

# **FINCHINGFIELD & CORNISH HALL END Parish Council Codes and Schemes**

<b>Code of Conduct for Members of this Parish Council .....</b>	<b>4</b>
1.    Introduction and interpretation.....	4
2.    Who does the Code apply to? .....	5
3.    What does the Code apply to? .....	5
4.    Where you act as a representative of the Authority – .....	5
5.    General obligations .....	5
6.    Confidential Information.....	6
7.    Conferring an advantage or disadvantage.....	6
8.    Disclosable Pecuniary Interests .....	6
9.    Other Pecuniary Interests.....	7
10.    Non-Pecuniary Interests .....	7
11.    Disclosure of Interests (Disclosable Pecuniary Interests, OtherPecuniary Interests and Non-Pecuniary Interests) .....	8
12.    Effect of Interests on participation .....	8
13.    Registration of Members' Interests.....	9
14.    Sensitive Information.....	10
15.    Register of Gifts and Hospitality .....	10
<b>Members' Code of Conduct .....</b>	<b>11</b>
1.    Introduction.....	11
2.    The Basics.....	11
3.    Committee on Standards In Public Life (The Nolan Committee) .....	11
4.    Conflict of Interest .....	12
5.    Standards of Conduct.....	12
6.    The Legal Background .....	12
7.    Gifts.....	13
8.    Hospitality.....	14
9.    Disclosure of Information.....	15
10.    Political Neutrality.....	15
11.    Relationships.....	15
12.    Appointment and Other Employment Matters.....	16
13.    Equality Issues .....	16

14. Separation of Roles During Tendering .....	16
15. Use of Financial Resources.....	17
<b>Protocol on Member/Officer Relations .....</b>	<b>18</b>
1. Key Points .....	18
2. Introduction.....	18
3. Officer Advice to Party Groups .....	19
4. Support Services to Members and Party Groups .....	20
5. Members' Access to Information and to Council Documents .....	20
6. Correspondence .....	21
<b>Code of Practice for Councillors Engaged in the Consideration of Planning Applications .....</b>	<b>22</b>
1. Introduction.....	22
2. The Need for Guidance .....	22
3. The General Role and Conduct of Councillors and Officers .....	22
4. Declaration and Registration of Interests.....	23
5. Parish Councillors and Essex County Councillors .....	24
6. Development Proposals Submitted By Councillors and Officers, and Council Development.....	24
7. Lobbying Of and By Councillors .....	25
8. Pre-Application Discussions .....	26
9. Post-Application Discussions .....	27
10. Site Visits by Councillors .....	27
11. Reports on Applications.....	27
<b>Gifts and Hospitality Guidance .....</b>	<b>28</b>
1. General Principles .....	28
2. Consent Regimes.....	30
3. Reporting.....	31
4. Gifts to the authority .....	31
5. Definitions.....	32

Advice on the Constitution can be obtained from the Monitoring Officer or the Governance and Members Team at Braintree District Council.

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# **Code of Conduct for Members of Finchingfield & Cornish Hall End Parish Council**

## **General Provisions**

### **1. Introduction and interpretation**

- 1.1. As a member you are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.
- 1.2. This Code as a whole is consistent with “Nolan Principles” which are set out in s29(1) Localism Act 2011 and are as follows:

#### **Selflessness**

To serve only the public interest and never improperly confer an advantage or disadvantage on any person.

#### **Integrity**

Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### **Objectivity**

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

#### **Accountability**

To be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their Office.

#### **Openness**

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

#### **Honesty**

Not to place themselves in situations where their honesty may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of such behaviour.

#### **Leadership**

Should promote and support these principles by leadership and by example and should always act in a way that secures or preserves public confidence.

### **1.3. In this Code-**

#### **1.3.1. “meeting” means any meeting of:**

1.3.1.1. the Authority (Finchingfield & Cornish Hall End Parish Council)

1.3.1.2. the Executive of the Authority

- 1.3.1.3. any of the Authority's or its committees, sub-committees, joint committees or joint sub-committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members
- 1.3.1.4. any briefings by officers and site visits organised by the Authority
- 1.3.2. "relevant period" means the period of 12 months ending with the day on which you give notification to Braintree District Councils' Monitoring Officer of any disclosable pecuniary interests you had at the time of the notification.
- 1.3.3. "profit or gain" includes any payments or benefits in kind which are subject to Income Tax.
- 1.3.4. "beneficial interest" means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale.
- 1.3.5. "Member" includes a co-opted member.

## **2. Who does the Code apply to?**

- 2.1. This Code applies to all Members of Finchingfield & Cornish Hall End Parish Council including co-opted members.
- 2.2. It is your responsibility to comply with the provisions of this Code.

## **3. What does the Code apply to?**

- 3.1. You must comply with this Code whenever you -
  - 3.1.1. Conduct the business of the Authority, or
  - 3.1.2. You are acting as a representative of the Authority.
- 3.2. This Code has effect in relation to your conduct in your official capacity.

## **4. Where you act as a representative of the Authority –**

- 4.1. On another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- 4.2. On any other body, you must, when acting for that other body, comply with the Authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## **5. General obligations**

- 5.1. You must treat others with respect.
- 5.2. You must uphold the law.
- 5.3. You must not –
  - 5.3.1. Do anything which may cause the Authority to breach any of the equality enactments;
  - 5.3.2. Bully any person;
- 5.3.3. Intimidate or attempt to intimidate any person who is or is likely to be:–
  - 5.3.3.1. a complainant;

- 5.3.3.2. a witness; or
- 5.3.3.3. involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with the Authority's code of conduct; or
- 5.3.3.4. Do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

## **6. Confidential Information**

- 6.1. You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
  - 6.1.1. You have the consent of a person authorised to give it;
  - 6.1.2. You are required by law to do so;
  - 6.1.3. The disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - 6.1.4. The disclosure is, reasonable and in the public interest; and made in good faith and in compliance with the reasonable requirements of the Authority;
- 6.2. You must not prevent another person from gaining access to information to which that person is entitled by law.

## **7. Conferring an advantage or disadvantage**

- 7.1. You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- 7.2. You must when using or authorising the use by others of the resources of the Authority, act in accordance with the Authority's reasonable requirements and ensure that such resources are not used improperly for political purposes (including party political purposes);
- 7.3. You must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

## **Members Interests**

### **8. Disclosable Pecuniary Interests**

- 8.1. You have a Disclosable Pecuniary Interest (DPI)<sup>1</sup> in any business of the Authority if it is of a description set out in 8.2 below and is either:
  - 8.1.1. An interest of yours; or
  - 8.1.2. An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner (known as "Relevant Persons").

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<sup>1</sup> The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the pecuniary interests specified for the purposes of Chapter 7 of Part 1 Section 30(3) of the Localism Act 2011 and take precedence over this definition

- 8.2. A Disclosable Pecuniary Interest is an interest which relates to or is likely to affect:
- 8.2.1. Any employment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain;
  - 8.2.2. Any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
  - 8.2.3. Any contract for goods, services or works which has not been fully discharged between you or a Relevant Person and the Authority or a body in which you or they have a beneficial interest;
  - 8.2.4. A beneficial interest in any land in the Authority's area
  - 8.2.5. A licence of any land in the Authority's area (alone or jointly with others) that you or a Relevant Person occupy for a month or longer
  - 8.2.6. Any tenancy where to your knowledge (i) the landlord is the Authority and (ii) the tenant is a body in which you or a Relevant Person has a beneficial interest
  - 8.2.7. Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the Authority and either:
    - 8.2.7.1. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - 8.2.7.2. the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.

## **9. Other Pecuniary Interests**

- 9.1. You have an Other Pecuniary Interest in any business of the Authority where it relates to or is likely to affect:
  - 9.1.1. Any person or body who employs or has appointed you;
  - 9.1.2. Any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 8.2.7 which has been fully discharged within the last 12 months;

## **10. Non-Pecuniary Interests**

- 10.1. You have a non-pecuniary interest in any business of the Authority where it relates to or is likely to affect -
  - 10.1.1. Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
  - 10.1.2. Any body of which you are a member or in a position of general control or management
    - 10.1.2.1. Exercising functions of a public nature; or

- 10.1.2.2. Directed to charitable purposes; or
- 10.1.2.3. One of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- 10.1.3. The interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
- 10.1.4. A decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing or financial position of a friend, relative or close associate to a greater extent than the majority of:-

  - 10.1.4.1. (In the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - 10.1.4.2. (In all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.

## **11. Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)**

- 11.1. Subject to sub-paragraphs 11.2 to 11.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.
- 11.2. Sub-paragraph 11.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.
- 11.3. Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 11.1 but by virtue of paragraph 14 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest or Other Pecuniary Interest you need not disclose the nature of the interest to the meeting.
- 11.4. Where you have a Pecuniary Interest in any business of the Authority which would be Disclosable by virtue of paragraph 11.1 and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's Monitoring Officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 11.5. Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 11.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **12. Effect of Interests on participation**

- 12.1. Disclosable Pecuniary Interests

12.1.1. If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and you are aware of that Interest:

12.1.1.1. You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting unless you have received a dispensation from the Authority's proper officer.

12.1.1.2. You must withdraw from the room or chamber where the meeting considering the business is being held.

12.1.2. If you have a Disclosable Pecuniary Interest in any business of the Authority you must not exercise executive functions in relation to that business; or seek improperly to influence a decision about that business

12.1.3. If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

## 12.2. Other Pecuniary Interests

12.2.1. If you have an other Pecuniary Interest in any business of the Authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must disclose the existence and nature of the interest in accordance with paragraph 11.1 (but subject to paragraph 11.3) and; Withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from the Authority's proper officer.

## 12.3. Non-Pecuniary Interests

12.3.1. After having declared an interest in accordance with paragraph 11.1 you may then participate and vote unless: a member of the public with knowledge of the relevant facts would reasonably regard your interest as so significant that it is likely to prejudice your judgement; or your interest may give rise to a perception of conflict of interest or bias, in which case you must withdraw.

## **Register of Members Interests**

### **13. Registration of Members' Interests**

13.1. Subject to paragraph 14, you must, within 28 days of this Code being adopted by or applied to the Authority; or your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Authority register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

13.1.1. Disclosable Pecuniary Interests as referred to in paragraph 8 that you or a Relevant Person has in so far as you are aware of their interests at that time;

- 13.1.2. Other Pecuniary Interests referred to in paragraph 9 that you have;
- 13.1.3. Non-pecuniary interests referred to in paragraph 10 that you have.
- 13.2. You must keep your register of interests up to date by notifying the Monitoring Officer of any changes to your interests referred to in 13.1 above within 28 days of the change occurring or becoming aware of the change.

#### **14. Sensitive Information**

- 14.1. Where you have a Disclosable Pecuniary Interest referred to in paragraph 8 or Other Pecuniary Interest referred to in paragraph 9 and the nature of the interest is such that you and Braintree District Councils' Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Authority's Register then copies of the register available for inspection and any published version of the Register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 14.2. You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 14.1 is no longer sensitive information, notify Braintree District Councils' Monitoring Officer.
- 14.3. In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

#### **15. Register of Gifts and Hospitality**

- 15.1. You must within 28 days of receipt, notify Braintree District Councils' Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a Member from any person or body other than the Authority.
- 15.2. The Monitoring Officer will place your notification on a public register of gifts and hospitality.
- 15.3. This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

# **Members' Code of Conduct**

## **1. Introduction**

- 1.1. Lord Nolan in his report on Standards of Conduct in Local Government, commented that in general the standard of behaviour and conduct in Local Government is extremely high. However, there is no room for complacency where this subject is concerned and the public rightly expect the highest standards from Local Government.
- 1.2. The purpose of this code is to ensure the Council and its employees achieve the highest standards of behaviour and conduct.
- 1.3. It brings together extracts from documents with which staff should already be familiar.
- 1.4. In maintaining an effective plan to ensure fraud and corruption are minimised, it is essential that as a part of that process the standards by which employees are expected to conduct themselves are clearly defined. They must also be widely circulated to increase the overall awareness.

## **2. The Basics**

- 2.1. Each individual is accountable for their own decisions and actions.
- 2.2. Use this code to aid your judgement.
- 2.3. If you are doubtful or unclear about circumstances involving gifts/hospitality, it is prudent to seek advice, or simply make a polite refusal.
- 2.4. When in doubt SEEK ADVICE

## **3. Committee on Standards In Public Life (The Nolan Committee)**

- 3.1. The Seven Principles of Public Life
  - 3.1.1. Selflessness - Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - 3.1.2. Integrity - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - 3.1.3. Objectivity - In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - 3.1.4. Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - 3.1.5. Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

- 3.1.6. Honesty - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- 3.1.7. Leadership - Holders of public office should promote and support these principles by leadership and example.

#### **4. Conflict of Interest**

- 4.1. Reference is made in several parts of this code to the term conflict of interest. To avoid ambiguity, and to indicate clearly what is meant, these notes aim to help your judgement of such situations.
- 4.2. The accountability for avoiding any conflict of interest rests with the member, and implies the member will exercise the necessary judgement. Advice can always be obtained from the Clerk/Responsible Financial Officer (RFO).
- 4.3. Examples of where there may be a potential conflict of interest include: Employment or Private Business Activities, Outside Commitments, Personal Interests, Interests (business or other) or family, friends etc.
- 4.4. A member must ensure there is complete openness in any situation which could lead to a conflict of interest. Where known this must be by a declaration to the Clerk/Responsible Financial Officer.
- 4.5. The key issues are:-
  - 4.5.1. distinguish between your duties/responsibilities to the Council and your own personal and/or other interests.
  - 4.5.2. make the necessary declarations to your Clerk/Responsible Financial Officer.

#### **5. Standards of Conduct**

- 5.1. It would be inappropriate if a blanket prohibition was placed on members of the Council so that they were unable to accept gifts or invitations for social involvement from persons or companies who may have had, currently have or may seek to have in the future, business dealings with Finchingfield & Cornish Hall End PC. Social contact, when properly regulated, can be beneficial and helpful to the Council's interests.
- 5.2. Local Government members are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow members with impartiality. Members will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Members must report to the appropriate manager any impropriety or breach of procedure.
- 5.3. The purpose of this guidance note is to provide members with a clearer understanding of the obligations on them as local government members whilst at the same time helping them to make the right and proper decision in each particular case.

#### **6. The Legal Background**

- 6.1. Fraud and corruption does not just happen; it develops out of relationships

- 6.2. The Bribery Act 2010 provides that it is an offence for any employee to corruptly receive or agree to receive any gift, loan, fee, reward or advantage as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction in which a local authority is concerned. It is also an offence corruptly to give, promise or offer any gift, loan etc. in such circumstances.
- 6.3. To say that the employee was not influenced either way by the gift is no excuse. For the employee to receive a bribe is sufficient for an offence to have been committed

## 7. **Gifts**

- 7.1. Considerable caution needs to be exercised by employees with regard to the acceptance of gifts. Other than the exceptions shown below an employee should refuse any gift offered to them or to a member of their immediate family (i.e. spouse, partner or child) by any person or body who has or seeks to have dealings with the Authority. All refusals should be notified to the Monitoring Officer and Finchingfield & Cornish Hall End PC who will maintain a Register for his/her Services.
- 7.2. Any gifts received by an employee during their employment belong to the Authority although they may be used by the employee during the course of their employment.
- 7.3. An exception is a modest gift of a promotional/advertising character given to a wide range of people and not uniquely to the employee. The gifts would normally bear the Company's name and/or trademark/logo and would be the sort of item that would be useful in the every- day working environment e.g. pens, calendars, diaries, note pads, desk sets, tape measures.
- 7.4. However, cash or monetary gifts should be refused as should legacies, and this should be recorded.
- 7.5. From time to time, as part of a sales promotion drive, firms offer gifts or vouchers exchangeable for gifts, for orders in excess of certain targets. When this happens Value for Money and the best interests of the Authority should always be uppermost in an employee's mind. Employees should not be lured to over ordering, over stocking, or purchasing items not forming part of the Authority's normal requirements.
- 7.6. Gifts are also given as prizes at Exhibitions, Conferences, Seminars etc as part of a free raffle or draw. These gifts may be accepted but they are the property of the Authority and not the employee. The gift must be recorded in the Register maintained by the Monitoring Officer and Finchingfield & Cornish Hall End PC and may be used by Finchingfield & Cornish Hall End PC for the benefit of the parish. The failure of an employee to disclose a gift may render that employee liable to disciplinary action and criminal prosecution.
- 7.7. Where the gift is of no direct use to Finchingfield & Cornish Hall End PC, it can be the subject of a raffle (or donation) with the proceeds going to a charitable fund e.g. Chair's Charity Fund, or Union Welfare Fund. However this arrangement can only be made with the Monitoring Officer's written approval and must be recorded in the Service's register.

## **8. Hospitality**

- 8.1. The traditional view of offers of hospitality would be to consider them as being a "sweetener" for future business, the purpose being simply to try to place the person providing the hospitality in a more favoured position if and when contracts are on offer. However, that view is perhaps too rigid and dated. Business habits change and so therefore should attitudes in local government.
- 8.2. It is difficult to draw up precise rules that would cover every occasion, and the use of terms such as "modest" or "lavish" are not helpful. That which to us in the public sector may appear "lavish" may in fact be seen as "modest" by those in the private sector.
- 8.3. Invitations accepted need to be on the clear understanding that the employee is acting in their official capacity, and this code of conduct cannot be circumvented by allowing their immediate family to benefit.
- 8.4. The following are examples of the ACCEPTABLE:
  - 8.4.1. A working meal provided to allow the parties to discuss or continue to discuss business. (Employees are reminded they must not claim subsistence unless money has actually been expended by them on paying for their share of the meal or purchase of drinks). Employees should endeavour to pay their share of the cost where practicable.
  - 8.4.2. An invitation from an established or prospective trading partner to a function that is part of a wider gathering e.g. conference lunches or dinners, where other local government employees connected with the service provided by the trading partner are also invited.
  - 8.4.3. An invitation to attend a dinner or function of a Society or Institute with whom the Authority has contact.
  - 8.4.4. An invitation to attend a function organised as part of a company's anniversary or jubilee celebration.
- 8.5. Some companies with whom the Authority deals are sponsoring events. These are usually sporting but can also be cultural. No link appears to exist between the nature of the sponsor's business and the event itself, but the purpose of sponsorship is publicity.
- 8.6. In these circumstances it would not be unusual for the sponsor to treat customers preferentially and invite them to attend. If the event is local, or, if at a distance, does not involve overnight accommodation paid for by the sponsor, acceptance of an invitation could be reasonable.
- 8.7. If however, an employee receives an invitation to attend a sporting or cultural event from an established or prospective trading partner who has no apparent connection (sponsorship or otherwise) with the event e.g. Football at Old Trafford or Rugby at Twickenham then these invitations should be rejected.
- 8.8. Amongst those invitations that are also UNACCEPTABLE and should therefore be refused are:- holidays, offers of hotel vouchers, theatre tickets, free travel etc, use of a Company flat or hotel suite.
- 8.9. In general terms if the offer/invite is something unique to yourself or of doubtful integrity SAY NO.

- 8.10. When a particular person or body has a matter currently at issue with the Council e.g. an arbitration arising from a contract, then clearly common sense dictates that offers of hospitality should be refused even if in normal times they would be acceptable.
- 8.11. General "Complimentary" tickets are, of course, to be dealt with in a different way. Depending on the type of event they can be properly used by making them widely available to the staff in the Service.
- 8.12. People making offers of gifts and/or hospitality should be made aware Finchingfield & Cornish Hall End Parish Council has a code of conduct for its employees.
- 8.13. It is appropriate, when circumstances warrant, to decline with the explanation: "I am unable to accept your offer as it contravenes the Council's code of conduct". Such a refusal should be entered in the Departmental register which is the responsibility of the relevant Head of Service to maintain.
- 8.14. It may also be appropriate, and prudent, to confirm your refusal in writing to the head office of the person making the offer.

## **9. Disclosure of Information**

- 9.1. The law requires that certain types of information must be available to councillors, auditors, government departments, service users and the public. The authority itself may decide to be open about other types of information. Employees must be aware of which information their authority is and is not open about, and act accordingly.
- 9.2. Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor or a third party which is personal to that individual and does not belong to the authority should not be divulged by the employee without the prior approval of that individual, except where such disclosure is required or sanctioned by the law.

## **10. Political Neutrality**

- 10.1. Employees serve the authority as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected
- 10.2. Occasionally, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
- 10.3. Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.

## **11. Relationships**

- 11.1. Councillors
- 11.1.1. Employees are responsible to the authority through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are

there to carry out the authority's work. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should, if possible, therefore be avoided. Where such relationships do exist those involved should be careful to apply their mind to the issues and not be influenced by other factors including their relationship and that this is also seen to be the case by an impartial observer.

#### **11.2. The Local Community and Service Users**

- 11.2.1. Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.

#### **11.3. Contractors**

- 11.3.1. All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against. Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to their immediate line manager.

### **12. Appointment and Other Employment Matters**

- 12.1. Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her. Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

### **13. Equality Issues**

- 13.1. All local government employees should ensure that policies relating to equality issues as agreed by the authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

### **14. Separation of Roles During Tendering**

- 14.1. Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

14.2. Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors, former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

**15. Use of Financial Resources**

15.1. Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the authority.

# **Protocol on Member/Officer Relations**

## **1. Key Points**

- 1.1. Mutual respect between Councillors and officers is essential to good local government. Courtesy should be extended to one another at all times (paragraph 19)
- 1.2. Support and advice to political party groups is available provided that this is first agreed between the relevant group leader and the Chief Executive (paragraph 19)
- 1.3. Requests for information, explanation, advice should be reasonable in terms of time and quantity and be directed to the relevant Head of Service. The Executive, individual Members of the Executive and Committees acting under delegated authority can instruct officers, other individual Members cannot (paragraph 20)
- 1.4. Individual Members rights to inspect documents are restricted by the “need to know” principle. There is no right to a “roving commission” (paragraph 4.5)
- 1.5. It is a betrayal of trust to disclose or use confidential information for personal advantage, or to the disadvantage or the discredit of the Council or anyone else (paragraph 21)

## **2. Introduction**

- 2.1. The purpose of this protocol is to guide Members and Officers of the Council in their relations with one another.
- 2.2. 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 which most commonly arise. It is hoped that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 2.3. This protocol is to a large extent no more than a written statement of current and recommended good practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 2.4. This protocol also seeks to reflect the principles underlying the Council's adopted Code of Conduct for Members (“the Code”) and the General Principles of Conduct which have been adopted by the Council. The shared objective of the Code and the General Principles is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand very high standards of personal conduct.
- 2.5. A relevant extract from the Code is reproduced below:-

*"2 A Member must -*

*(a) promote equality by not discriminating unlawfully against any person*

*(b) treat others with respect; and*

*(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority".*

- 2.6. A relevant extract from the General Principles is reproduced below

*"Relations with Officers*

*You should respect the role of the Council's officers and employees and treat them in a way that engenders mutual respect at all times"*

- 2.7. Both the Code and the General Principles refer to "respect". It is important, therefore, that any dealings between members and officers should observe normal standards of courtesy and that neither party should seek to take unfair advantage of their position.

- 2.8. Relationships between Members and officers are also subject to the Council's policy on harassment (including bullying) a copy of which can be obtained from Human Resources. Bullying is defined as:-

*"the misuse of power or position to persistently criticise and condemn, to openly humiliate and professionally undermine an individual's professional ability"*

**3. Officer Advice to Party Groups**

- 3.1. There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups provided that this is first agreed between the relevant Group Leader and the Chief Executive

- 3.2. The support provided by officers can take many forms, ranging from a briefing meeting with a Chairman, a Cabinet Member or a Group (either jointly or individually) prior to a committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

- 3.3. Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:

- 3.3.1. officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;

- 3.3.2. party group meetings, whilst they inform part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;

- 3.3.3. similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered; and

- 3.3.4. the attendance of officers at a party group meeting does not confer on that meeting any official standing.

- 3.4. Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Code (in particular, the provisions concerning the declaration of interest and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.
- 3.5. Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 3.6. Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

#### **4. Support Services to Members and Party Groups**

- 4.1. The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, etc) to members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes or for purposes not directly related to Council business.

#### **5. Members' Access to Information and to Council Documents**

- 5.1. Members are free to approach any Council Service with a request to provide them (within a reasonable period) with such information, explanation and advice (about that Service's functions), as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Clerk or Chairman of the Service. It must be remembered, however, that officers within a Service are accountable and whilst officers should always seek to assist members they must not, in doing so, go beyond the bounds of whatever authority they have been given. Individual Members do not have the power or authority to instruct officers to provide information, explanations, advice or to carry out any specific task or tasks.
- 5.2. As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 5.3. Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, committee or sub- committee meeting. This right applies irrespective of whether the member is a member of the committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also to relevant background papers. This right does not, however, apply to documents relating to certain items which may appear on the private agenda for meetings. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

- 5.4. The common law right of members is much broader and is based on the principle that any member has a *prima facie* right to inspect Council documents as far as his/her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the “need to know” principle.
- 5.5. The exercise of this common law right depends therefore upon the member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect a member has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The question must initially be determined by the Clerk or Chairman whose Service holds the document in question (with advice from the Clerk). In the event of dispute, the question falls to be determined by Finchingfield & Cornish Hall End PC as a whole or the relevant committee, Panel or Group – i.e. the body in connection with whose functions the document is held.
- 5.6. In some circumstances (e.g. a member wishing to inspect documents relating to the functions of a committee, group or panel of which he/she is a member) a member’s “need to know” will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms and, on request, in writing.
- 5.7. Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of the member’s duties as a member of the Council. This point is emphasised in the Code in the following terms:

“3 A Member must not -  
(a) disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he/she is required by law to do so; nor  
(b) prevent another person from gaining access to information to which that person is entitled by law”.

## **6. Correspondence**

- 6.1. Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of “silent copies” should not be employed.
- 6.2. Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent over the name of the member.

# **Code of Practice for Councillors Engaged in Consideration of Planning Applications**

## **1. Introduction**

- 1.1. This Code of Practice applies to both councillors and officers. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

## **2. The Need for Guidance**

- 2.1. Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also contentious because its decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers. It affects land values. All this is heightened by the openness of the system and the legal nature of development plans and decision notices.
- 2.2. Consequently with any application which has been refused or approved in the face of opposition, the decision may well be the subject of detailed scrutiny. Any question of a procedural defect, impropriety or misconduct, whether warranted or not, may lead to an application for judicial review or a complaint to the Local Government Ombudsman of maladministration. Even if not taking such action the aggrieved party may attempt to convince others that the decision was flawed. As a result, the planning process must not only be fair, it must be seen to be fair.

## **3. The General Role and Conduct of Councillors and Officers**

- 3.1. Councillors and officers have different, but complementary roles. Both service the public but councillors are responsible to the electorate, while officers are responsible to the Council as a whole. As a general rule, instructions will usually be given to officers through a Council or committee decision.
- 3.2. Both councillors and officers are guided by codes of conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. Not all planning officers are members of the RTPI and its Code of Professional Conduct should therefore be operated as a Local Code for all planning officers.
- 3.3. The Code of Conduct for Members, provides standards and guidance for councillors and sets out requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, but also appropriate relationships with other members, staff and the public, which will impact on the way in which councillors participate in the planning process.
- 3.4. Of particular relevance to councillors engaged in the determination of planning applications is the requirement that a member:  
*"Not use, or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage "*  
*(paragraph 5(a) of the Code of Conduct for Members).*
- 3.5. Under Braintree District Council's Constitution all Members of the District Council are responsible for approving or adopting the policy framework, including the

plans and strategies which together comprise the Local Plan. Nothing in this Code restricts or interferes with the role of Members in formulating, implementing, supporting and defending the policies of the Council.

- 3.6. The basis of the development control system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are strongly held by those involved. While councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 3.7. The Local Government Ombudsman has concluded that the use of whipped votes at group meetings, or reliance on party political loyalty, to compel a councillor to vote on a planning application in a particular way will amount to maladministration. The Court of Appeal has given judicial endorsement to this approach. Votes in Committee and Council on planning applications are a matter of individual conscience based on planning judgement and should not be influenced or controlled by whipped votes.
- 3.8. Employees must always act impartially. The Local Government and Housing Act 1989 imposes restrictions on their outside activities.
- 3.9. Councillors should be very cautious about accepting gifts and hospitality. The Code of Conduct for Members requires that any members receiving any gifts or hospitality, in their capacity as members, over the value of £50, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer and Clerk of Finchingfield & Cornish Hall End PC. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.
- 3.10. Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimum level and declare its receipt as soon as possible.
- 3.11. For councillors the Head of Governance at Braintree D C maintains a register of gifts and hospitality for this purpose. For officers, each Service maintains a hospitality book.
- 3.12. Councillors and Officers should take into account the Bribery Act 2010 which makes it a criminal offence to offer or accept something for the purposes of doing or not doing something for someone else's benefit.

#### **4. Declaration and Registration of Interests**

- 4.1. Councillors must observe scrupulously the requirements on declaring interests as set out in the Code of Conduct for Members.
- 4.2. Ultimate responsibility for fulfilling the requirements rests individually with each councillor.
- 4.3. A register of members' interests is maintained by Braintree Council's Monitoring Officer, which will be available for public inspection. A member must provide the Monitoring Officer with written details of relevant interests within 28 days of their election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.

- 4.4. Where Councillors have an interest within the meaning of the Code of Conduct they should declare this at any relevant meeting and take the appropriate action which may include removing themselves from the meeting for the item concerned. Members should refer to the Code of Conduct for the detailed rules as to when they must leave the room.
- 4.5. Members should take into account public perception. Whilst in strict terms they may not have an interest which requires them to leave the room, they may choose to do so if to remain would give the public a reasonable ground for considering that they are not able to perform their duties as a Councillor fairly.
- 4.6. However, if a Member, in advance of the decision-making meeting takes a firm view on the planning matter, either in meetings of another Council (such as a Town or Parish Council) or otherwise, they may well not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account - they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place their authority in danger of judicial review. Members should be clear in any meeting that they will give appropriate consideration to the facts before them, and consider the matter clearly.
- 4.7. Where the Member with responsibility for development is committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area to the extent that they are not able to demonstrate that they are able to take account of counter arguments before a final decision is reached the Member should be able to argue for the development but should not vote on the relevant application(s).

## **5. Parish Councillors, District Councillors Essex County Councillors**

- 5.1. Where a Councillor feels compromised, they should seek advice in advance of the meeting.

## **6. Development Proposals Submitted By Councillors and Officers, and Council Development**

- 6.1. Applications to their own authority by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety.
- 6.2. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving councillors and council officers who act as agents for people pursuing a planning matter with the Council should play no part in the decision-making process for those proposals. Similarly, should they submit their own application to the Council, they should take no part in its processing. Any such applications, whether by members or officers, will not be dealt with under delegated powers.
- 6.3. A councillor submitting an application will invariably have a Disclosable Pecuniary interest in the application. They must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered. Unless they have been granted a dispensation in advance.

- 6.4. An officer submitting an application will have an interest in that application. They must also declare an interest if present at the meeting at which the application is discussed. Applications submitted by councillors or officers will always be determined by the whole parish council and not under delegated powers.
- 6.5. Proposals for the Council's own development should be treated in the same way as those by private developers. This requirement also applies to private applications on Council owned land (such as a private application prior to a Council land sale being agreed or negotiated). The planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so. To ensure transparency all applications by the Council will not be dealt with under delegated powers.

## **7. Lobbying Of and By Councillors**

- 7.1. Lobbying, which can be defined as an approach to a councillor by an applicant, developer, objector or other third party, is a normal and perfectly proper part of the democratic process. The Committee on Standards in Public Life recognised the additional roles that councillors perform in the planning process beyond policy formulation and implementation, namely, the representation of public opinion and the determination of applications.
- 7.2. However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality of a councillor being called into question and the need for an interest to be declared. When being lobbied, all councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the application before they have considered all representations and the planning content. Councillors should not lobby other councillors to act for them, or act as an agent for other councillors, or put pressure on members for a particular recommendation or decision.
- 7.3. In such situations, they should restrict themselves to giving procedural advice including recommending that those who are doing the lobbying should write to the Development Director at Braintree DC so that their views can be included in the officer's report to the Committee. A councillor should not give a firm indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair, prejudicial and may amount to maladministration.
- 7.4. When attending public meetings councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals or submitted planning applications.
- 7.5. Correspondence received by councillors should be passed to the Clerk without delay to ensure that all material considerations are available to those members responsible for considering the application. A response by a councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to the parish council.

- 7.6. Taking account of the need to take decisions impartially, councillors must weigh up all the material considerations reported at each meeting. Without prejudice to their roles in formulating, implementing, supporting and defending the policies of the Council, they should not be biased (or appear to be biased) towards any person, company, group or locality. Councillors who commit themselves firmly to a particular view on a planning issue, prior to its consideration at a meeting, must decide whether the public (or other interested body) would believe that they have prejudiced their position and were incapable of weighing up all the material considerations. If the Councillor feels that the public would believe he or she had come to a conclusive view on the planning matter or application before a meeting, then he or she should consider not taking part in the debate and not voting on the issue.
- 7.7. If planning applications are considered by a succession of committees or meetings each consideration will require the councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
- 7.8. Whilst councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committees when all available information is to hand and has been considered.

## **8. Pre-Application Discussions**

- 8.1. Discussion between a potential applicant and with representatives of Council prior to the submission of an application can be of considerable benefit to both parties and is encouraged in appropriate situations. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process.
- 8.2. In order to avoid such problems, pre-application discussions should take place within clear guidelines.
  - 8.2.1. It should always be made clear at the outset that the discussions will not bind the Council;
  - 8.2.2. Advice should be consistent and based upon the current planning policies and material considerations;
  - 8.2.3. A written note should be made of the meeting. Councillors would be entitled to see this note. At least one officer should attend potentially contentious meetings and a follow-up letter would usually be sent;
  - 8.2.4. Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be partisan;
  - 8.2.5. To maintain impartiality and its appearance, it is preferable that councillors do not take part in such discussions. Should there, however, be occasions when councillors are involved they should be advised by appropriate professional officers;
  - 8.2.6. The involvement of councillors should be recorded in the committee report.

## **9. Post-Application Discussions**

- 9.1. A councillor should not approach an applicant for planning permission with a view to securing changes to an application or achieving planning gain. Such an approach would contravene the principles of good practice set out in this Code and would inevitably give rise to allegations of partiality or bias. Any contact with applicants should normally be conducted with and through the clerk and should always be reported to the parish council members at a meeting.

## **10. Site Visits by Councillors**

- 10.1. Site visits are intended solely for the purpose of acquiring information about the nature of a planning application. They should not be used as an opportunity for applicants, agents or objectors to seek to influence the views of Councillors. During site visits Councillors should:-
- 10.1.1. as far as is possible, not visit sites alone;
  - 10.1.2. ensure that applicants, agents or objectors do not impose themselves; and
  - 10.1.3. refrain from making comments on the merits or otherwise of the application to any interested party who may be present.
- 10.2. Formal site visits can cause delay and additional costs and should only be used where the expected benefit is substantial. They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit.
- 10.3. The principles set out above should apply to formal site visits. In addition, Councillors with accompanying officers should carry out the visit in one group.
- 10.4. If Councillors wish to visit an area in advance of a Planning Committee meeting they can do so, however they should not attempt to turn this into a formal site visit or enter private land without permission.

## **11. Reports on Applications**

- 11.1. The Clerk will make formal written response to the Planning Department accurately conveying the outcome of the consideration given to the Application by the parish council members, whether by a committee of the council or full council.
- 11.2. That written response will be in the form of a Word document attached to an email and may contain the response to more than one planning application.
- 11.3. Any written response will be timed to arrive before the expiration date for comments.

# **Gifts and Hospitality Guidance**

The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the authority as acting in the public interest or as acting for the personal advantage of friends and for what personal benefit Councillors can get out of their position. This guidance supports the Member Code of Conduct

The law on the acceptance of gifts and hospitality is set out in the authority's Code of Conduct for Members and in the Bribery Act 2010. These requirements are then supplemented by the procedures which have been adopted by this authority, to provide a clear set of rules for the protection of both Councillors and the authority. Corrupt acceptance of a gift or hospitality can lead to a heavy fine or up to 10 years' imprisonment.

This guidance sets out:

- the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality;
- a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it; and
- a procedure for declaring any gift or hospitality which you receive and for accounting for any gift to the authority

This Code does not apply to the acceptance of any facilities or hospitality which may be provided to you by this authority.

## **1. General Principles**

- 1.1. In deciding whether it is proper to accept any gift or hospitality, you should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, you should not accept it if to do so would be in breach of one or more of these principles.
- 1.2. Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor
  - 1.2.1. As a Councillor, you must act in the public interest and must not be swayed in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.
  - 1.2.2. The Bribery Act 2010 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or not doing anything in respect of any matter or transaction in which the authority is concerned, you commit a criminal offence carrying a maximum term of imprisonment of up to 10 years
  - 1.2.3. Further, the authority's Code of Conduct for Members provides that you must act in the public interest, serving the authority and the whole community, rather than acting in the interests of any particular individual or section of the community, and that it is a breach of the Code improperly to confer any advantage or disadvantage on any person, including yourself.

- 1.3. You should only accept a gift or hospitality if there is a commensurate benefit to the authority.
  - 1.3.1. The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the authority which would not have been available but for the acceptance of that gift or hospitality.
  - 1.3.2. Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interests of the authority and its area at a meeting. Acceptance of a gift is much less likely to confer such an advantage. But unless the benefit to the authority is clear, and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.
  - 1.3.3. As set out above, the authority's code provides that you must not improperly confer any advantage on anyone, including yourself. Acceptance as a Councillor of a gift or hospitality for your own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Code.
- 1.4. Never accept a gift or hospitality if acceptance might be open to misinterpretation
  - 1.4.1. The appearance of impropriety can be just as damaging to the authority and to you as a Councillor as actual impropriety. The authority's ability to govern rests upon its reputation for acting fairly and in the public interest. You must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that you or the authority favours any particular person, company or section of the community or as placing you under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.
  - 1.4.2. Certain occasions are particularly sensitive, and require the avoidance of any opportunity for such misunderstanding. These include:
    - 1.4.2.1. occasions when the authority is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer.
    - 1.4.2.2. determinations of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination,
    - 1.4.2.3. funding decisions, when the authority is determining a grant application by any person or organisation.
- 1.5. Never accept a gift or hospitality which puts you under an improper obligation
  - 1.5.1. Recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, it is possible that they may seek to use this fact to persuade you to determine an issue in their favour. Equally, if others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the authority.
- 1.6. Never solicit a gift or hospitality

- 1.6.1. You must never solicit or invite an offer of a gift or hospitality in connection with your position as a Councillor. You should also take care to avoid giving any indication that you might be open to such any improper offer. Asking for a benefit may be an offence under the Bribery Act 2010.

## **2. Consent Regimes**

- 2.1. For clarity, the authority has agreed that you may accept gifts and hospitality in the following circumstances:
  - 2.1.1. civic hospitality provided by another public authority
  - 2.1.2. modest refreshment in connection with any meeting in the ordinary course of your work, such as tea, coffee, soft drinks and biscuits
  - 2.1.3. tickets for sporting, cultural and entertainment events which are sponsored by the authority
  - 2.1.4. small gifts of low intrinsic value below £50, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. However, you should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise
  - 2.1.5. a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom you have done business on behalf of the authority if you meet accidentally in a public house, cafe or bar. In such cases, you should make reasonable efforts to return the offer where this is practicable
  - 2.1.6. a modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the authority has an existing business connection where this is required in order to facilitate the conduct of that business.  
Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction, when arranging any such meeting, to make it clear to the other party that such a lunch must not exceed a value of £10 a head
  - 2.1.7. modest souvenir gifts with a value below £50 from another public authority given on the occasion of a visit by or to the authority
  - 2.1.8. Hospitality received in the course of an external visit or meeting which has been duly authorised by the authority. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction to make it clear that any such hospitality for Councillors and officers is to be no more than commensurate with the nature of the visit
  - 2.1.9. other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the following procedure: The Councillor must, as soon as practicable after the receipt of the gift, pass it to the Clerk of the Council together with a written statement identifying the information set out in Paragraphs 2(b) below. The Clerk will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that you have donated the gift to the Chairman's Charity Fund, on whose behalf it will be raffled

- or otherwise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Chairman.
- 2.2. Special consent provisions exist where you wish to accept any gift or hospitality which is in accordance with the General Principles set out above, but is not within any of the general consents set out above. You may only accept the gift if you have previously obtained specific consent in accordance with the following procedure:
  - 2.3. You must make an application in writing to the Monitoring Officer, setting out:
    - 2.3.1. the nature and your estimate of the market value of the gift or hospitality
    - 2.3.2. who the invitation or offer has been made by or on behalf of
    - 2.3.3. the connection which you have with the person or organisation making the offer or invitation, such as any work which you have undertaken for the authority in which they have been involved
    - 2.3.4. any work, permission, concession or facility which you are aware that the person or organisation making the offer or invitation may seek from the authority
    - 2.3.5. any special circumstances which lead you to believe that acceptance of the gift or hospitality will not be improper
  - 2.4. You must not accept the gift or hospitality until you have received the appropriate consent.
  - 2.5. The Monitoring Officer will enter details of any approval in a register which will be available for public inspection on the occasion of the public inspection of the authority's accounts for the relevant year. But note that this does not relieve you of the obligation to register the receipt of the gift as set out below.

### **3. Reporting**

- 3.1. Where you accept any gift or hospitality which you estimate to have a market value or cost of provision of £50 or greater, you must, as soon as possible but not later than 28 days after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information set out in Paragraphs 2(b) above. A form for this purpose is available from the Monitoring Officer, but you can send the same information by any convenient means. The Monitoring Officer will retain a copy of any such declaration in a register which will be available for public inspection until the approval of the authority's accounts for the year in question.
- 3.2. Even if the value of the gift or hospitality is less than £50, if you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

### **4. Gifts to the authority**

- 4.1. Gifts to the authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the authority. You should not solicit any such gift on behalf of the authority except where the

authority has formally identified the opportunity for participation by an external party and how that participation is to be secured, for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements. If you receive such an offer on behalf of the authority, you must first consider whether it is appropriate for the authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the authority under any improper obligation, whether there is a real benefit to the authority which would outweigh any dis-benefits). If you do not have delegated authority to accept the gift, you should report the offer directly to the Monitoring Officer who has such delegated authority, together with your recommendation. The Monitoring Officer will then write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the authority. If you have any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the authority to accept the gift, you should consult the Monitoring Officer directly.

## **5. Definitions**

- 5.1. "Gift or hospitality" includes any:
  - 5.1.1. free gift of any goods or services
  - 5.1.2. opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public
  - 5.1.3. opportunity to obtain any goods or services which are not available to the general public
  - 5.1.4. offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.
- 5.2. References to the "value" or "cost" of any gift or hospitality are references to the higher of:
  - 5.2.1. your estimate of the cost to the person or organisation of providing the gift or consideration
  - 5.2.2. the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.