

THE ASSEMBLY

2 NOVEMBER 2005

REPORT OF THE STANDARDS COMMITTEE

Title: Report of the Standards Committee meeting of 8 September 2005	For Decision
<p>Summary:</p> <p>The following business which requires Assembly approval was carried out by the Standards Committee at its last meeting of 8 September 2005.</p> <p>1. Annual Review of the Guide for Members' Use of Council Resources, Facilities and Equipment</p> <p>The Committee received a report outlining minor changes to this Guide.</p> <p>2. Protocol re: Member and Employee Relations</p> <p>This report reviewed and updated the Council's Member and Employee Relations Protocol.</p> <p>3. Planning Code of Conduct</p> <p>The Committee received a report proposing a "Planning Code for Members" for suggested adoption by the Assembly. The key objectives of the Code are to protect the Council and individual Members from allegations of unfairness, findings of maladministration and legal challenge.</p> <p>Wards Affected: None</p>	
<p>Recommendations</p> <p>The Assembly is recommended to approve:</p> <ol style="list-style-type: none">1. The changes to the Guide for Members' Use of Council Resources, Facilities and Equipment (Appendix A);2. The amended Member and Employee Relations Protocol (Appendix B); and3. The adoption of the Planning Code of Conduct (Appendix C). <p>Please note that Appendix A and B includes only those pages from the Guide and Protocol where changes have been made; amendments to these pages are indicated in bold type.</p>	

Reasons

The suggested changes clarify the application of these guidance documents. In the case of the Planning Code of Conduct, adoption will ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

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Background Papers Used in the Preparation of the Report:

Minutes of the Standards Committee, 8 September 2005

**EXTRACT FROM THE
GUIDE FOR MEMBERS' USE OF COUNCIL RESOURCES,
FACILITIES AND EQUIPMENT**

Telephones

You are expected to use your own private telephone(s) for Council business at your expense. This includes mobile telephones. If you feel that your Council position warrants a mobile telephone, or other similar equipment, you should purchase your own, again at your own expense including all call costs.

If you have a Council computer and associated telephone handset you can receive incoming business calls on that line – see the relevant section later.

A Council mobile telephone ~~will be kept in the Mayor and Deputy Mayor's cars~~ **will be made available** for their **Council** use **by the Mayor and Deputy Mayor** when attending **Mayoral** functions for the purpose of, for example, contacting the driver when ready to leave.

Council computers and associated telephone lines

You may:

- use the telephone line but only for incoming calls and outgoing faxes;
- use the computer as much as possible to reduce the number of hard copies of documents; and
- use the computer for personal e-mails, and the Internet for personal as well as Council purposes, provided they are accessed through the Council system as installed by the I.T. system. This means that access should be by clicking on the Outlook icon, or the Internet Explorer icon. This provision is on the basis that such personal use is not excessive and would not place in doubt the integrity of the Member.

You should:

- take advantage of relevant training to advance computer skills;
- be aware that e-mail usage is monitored as part of the Council's security policy (consider e-mail as no more private than something which is mailed through the post);
- be aware that websites visited are also monitored (if you accidentally connect to a site containing sexually explicit or other offensive material, let the Information Technology staff know so they can block access. Most of these sites should already be blocked);
- call the Help Desk if you cannot resolve any technical difficulties, or Members' Services for any general advice;
- log off the computer when not in use for financial and safety reasons;
- take reasonable care not to allow family or friends access to any personal data about constituents or any confidential information;
- record details of any fax calls in case of later query; and
- note that details of any bills which are considered to be excessive will be brought to the attention of the Chief Executive who will liaise with the Member concerned as to usage. If necessary reimbursement will be asked for from the Member for any exceptional personal usage costs. (See the section on 'Breaches of this Guide' towards the end of the document).

You should not:

- **use your computer to access undesirable web sites. These include sites containing information of a pornographic, sexist and racist nature.**
- use the telephone line for outgoing calls; or
- expect to be granted access to computer based systems containing personal data.

EXTRACT FROM
PROTOCOL RE: MEMBER AND EMPLOYEE RELATIONS

WHAT MEMBERS CAN EXPECT OF EMPLOYEES

Members can expect employees:

- To do their job effectively and efficiently
- To strive to provide services which offer best value
- To behave in a manner which accords with the standards set by the Council
- To be helpful, respectful and courteous to Members
- To assist Members in carrying out their role as Members of the Council in connection with Council business (they cannot, however, assist with party political or campaigning activity, or with private business)
- To deal with Members' enquiries fairly and efficiently
- To be open and honest with Members. To tell the whole story, giving any bad news as well as the good.
- To keep Members well informed
- To work with all Members equally and fairly
- To act lawfully
- To give advice or recommendations based on reasoned options
- To ensure that Members have all the information necessary to make informed judgements **in a timely fashion and presented in a way which is easy to understand in accordance with Plain English guidance wherever practicable**
- To maintain confidentiality where it is proper for them to do so
- Not to canvass Members or otherwise seek to gain favour from them for personal or career advantage
- To have regard to social hours and generally to be sensible about contacting Members at potentially inconvenient times, unless in an emergency or otherwise agreed
- **Not to raise personal issues related to their employment with Members.**

WHAT EMPLOYEES CAN EXPECT OF MEMBERS

Employees can expect Members:

- To accept that employees are accountable to their Manager
- Not to become involved in the day to day management of the Council
- To fully consider advice and recommendations for the purpose of making informed judgements
- Not to ask employees to breach Council policy or procedures, or to act unlawfully, or outside the terms of their job
- Not to exert influence or pressure, or request special treatment, because they are a Member
- Not to request unauthorised access to resources or information held by the Council
- Not to attempt to intervene in case management nor attempt to delve into the personal details of individuals and families
- To accept that employees act independently of political bias
- To treat employees in a reasonable manner **and with respect**
- To be open and honest with employees
- To act lawfully
- To maintain confidentiality when appropriate to do so
- To respect that employees have private lives and not to contact them outside normal working hours, or at home, unless in an emergency, or if the employee is officially working from home, or otherwise agreed.

FAMILIARITY, FRIENDSHIPS AND RELATIONSHIPS

Close personal familiarity, in the office or at meetings, between individual Members and employees should be avoided as this can damage working relationships and prove embarrassing to colleagues on both sides. In particular, it could bring into question an employee's ability to deal impartially with other Members, and vice-versa.

However, it is recognised that personal, family or business relationships or friendships will exist between some Members and employees. These should be made known by a Member to the Leader of the party group (or another Member of the group if so designated as the contact point), and by an employee to their Director - for their information. The Director will inform the Chief Executive and the Head of Human Resources.

Persons engaged in such friendships or relationships should take special care not to seek, or be seen, to influence their positions through their respective friend or partner. Name dropping to seek advantage is totally unacceptable. People should also go out of their way to ensure that colleagues are not placed in an awkward or embarrassing situation as a result of a friendship or relationship.

A Member involved in a relationship or otherwise associated with an employee should declare an interest if, on any occasion, they are involved in decision-making directly related to the employee concerned, or the service in which they work. Where appropriate, they should seek to avoid being a member of a related meeting.

Certain informal gestures in a formal work setting may be innocently made but could be perceived by the recipient to be unwelcome or embarrassing. Such gestures should always be avoided. Similarly, jokes or pranks should be avoided.

Members must be careful never to become engaged in any matter related to an individual officer's employment [except through formal meetings when these are relevant]. Any officer attempting to raise such issues with Members should be advised to take the matter up with their manager and/or their trade union representative, and the Member should take no part in any discussion.

Members should not invite or encourage employees to partake in unofficial social activities, irrespective of whether this is outside normal working hours. This could be perceived by the recipient to be unwelcome and may result in them feeling obliged to become involved.

Note - This Code of Conduct has been designed to help Members in their deliberations at the Development Control Board, and is not meant to replace any other provisions in relation to discipline and standards that appear in the law and in the Council's Constitution.

Members Code of Conduct for Planning Matters

Introduction

The Council is the Local Planning Authority for Barking and Dagenham. In due course, the London Thames Gateway Urban Development Corporation will take responsibility for planning matters relating to major applications in its area of operation.

The Council's planning decisions must be taken with regard to policies contained in its adopted Development Plan (UDP), any supplementary planning guidance and any other material planning considerations. These decisions are made by Committees of elected Members (the Development Control Boards) and also by officers under delegated powers.

The Council's current Development Plan is the Unitary Development Plan which was adopted in 1995. However, recent changes to planning legislation require the production of a new Development plan, known as a Local Development Framework (LDF). The LDF must conform to Government Guidance and the London Plan. Until the LDF is formally adopted by the Council, planning decisions must be taken in accordance with policies contained in the adopted UDP, but should also recognise other material considerations such as Interim planning guidance, Government guidance and the London Plan.

Planning decisions should be taken with regard to the Council's policies, unless material considerations justify a departure. While many minor applications are dealt with by officers under delegated authority, as provided for under the constitution and as a requirement of government performance standards for planning, major schemes and those raising substantial objections are determined by the Development Control Boards.

This Members Code of Conduct for Planning Matters sets out the rules and procedures for the Council's Development Control Boards when determining planning applications and enforcement actions and considering site specific policy issues both in the lead up to and at a Development Control Board meeting. Our Code reflects the Council's Members' Code of Conduct, the advice of Local Government Ombudsman, the Standards Board for England and the Code of Conduct for Staff.

The law relating to the planning process obliges Members [of Development Control Boards](#) to act in a quasi-judicial and independent manner. They are required to consider planning applications and enforcement matters and site specific policy issues solely on their own merits, in line with published relevant policy.

The key objectives of this Code are:

- to protect the Council and individual Members from allegations of unfairness, findings of maladministration and legal challenge
- to ensure that the role of officers, developers and applicants/members of the public are understood

To ensure these objectives are maintained all Members of the Council are advised to be familiar with the Code. If there are any concerns or lack of clarity about a planning matter advice will be readily available from Officers. This will help avoid potential conflicts of interest, which may occur from time to time. If there should be any risk of unresolved conflicts with this Code Officers have been instructed to raise their concerns with of the Chair of the Development Control Board, who will be asked to take appropriate action, including giving specific advice to Members.

The Code

1. How to avoid a conflict of interest and still assist your constituents

1.1 In making their decisions Members of Development Control Boards are required to have a neutral position on any application. This means they cannot be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Adhering to the following rules will ensure that public confidence in the Development Control Board is maintained and also serve to minimise the prospect of non-planning related matters clouding the judgment of Members. This is a requirement of the law and this guidance is aimed to assist Members in complying with this complex area of legislation and case law. Officers are always available to assist individual Members on these matters.

1.2 As their role is quasi-judicial, Members of the Development Control Boards must not be involved in the support of, or the opposition to planning applications or enforcement actions. This could be considered as “pre-judging” an application for permission or an enforcement action that may be considered by the Board. Similarly, Members of the Development Control Boards should not allow themselves to be influenced by members of the public and developers who might approach them and they should not be influenced by party politics or the views of other Members.

If Members of the Development Control Boards do have particularly strong views on a particular planning matter they should seek advice from the Solicitor to the Council and Monitoring Officer, the Director of Regeneration and Environment or the Head of Planning and Transportation in order to minimise any risk to themselves.

1.3 As decision-makers Members of the Development Control Boards, Members should neither be seen to be pre-judging the application, or to be influenced by those with whom they have a special relationship such as fellow Members, at any stage prior to determination. Members of Development Control Boards should similarly avoid making public statements as to their support of, or opposition to, any application. This could be considered to be pre-judging the proposal and as such, could bring into question whether Members are acting independently on the merits of the case.

1.4 If Members of Development Control Boards should receive lobbying material relating to potential applications, they should not respond and should forward it to the Council’s Development Control Manager. If such a Member is approached by an individual or an organisation in relation to a particular planning application on the agenda of an upcoming meeting, the Member should explain that they are unable to personally comment on the application but that the person or organisation may:

- Where the application is not yet on the agenda, write to the Planning Officer responsible for the particular application/enforcement action who will take into account any material planning considerations raised in the representations when preparing the report for the Development Control Board;
- Contact the Democratic Support Officer to request to speak at the meeting;
- Contact an alternative Councillor who is not a member of the Development Control Boards.

It is recommended that they may a written note of any approach made to them.

- 1.5** If a Development Control Board Member decides to become involved in organising the support of or opposition to a planning application, then that Member should accordingly declare an interest at the beginning of the meeting (see “*When to declare an Interest*” below) and remove themselves from the room when the Development Control Board is determining the item in question. By becoming involved in a planning application prior to the meeting other than to read the Planning Officer’s report and to attend a Site Visit accompanied by the Planning Officers, the Member risks forfeiting his or her right to take part in the discussion or vote on that particular item.
- 1.6** If Members [of Development Control Boards](#) are under any doubt as to whether they have expressed a view on a planning matter before going to the meeting, they should seek advice from the Solicitor to the Council and Monitoring Officer in advance of the meeting.
- 1.7** Ward Councillors who wish to make representations to the Development Control Boards should in particular note 1.2 and 1.3 on influencing other Members, 3.2 on Declarations of Interest and 6.3 and 6.4 If any doubt exists in a Member’s mind about possible personal or prejudicial interests they should seek advice from the Solicitor to the Council and Monitoring Officer in advance of the meeting.

2. When to declare an interest?

- 2.1** As outlined in the Council’s Members’ Code of Conduct, Members’ interests are broken down into two distinct categories: personal interests and prejudicial interests, the latter being the more serious interest. A Member may have a personal interest, but that interest may not be a prejudicial interest which would preclude them from participating in a discussion and voting on a particular item.

2.2 Personal Interest

In general terms, if a Member is aware that he/she or one or more of their relatives or friends has an interest (directly or indirectly, for example, through an organisation of which they are a member, or a company of which they are a director) in any matter before a Development Control Board and if the decision to be taken by the Members may be regarded as potentially affecting the well-being or financial position of that Member or one or more of their relatives or friends, then such a ‘personal interest’ must be declared before the matter is discussed, or as soon as it comes apparent to that member.

2.3 Prejudicial Interest

A Member with a 'personal interest' also has a 'prejudicial interest' in a matter if the interest is one, which **a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest.** In practice, it is more often than not, that a personal interest will be perceived by the public to be a prejudicial interest.

2.4 The Members' Code of Conduct sets out a number of exceptions to the above rule where a Member may regard them as not having a prejudicial interest, despite having a personal interest. Members are advised to be familiar with these provisions.

2.5 A common potential prejudicial interest arises where the Member resides near a development which is the subject of a planning application. While it is for the Member to judge, a useful rule of thumb is "will my enjoyment of my property be affected either positively or negatively by this application?" If the answer is in the affirmative, the Member should declare an interest and exclude themselves from discussion and voting on that item.

2.6 If any doubt exists in a Member's mind, they are advised to seek advice from the Solicitor to the Council and Monitoring Officer in advance of the meeting. In the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with officers.

3. What to do when a prejudicial interest is declared?

3.1 A Member with a prejudicial interest must withdraw from the meeting as soon as it becomes apparent that the matter in which they have a prejudicial interest is being considered unless he/she has obtained a dispensation from the Council's Standards Committee. The Member must not participate in any discussion on the matter in the meeting or vote on or be present at the vote on that matter.

3.2 The rules relating to declarations of interest apply equally to Ward Councillors who may from time to time wish to attend a meeting of the Development Control Board and speak on a particular matter. Each Member who attends a meeting must make an assessment of whether they have an interest or not. If a Member has a prejudicial interest they must withdraw from the meeting room for the duration of the discussion on that item. This applies even if the Member was not intending to speak.

4. Decision-Making: Material Planning Considerations

4.1 Members of [Development Control Boards](#) should only consider the planning merits of an application as set out before the Development Control Board in determining whether or not to grant planning permission. Members are not to give weight to non-planning related matters that may be raised by members of the public.

- 4.2** Further, an applicant or objector may not raise any substantial new information at a meeting (including by way of correspondence, other documents, photographs or models) at the Development Control Board meeting without due notice or the consent of the Board. Any attempts by applicants or objectors (or their agents) to introduce such information in breach of this Code must not be taken into consideration by Members in arriving at their final decision.
- 4.3** Planning applications are considered with regard to the policies set out in the Unitary Development Plan, adopted in 1995 and subsequent Supplementary Planning Guidance. Applications must be determined in accordance with policy unless material considerations indicate otherwise. Material considerations include the site history, appeal decisions, Central and London Government Guidance. All these policies and factors must be weighed together before a decision at Development Control Board level is made.
- 4.4** If a decision of a Development Control Board appears to be made on other than planning grounds it could be open to legal challenge. If it is appealed, and a Planning Inspector or the Court decides the decision to be flawed, it may be overturned. This could have serious cost implications for the Council.
- 4.5** If the majority of Members on a Development Control Board make a decision which is contrary to the Planning Officer's recommendations, reasons for the decision need to be given. Officers will at this point outline to Members the implications of the decision they are making.

5. Site Visits Protocol

- 5.1** Members of [Development Control Boards](#) will not make any decisions or discuss the merits or otherwise of a case during the site visit but may seek clarification, particularly about the layout of the site, from the accompanying Planning Officers.
- 5.2** The Democratic Support Officer will record the time/date of the site visit, Members in attendance and any other relevant information.

6. Conduct at Meetings

- 6.1** Members of [Development Control Boards](#) who are not present throughout an entire item for whatever reason must refrain from participating in the discussion on that item and must not vote on it.
- 6.2** As this is a legal process it is vital that Members of [Development Control Boards](#) must be **seen** to act fairly – Members of [Development Control Boards](#) must not discuss, or appear to discuss, any matter with members of the public during the course of the meeting or in the lead up to it.
- 6.3** Members who are not members of the Development Control Boards may speak at a meeting with the agreement of the Chair. ~~Councillors~~ [Non-Development Control Board Members](#) should sit separately from the members of the Development Control Board and they should declare whether they have had any contact with the applicant/objector/property owner or their agents, and whether they are speaking on behalf of a third party, and if so, who.

- 6.4** Members who are not members of the Development Control Boards must not communicate with the Members in respect of any undetermined planning matter in any other manner than that described above in the lead up to or during the course of the meeting.
- 6.5** Use of political whips - Proceedings are quasi-judicial and can never be party political. Members can neither be whipped nor lobbied by other Members. Members are advised that any political group meeting prior to a Development Control Board meeting must not be used to decide how Members should vote on any one or more items. This is considered to be maladministration.
- 7. Breaching the Code**
- 7.1** Where a Member believes that another Member is in breach of the Code of Conduct, then they themselves have a duty to report this to the Solicitor to the Council (who is the Council's Monitoring Officer).
- 8. Training**
- 8.1** Members of the Development Control Boards should attend planning training organised by the Council and are strongly advised to do so.
- 8.2** Members are encouraged to attend any other specialised training sessions provided, since these will be designed to extend Members' knowledge of planning law, regulations procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist Members in carrying out their role properly and effectively.

(Contact Officer : The Council's Monitoring Officer - Tel. 020-8227 3108)

Standards Committee 8 September 2005
Assembly 2 November 2005