 for lobbying). For these reasons, if an applicant or an objector seeks a meeting with members it is strongly advisable for the member to insist that they will only attend if an officer or others are present, this also includes any pre-application discussion. For the avoidance of doubt this includes whether the meeting is taking place in person or virtual.
- 5.13. However, it can be practically impossible for members to always avoid informal approaches in their ward and 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. Councillors can play a constructive role in listening to and objectively gathering and reporting such views to the Members who will determine the application, even though Members will be aware that the views expressed by the public may not be based on material planning considerations.
- 5.14. 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:
  - i. 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 ensure that an officer or others are present and avoid expressing any fixed view on the matter.
  - ii. Councillors must not make any commitment to determine a matter in a particular way, for any reason.
  - iii. Members and Ward Councillors (subject to the two paragraphs 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, they 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.

- iv. 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.
- v. 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 Members make it clear that they have no fixed view of the matter at that stage.

## **6. Lobbying**

- 6.1. Lobbying is a normal part of the planning process and may not be restricted to Members of the Planning Committee. If a councillor, who is not on the Planning Committee, wishes to support a particular viewpoint then that councillor has a right to appear at Planning Committee and seek permission to address the meeting.
- 6.2. Members of the Planning Committee (including substitutes) should be aware that if they are a member of a lobbying group, they may need to recuse themselves from participation in decision making on an application where that application has been discussed by the lobby group in their presence. They should also consider recusing themselves from meetings of the lobby group whilst a planning application is to be discussed.
- 6.3. 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. Members will not breach this 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.

**7. The Decision-Making Process and Decisions Contrary to Officer Recommendations and / or the Local Plan**

- 7.1. All Committee decisions are made by a simple majority with the Chair's casting vote in case of a tied vote.
- 7.2. In discussing, and determining a planning application or other planning matter, Members should confine their discussion to the policies of the Development Plan, and to those material considerations that should influence their decision.
- 7.3. However, it is acknowledged that depositions 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.
- 7.4. Where it appears that the clarity of the decision-making process may be undermined, the Committee Chair 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 relevant consideration in their reports, or advise on information that comes forward during depositions or in the course of debate. It is very important that Members are aware that if decisions are not made with due regard to the proper consideration they can be challenged.
- 7.5. Where the Planning Committee's decisions 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(s) making the proposal.
- 7.6. Where members are minded to make a decision that is contrary to officers' recommendations it is important to ensure as far as possible that any decision made will be capable of surviving a legal challenge. Members should be clear on their reasons for refusal, however they can ask officers present in the meeting to help refine their reasons. When the Committee has made such a decision, the Chair will allow brief discussion to ensure that officers have understood the intentions and reasons of the Committee.
- 7.7. 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.

- 7.8. If the report of the Head of Place Development recommends approval of a departure from the Local Plan, the full justification for that recommended departure will be included in the report.

## **8. Councillor “Planning Application Call-in” Procedure**

- 8.1. Most planning applications are determined by Planning Officers in line with the council’s Scheme of Delegation (**Annex 3.2**). However even when delegated authority authorises officers to determine the application, a Planning Committee Member, or any councillor, 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.
- 8.2. A “call-in” request must be received within **28 calendar** days following the date of public notification by the Development Management team. This gives the councillors enough time to read the comments being received from other parties (who have 21 days to comment).
- 8.3. The request must be in writing (email is acceptable) to the Case Officer, copied to the Head of Place Development, Development Management Manager, and the Chair of Planning Committee, asking that the item be “called-in” to the Planning Committee,
- 8.4. The request must be on **relevant planning grounds** or **merit** intervention to have the application placed before the Planning Committee.
- 8.5. 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 councillors to explain to their electorate that a call-in cannot be justified if there are no planning grounds for doing so.
- 8.6. **All** “call-ins” made by councillors stating **material planning grounds** and within **28 calendar days** will be valid.
- 8.7. Where the “call in” is not made on material planning or merit intervention grounds, the “call-in” will be rejected. The decision as to whether the grounds are justifiable will be at the discretion of the Head of Place Development, in consultation with the Chair of Planning Committee and the councillor(s) concerned.
- 8.8. Councillors who have asked for a call-in should 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. However, if they do not attend this will not prevent the item from being dealt with.

## **9. Planning Applications made by Councillors and Officers**

- 9.1. When a planning application is submitted by a councillor or member of the Corporate Management Team, or by a close relative or friend of them they will:
- i. Advise the Monitoring Officer of the application.
  - ii. 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 Corporate Management Team means the Chief Executive, Directors, and Heads of Service.

## **10. Late Representations**

- 10.1. Late representations by the applicant or objectors regarding applications being presented to Committee will be considered up until midday three working days before the Planning Committee meeting. Such representations will be summarised by the Case Officer and sent to the Planning Committee Members at least one working day before the meeting.
- 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 Place Development, in consultation with the Chair of Planning Committee. 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. Any Ward members, members of the public or organisations are entitled to speak at the Planning Committee, subject to the conditions below.
- 11.2. An individual or representative of a local group / organisation who wishes to speak at a Planning Committee must register their wish to do so by noon on the day of the meeting. Details on how registration can be made are provided on the introduction to a meeting's agenda papers.
- 11.3. Normally, only two speakers in support (including the applicant/agent) and two against may speak on 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.

- 11.4. 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 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.
- 11.5. Speakers should only raise issues concerning planning matters such as:
  - i. Appearance and character of the application
  - ii. Traffic issues, highway safety and parking
  - iii. Layout and density of buildings
  - iv. Loss of light overshadowing and loss of privacy
  - v. Noise, disturbance and other loss of privacy
  - vi. Other relevant planning considerations
- 11.6. There will be no opportunity for displaying any materials or to ask any questions of anyone at the meeting, unless with the express approval of the Chair of the Committee and submitted in advance.
- 11.7. If the Chair considers that any remarks made are defamatory, no further representation will be allowed.
- 11.8. Once a speaker has finished they will take no further part in the meeting.
- 11.9. 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:
  - i. Ward councillors
  - ii. Any councillor who has called in an application
  - iii. Objectors
  - iv. Supporters (including the 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 sit on 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 Place Development will provide a Planning Committee Training Programme to include:
  - i. An annual training session that will provide an overview of the key role of planning and the role councillors 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 councillors will be encouraged to attend, to help them understand planning issues and enable them to act as substitutes on the Planning Committee.
  - ii. A six month mandatory refresher session.
  - iii. Further training sessions as necessary on new council and Government policy and legislation, or other planning issues that are requested by councillors or officers. Again, all members of the council will be encouraged to attend such sessions.
- 13.4. Democratic Services will maintain a register of councillors who have received 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 Place Development will investigate a complaint made in writing regarding the determination of a planning application, or a related planning matter, and will deal with it in accordance with the council's complaints procedure.

14.3. In the event that the complainant was not satisfied with the result of the investigation under the council's complaints procedure, must be made directly to the Local Government and Social Care Ombudsman.

## **15. Site Visits**

15.1. The purpose of an organised council site visit is for members to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. Members and officers must remember when conducting a site visit that anything said or done by them should be restricted to relevant planning considerations and that they should remain open minded.

15.2. The decision to hold a site visit prior to the Committee meeting is to be made by the Head of Place Development in consultation with Chair of Planning Committee. The purposes of a formal site visit are:

- i. To view the setting of the application.
- ii. To consider any other matters seen on site which may be material to consideration of the application.
- iii. To find facts, especially when the application site is not visible from public land.

15.3. Site visits should be requested by members prior to the application being reported to Committee. Members should only request a site visit when the application has reached the determination stage and 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.

15.4. 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.

- 15.5. The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. Site visits should not be used as a lobbying opportunity by objectors or supporters. 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 processes for making representations.
- 15.6. 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.
- 15.7. Members with a personal interest that a fair-minded observer and informed observer may conclude amounts to a real danger of bias on an agenda item or particular application must also not attend any related site visit.
- 15.8. Other councillors can attend a site visit at the discretion of the Chair of Planning Committee. However it is at the discretion of the land owner as to whether they are allowed on private land.
- 15.9. If a member intends to visit a site, outside of the formal site visit arrangements they should avoid entering private land and avoid discussions with any land owner or member of the public.

## **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; for example, where an application relates to council owned land that is subject to a long leasehold.
- 16.3. Planning decisions must always 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. Review of Protocol**

- 17.1. This Code will be reviewed as necessary, for instance with changes to planning legislation, national codes of conduct, and so forth.

## **Annex 4.12 – Guidance on the Role of the Chair and Vice Chair**

1. This document provides guidance for the Chairs and Vice Chairs of committees sub-committees, and panels at Epsom and Ewell Borough Council. It sets out some principles within which Chairs and Vice Chairs should aim to operate, but it is in the nature of these roles that not everything can be covered. Where a Chair or Vice Chair is uncertain about their role, powers or the correct procedure to follow, they should seek the advice of officers.
2. Much of the role of a Chair and Vice Chair is to facilitate the smooth running of meetings, to progress through agreed agendas and to reach decisions where required. However, there are some important principles to remember as decisions can be held void if challenged.
3. The council appoints committees, and the Chairs and Vice Chairs (where appropriate) of those committees; and delegates matters to the committees, or to officers, to decide. Matters that are not delegated are left in the control of the Full Council, but the vast majority of decisions are delegated.
4. Chairs should note that as per committee rules of procedure (**Annex 4.4**), agendas must include any items of business that the Chairs require to be included.
5. The Chair takes charge of the meeting and must act impartially in controlling and leading the meeting to ensure that discussions and debates are carried out fairly and in accordance with the council's Constitution and procedural rules. The Chair should ensure that decisions made are clear, that is, the committee members must know what they are voting for, and that this is in accordance with the council's Constitution and the meeting's agenda.
6. In the absence of the Chair, the Vice Chair must, if present, preside. If both the Chair and the Vice Chair are absent or not appointed, then a member of the committee will be elected to Chair the meeting until the Chair or Vice Chair is present.
7. It is important for a Chair to ensure that they have prepared thoroughly for the meeting, including reading the reports.
8. Schedule 1, paragraph 39(2) of the Local Government Act 1972 provides that the Chair of a meeting has a casting vote. This means that, if once the votes at a meeting have been counted and there is a tie, then the Chair is able to exercise their casting vote. The Chair does not have to exercise their casting vote. Should they choose to do so, it is entirely up to them how it is exercised.
9. Section 101 of the Local Government Act 1972 does not enable matters to be delegated to a single councillor, unless the council operates an executive model of governance. Matters can only be delegated to committees, sub-

committees, joint committees and officers. Accordingly, if a matter is left at a meeting to be decided, the committee should resolve to delegate the decision to an officer *“in consultation with”* the Chair/Vice Chair. This means that the decision is that of the officer, but they will consult with the Chair and should listen carefully to the Chair’s view.

10. The authority coming to the Chair from standing orders and common law is such that where a Chair acts reasonably and in good faith, a challenge to their decision is unlikely to be upheld. Although, if a Chair were to act improperly a court could intervene if a challenge were made, which would usually be via judicial review. Although such challenges are rare, they are not unknown and when made are always expensive and can be reputationally damaging.
11. Before a meeting it is usual for the Chair, often with the Vice Chair, to have a meeting, also known as call-over, with the relevant officers to consider the agenda and the matters which will be considered at the meeting, and how the meeting will be handled. Papers for call-over should be provided five days in advance of the meeting to allow time for the papers to be read. Those present will go through the papers to ensure the recommendations are understood and the documentation is clear. Reports that make recommendations “to note” should be by exception only, and most reports should require a decision. For meetings to be successful it is important for the Chair and their lead officers to develop a mutually respectful and trustworthy relationship. Whilst the Chair will give their view, and an experienced Chair can add considerably to the agenda setting due to their knowledge of the subject, it is the responsibility of officers to finalise the agenda.
12. The Chair can decide if an urgent matter can be admitted to the agenda, **provided that the Chair has consulted with the Monitoring Officer prior to the meeting**. It is however strongly recommended that Chairs only agree for urgent items to be admitted in exceptional circumstances, rather than this becoming an accepted norm.
13. At the meeting, the Chair will call members to order and check that there is a quorum. The Chair, with their knowledge of the agenda, should try to keep the discussion at the meeting within scope and to time. The Chair should seek advice from officers about motions and amendments, to ensure that they are in order.
14. It is the responsibility of the Chair to decide any points of order, after taking advice from the responsible officers present. Chairs should also ensure that the debate is carried out fairly, and in accordance with the standing orders in **Annex 4.3 and Annex 4.4**, and other relevant guidance, in the Constitution.
15. A Chair should not become personally involved in the discussion and should be clear about what is being put to members. The Chair’s ruling on any matter will

be final, but that ruling must be reasonable, otherwise it is open to challenge. The Chair must decide other incidental questions that require decision at the time.

16. The Chair is able to adjourn the meeting themselves in exceptional circumstances, for example when there is persistent disorder. However, the Chair can always ask the meeting if they will agree to a short adjournment and it is usual for committee members to respect the Chair and take their guidance from them. The Chair is able to exclude a member who exhibits persistently bad behaviour and, at all times, if the Chair stands all other persons must be silent.
17. If a member of the public interrupts a meeting, the Chair can warn the person concerned. If they continue to interrupt the Chair can order their removal from the meeting.
18. It is the responsibility of the Chair to declare the meeting closed when business has been completed.
19. The Chair is to approve the draft of the minutes or other record of proceedings.
20. It is the Chair's decision as to whether to cancel or postpone a meeting.

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## **Annex 5.3 – Sealing and Signing Council Documents**

### **1. Custody of Seal**

- 1.1. The Common Seal of the Council shall be secured by a lock and keys and the Head of Legal Services shall be person responsible for it.

### **2. Sealing of documents**

- 2.1. The Common Seal of the Council shall not be affixed to any document or deed unless the sealing has been authorised by a resolution of the Full Council, or of a committee or officer to which the Council has delegated its powers in this behalf. A decision of the Council, including decisions under delegated powers- 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 decision.
- 2.2. The seal shall be attested by an Authorised Officer (namely the Chief Executive, Director of Corporate Services, Director of Environment, Housing and Regeneration, or the Head of Legal Services). The sealing and execution of documents can be delegated further by an Authorised Officer in accordance with the Officer Scheme of Delegation. An entry of every sealing of a document or deed shall be made, and consecutively numbered, in a book to be provided for the purpose and shall be signed by the person or persons who shall have attested the seal.

### **3. Signature of Documents**

- 3.1. Where it is a necessary step in legal procedure or proceedings for any document, it shall be signed by the Chief Executive, Director of Corporate Services, Director of Environment, Housing and Regeneration or the Head of Legal Service (or other person authorised by them), unless:
  - i. Any enactment otherwise requires or authorises.
  - ii. Full Council, a committee, or sub-committee to which the Full Council has delegated its powers, has given the necessary authority to some other person for the purpose of such proceedings.

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## Annex 6.1 - Petition Scheme

### 1. Introduction

- 1.1. The council welcomes petitions and recognises that petitions are one way in which people can let the council know their concerns. All petitions sent or presented to the council will receive an acknowledgement within 10 working days of receipt. This acknowledgement will set out how the petition will be administered.
- 1.2. Paper petitions can be sent to:

Democratic Services  
Epsom and Ewell Borough Council  
The Town Hall  
The Parade  
Epsom  
Surrey  
KT18 5BY
- 1.3. Petitions can also be submitted online through the online portal.
- 1.4. Petitions which satisfy the requirements of the Petition Scheme, will be presented to either an ordinary meeting of (full) Council (excluding the Annual Meeting), or to a meeting of a relevant policy committee.

### 2. What are petitions?

- 2.1. A petition is a communication that is signed by, or sent to the council on behalf of, a number of people and can be submitted by a person of any age who lives, works or studies in the Borough. The list of signatories will be checked for any duplicate signatures or obviously frivolous responses. There are different types of petitions:
  - (a) **Ordinary Petitions:** These are petitions that relate to the day-to-day services or facilities provided by the council. Such petitions must be signed by at least 20 signatories.
  - (b) **Petitions for debate:** If a petition calls for something to be reported to and discussed at a meeting of the Full Council or at a policy committee, it must contain at least 1,500 signatures.

### 3. Petitions not covered by this Scheme

- 3.1. The following petitions will not be accepted:
  - (a) The subject matter of the petition is deemed likely to cause distress, disruption or irritation without any proper or justified cause.

- (b) Petitions which are considered to be vexatious, abusive or otherwise inappropriate.
- (c) The subject matter of the petition relates to a matter upon which legal proceedings are possible.
- (d) The petition relates to an individual member of the community, or the personal circumstances of councillors or council officers, or makes criminal accusations.
- (e) The subject matter of the petition is about something for which this council is not responsible or cannot influence.
- (f) Petitions relating to planning or licensing matters. Please refer to the relevant planning ([Annex 4.11](#)) and licensing protocols ([Annex 4.10](#)).
- (g) The petition discloses confidential or exempt information, including information protected by court order or government department.
- (h) The petition contains advertising statements.
- (i) The petition refers to an issue which is currently the subject of a formal council complaint, Local Ombudsman complaint or any legal proceedings.
- (j) If a petition is covered by specific legislation, for example a request for a referendum about how the council is governed, the scheme does not apply as the petition has to comply with the relevant legislation.
- (k) A petition will not normally be considered if it is received within six months of another petition on the same matter.
- (l) If two or more petitions on the same subject are received at the same time, each will be treated as a separate petition but only the organiser of the first petition received will be invited to address the relevant meeting.

#### **4. Guidelines for submission**

4.1. A petition submitted to the council must include:

- (a) A clear and concise statement covering the subject of the petition.
- (b) What action the petitioners would like the council to take.
- (c) The name, address and signature of any person supporting the petition.

4.2. Petitions must be accompanied by contact details, including an address for the petition organiser with whom the Council will correspond.

- 4.3. If the petition does not identify a petition organiser, the council will contact signatories to the petition to agree who should act as the petition organiser.
- 4.4. The period immediately before an election or referendum may require the presentation of a petition to Council or a Council meeting to be delayed.
- 4.5. If a petition does not follow the guidelines set out above, the council will not process the petition but will advise the petition organiser accordingly.
- 4.6. If the Monitoring Officer decides on behalf of the council that a petition does not fall within this scheme, the petition organiser will be informed and given the reason why it is not being accepted.

## **5. Actions on receipt of valid petition**

- 5.1. An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition, with an explanation of the next steps. The petition will also be published on the council's website. The council will also publish all correspondence relating to the petition (with personal details removed). Signatories to an e-petition can elect to receive this information by email.
- 5.2. If the action requested by the petition can be taken, confirmation of such will be sent and the petition will be marked as completed and closed. If the petition has enough signatures to trigger a council debate, then the acknowledgement will confirm this, and details of the meeting will be sent to the petition organiser.
- 5.3. If a petition seeks something for which a different council or body is responsible, the council will consider what the best method is for responding to it, in light of its data protection policy. In any event, the council will always notify the petition organiser of the action taken.

## **6. Council and Committee debates**

- 6.1. If a petition contains the requisite number of signatures (see Section 2), it will be debated by the Full council or by the relevant policy committee.
- 6.2. This means that the issue raised in the petition will be discussed either at a Full Council meeting, which all councillors can attend, or by the relevant policy committee. The petition organiser will be given five minutes to present the petition at the meeting and must confine their remarks to matters relevant to the petition. The Full Council or the policy committee will decide how to respond to the petition at this meeting. It may decide to take the action the petition requests, not to take the action for reasons put forward in the debate, or to commission further investigation into the matter. The petition organiser will receive written confirmation of this decision and it will also be published on the council's website.

## **7. E-petitions**

- 7.1. Petitions can also be created and submitted through the council's website. E-petitions must follow the same guidelines as paper petitions. The petition organiser will need to provide their name, postal address and e-mail address. The petition organiser will also need to decide how long they would like their petition to be open for signatures. Most petitions run for six months but a shorter or longer timeframe can be chosen, up to a maximum of twelve months.
- 7.2. When an e-petition is created, it may take five working days before it is published online, to enable the Democratic Services to check that the content of the petition is suitable before it is made available for signature. If the petition cannot be published the petition organiser will be advised as to the reasons. The petition organiser will be able to change or re-submit their petition if they wish. The council will, within 10 working days of rejecting a petition, publish a summary of the petition and the reason why it has not been accepted. The publication will be located in the "rejected petitions" section of the website.
- 7.3. If an e-petition is accepted, the petition organiser will receive an acknowledgment within 10 working days.
- 7.4. A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgement will also be published on this website.

## Annex 6.6 Complaints Process

1. If you would like to submit a comment, compliment and complaint regarding the work of the council, you can do so online via the council's website:  
[Comments, compliments and complaints.](#)
2. Alternatively, you can write to Customer Services at the address below, or come in person to:  

Epsom & Ewell Borough Council  
Town Hall  
The Parade  
Epsom  
Surrey  
KT18 5BY
3. If your complaint is about a councillor, please refer to the Councillors' Code of Conduct ([Annex 2.1](#)).
4. Complaints related to data handling / processing, data protection and information governance can also be made to the Information Commissioner's Office ("ICO"). Details can be found on the ICO's website:

[ICO – Make a complaint](#)

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