

# Agenda

## **Regulatory and Governance Committee**

Wednesday, 11 July 2018 at 7.00 pm
Brentwood County High School, Shenfield Common, Seven Arches Road,
Brentwood CM14 4JF

#### Membership (Quorum - 3)

Cllrs Ms Rowlands (Chair), Tumbridge (Vice-Chair), Barrett, Cloke, Mrs Hones, Kendall, McCheyne, Mrs Middlehurst and Mynott

#### **Substitute Members**

Cllrs Hirst, Naylor, Nolan, Morrissey, Mrs Murphy and Tierney

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## 7. Urgent Business

Chief Executive

Town Hall Brentwood, Essex 03.07.2018

#### **Information for Members**

#### **Substitutes**

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi-judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

#### Rights to Attend and Speak

Any Members may attend any Committee to which these procedure rules apply.

A Member who is not a member of the Committee may speak at the meeting. The Member may speak at the Chair's discretion, it being the expectation that a Member will be allowed to speak on a ward matter.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

#### Point of Order/ Personal explanation/ Point of Information

#### Point of Order

A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Mayor on the point of order will be final.

#### **Personal Explanation**

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Mayor on the admissibility of a personal explanation will be final.

## Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Mayor. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate, If the Mayor gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Mayor on the admissibility of a point of information or clarification will be final.

#### Information for Members of the Public

#### (i) Access to Information and Meetings

You have the right to attend all meetings of the Council and Committees. You also have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.brentwood.gov.uk.

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Where members of the public use a laptop, tablet device, smart phone or similar devices to make recordings, these devices must be set to 'silent' mode to avoid interrupting proceedings of the council or committee.

If you wish to record the proceedings of a meeting and have any special requirements or are intending to bring in large equipment then please contact the Communications Team before the meeting.

The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.

The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of these activities, in their opinion, are disrupting proceedings at the meeting.



#### Private Session

Occasionally meetings will need to discuss some of its business in private. This can only happen on a limited range of issues, which are set by law. When a Committee does so, you will be asked to leave the meeting.



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#### Evacuation Procedures

Evacuate the building using the nearest available exit and congregate at the assembly point in the Car Park.

#### 11<sup>th</sup> July 2018

#### **Regulatory and Governance Committee**

#### Regulation of Investigatory Powers Act 2000

**Report of:** Daniel Toohey, Monitoring Officer and Head of Legal Services

Wards Affected: All

This report is: Public

#### 1. Executive Summary

- 1.1 The Investigatory Powers Commissioner's Office (IPCO) conducts periodic inspections of local authorities' use of their powers under the Regulation of Investigatory Powers Act 2000 (RIPA). The purpose of these inspections is to examine the Council's policies, procedures, operations and administration in relation to directed surveillance and covert human intelligence sources (CHIS) under RIPA.
- 1.2 The last inspection took place on 16<sup>th</sup> August 2017 and although it was noted that there has been no directed surveillance or CHIS been requested since 21<sup>st</sup> July 2014 the inspector made one recommendation requiring a number of parts of Corporate RIPA policy to be updated and amended. In addition, the Inspector, while not a subject of a Recommendation, pointed out that the issue of the dual role of Senior Responsible Officer (SRO)/ Authorising Officer (AO) being exercised by one officer should be avoided. The roles should be separated. The purpose of the SRO is to maintain general oversight of RIPA compliance, including the integrity of the authorisation process, while the AO's role is solely to authorise requested activity. There are some minor changes as set out in 4.2 iii & iv . This report will enable members to generally review the RIPA activity since the last report and implement the recommendation as contained in attached Corporate RIPA policy document.
- 2. Recommendation(s)
- 2.1 That the Committee approves the amendments to the Corporate RIPA policy set out in Appendix A in accordance with the recommendation of the Surveillance Inspector.
- 2.2 That the Committee note the statistical information relating to the use of RIPA since September 2017.

#### 3. Introduction and Background

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) legislates for the use by local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authorities core functions.
- 3.2 The Council's use of these powers is subject to regular inspection and audit by the Investigatory Powers Commissioners Office (IPCO) in respect of covert surveillance authorisations under RIPA, and the Interception of Communications Commissioner (IOCCO) in respect of communications data. During these inspections, authorisations and procedures are closely examined and Authorising Officers are interviewed by the inspectors.

#### 4. Issue, Options and Analysis of Options

#### **Training**

4.1 Training of relevant personnel shall be taking place during Summer 2018. This shall be a refresher training which shall include the changes in the RIPA policy to ensure the Council's preparedness should the need arise to undertake surveillance or CHIS activity in the future.

#### **Amended RIPA Policy**

- 4.2 The draft RIPA Policy has been amended to reflect the recommendation issued by the IPCO in their Inspection Report of the 16<sup>th</sup> August 2017 in which it was recommended that the following areas be updated:
  - i. Updating the policy arising from the changes in the Data Protection Act 2018
  - ii. At present the dual role of Senior Responsible Officer (SRO)/ Authorising Officer (AO) is exercised by one officer .The role of the AO is singular, in that they are solely responsible for the decision to grant authorisation for Surveillance or CHIS whereas the SRO has the final say on the decision. This role of the SRO and AO should be separated.;
  - iii. Under section 8 of the policy the reference to urgent oral authorisation and their duration needs to be removed following the legislative changes of 2012.
  - iv. The term Managing Director needs to change to Chief Executive

A copy of the amended draft RIPA Policy is attached at Appendix A.

#### Statistical Information

- 4.3 The Committee is asked to note the following statistical information relating to the use of RIPA over the period between September 2017 and 30<sup>th</sup> May 2018.
- 4.4 September 2017 and 30<sup>th</sup> May 2018 Total No. Of RIPA authorisations 0

- 4.5 September 2017 and 30<sup>th</sup> May 2018 Total No. Of CHIS authorisations 0
- 4.6 Officers are encouraged to use overt surveillance wherever possible, and use RIPA as a last resort. Often necessary evidence can be obtained overtly, and if an officer makes his or her investigation visible, this alone can have the desired effect of compliance.

#### National Anti-Fraud Network (NAFN)

4.7 Occasionally 'data matching' (for example, matching a telephone number to a specific individual) is necessary to identify those engaging in criminal activity. The Council is a member of NAFN through whom requests for such data are regulated and, where legitimately applied for, processed. Members should note that there has been no such data matching exercise conducted during the last year.

#### 5. Reasons for Recommendation

- 5.1 To implement the recommendation made by the Surveillance Inspector and changes in law and to assist with Members' oversight and decision making in relation to the attached RIPA Policy.
- 6. Consultation
- 6.1 None
- 7. References to Corporate Plan
- 7.1 These actions assist with the work towards a safer borough.
- 8. Implications

**Financial Implications** 

Name & Title: Jacqueline Van Mellaerts, Interim Chief Finance Officer/S.151

Officer

Tel & Email: 01277 312542/jacqueline.vanmellaerts@brentwood.gov.uk

8.1 There are no financial implications directly related to this report.

**Legal Implications** 

Name & Title: Daniel Toohey, Head of Legal Services and Monitoring

Officer

Tel & Email: 01277 312860/daniel.toohey@brentwood.gov.uk

8.2 Legal implication comments are contained within this report above.

#### 9. Appendices to this report

Appendix A – Draft RIPA Policy

**Report Author Contact Details:** 

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## Appendix A

**BRENTWOOD BOROUGH COUNCIL** 

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) CORPORATE POLICY

**JUNE** 2018

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USE OF DIRECTED SURVEILLANCE COVERT HUMAN INTELLIGENCE SOURCES AND COMMUNICATIONS DATA ACQUISITION FOR THE PREVENTION AND DETECTION OF CRIME OR THE PREVENTION OF DISORDER

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#### 1. A BRIEF OVERVIEW OF RIPA

(For text in **bold**, see glossary of terms – Appendix 1)

The Regulation of Investigatory Powers Act (the Act) was introduced by Parliament in 2000. The Act sets out the reasons for which the use of **directed surveillance** (DS) and **covert human intelligence source** (CHIS) may be authorized.

Local Authorities' abilities to use these investigation methods are restricted in nature and may only be used for the prevention and detection of crime or the prevention of disorder. Local Authorities are not able to use **intrusive surveillance**.

Widespread, and often misinformed, reporting led to public criticism of the use of surveillance by some Local Authority enforcement officers and investigators. Concerns were also raised about the trivial nature of some of the 'crimes' being investigated. This led to a review of the legislation and ultimately the introduction of the Protection of Freedoms Act 2012 and the RIP (Directed Surveillance and CHIS)(Amendment) Order 2012 (Appendix 2).

In addition to defining the circumstances when these investigation methods may be used, the Act also directs how applications will be made and how, and by whom, they may be approved, reviewed, renewed, cancelled and retained.

The Act must be considered in tandem with associated legislation including the Human Rights Act (HRA) (Appendix 3), and the Data Protection Act \_(DPA) (Appendix 4).

The purpose of Part II of the Act is to protect the privacy rights of anyone in a Council's area, but only to the extent that those rights are protected by the HRA. A public authority, such as the Council, has the ability to infringe those rights provided that it does so in accordance with the rules, which are contained within Part II of the Act. Should the public authority not follow the rules, the authority looses the impunity otherwise available to it. This impunity may be a defence to a claim for damages or a complaint to supervisory bodies, or as an answer to a challenge to the admissibility of evidence in a trial.

Further, a Local Authority may only engage the Act when performing its 'core functions'. For example, a Local Authority may rely on the Act when conducting a criminal investigation as this would be considered a 'core function', whereas the disciplining of an employee would be considered a 'non-core' or 'ordinary' function.

Examples of when local authorities may use RIPA and CHIS are as follows:

Trading standards (Note: this function is undertaken by Essex County
 Council) – action against loan sharks, rogue traders, consumer scams,

- deceptive advertising, counterfeit goods, unsafe toys and electrical goods;
- Enforcement of anti-social behaviour orders and legislation relating to unlawful child labour:
- Housing/planning interventions to stop and make remedial action against unregulated and unsafe buildings, breaches of preservation orders, cases of landlord harassment;
- Investigating council tax support and business rates fraud; and
- Environment protection action to stop large-scale waste dumping, the sale of unfit food and illegal 'raves'.

The examples do not replace the key principles of necessity and proportionality or the advice and guidance available from the relevant oversight Commissioners. The RIPA (Communications Data) order came into force in 2004. It allows Local Authorities to acquire communications data, namely service data and subscriber details for limited purposes. This order was updated by the Regulation of Investigatory Powers Communications Data) Order 2010.

#### 2. <u>Directed Surveillance</u>

This policy relates to all staff directly employed by Brentwood Council when conducting relevant investigations for the purposes of preventing and detecting crime or preventing disorder, and to all contractors and external agencies that may be used for this purpose as well as to those members of staff tasked with the authorisation and monitoring of the use of directed surveillance, CHIS and the acquisition of communications data.

The policy will be reviewed annually and whenever changes are made to relevant legislation and codes of practice.

'It is essential that the Chief Executive , or Head of Paid Service, together with all Senior Officers should have an awareness of the basic requirements of RIPA and also an understanding of how it might apply to the work of individual council departments. Without this knowledge at senior level, it is unlikely that any authority will be able to develop satisfactory systems to deal with the legislation.

Those who need to use or conduct directed surveillance or CHIS on a regular basis will require more detailed specialised training' (Office of Surveillance Commissioners).

The use of directed surveillance or a CHIS must be necessary and proportionate to the alleged crime or disorder. Usually, it will be considered to be a tool of last resort, to be used only when all other less intrusive means have been used or considered.

#### **Necessary**

A person granting an authorisation for directed surveillance must consider *why* it is necessary to use covert surveillance in the investigation *and* believe that the activities to be authorised are necessary on one or more statutory grounds.

If the activities are deemed necessary, the authoriser must also believe that they are proportionate to what is being sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

#### **Proportionate**

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

The Council will conduct its directed surveillance operations in strict compliance with the DPA principles and limit them to the exceptions permitted by the HRA and RIPA, and solely for the purposes of preventing and detecting crime or preventing disorder.

The **Senior Responsible Officer** (SRO) (as named in Appendix 5) will be able to give advice and guidance on this legislation. The SRO will appoint a **RIPA Coordinating Officer** (RCO) (as named in Appendix 5) The RCO will be responsible for the maintenance of a **central register** that will be available for inspection by the Office of the Surveillance Commissioners (OSC). The format of the central register is set out in Appendix 7.

The use of hand-held cameras and binoculars can greatly assist a directed surveillance operation in public places. However, if they afford the investigator a view into private premises that would not be possible with the naked eye, the surveillance becomes intrusive and is not permitted. Best practice for compliance with evidential rules relating to photographs and video/CCTV footage is contained in Appendix 9. Directed surveillance may be conducted from private premises. If they are used, the applicant must obtain the owner's permission, in writing, before authorisation is given. If a prosecution then ensues, the applicant's line manager must visit the owner to discuss the implications and obtain written authority for the evidence to be used. (See R v Johnson (Kenneth) 1988 1 WLR 1377 CA. Appendix 29)

The general usage of the council's CCTV system is not affected by this policy. However, if cameras are specifically targeted for the purpose of directed surveillance, a RIPA authorisation must be obtained.

Wherever knowledge of **confidential information** is likely to be acquired or if a vulnerable person or juvenile is to be used as a CHIS, the authorisation must be made by the Chief Executive, who is the Head of Paid Service (or in his absence whoever deputises for him).

Directed surveillance that is carried out in relation to a **legal consultation** on certain premises will be treated as intrusive surveillance, regardless of whether legal privilege applies or not. These premises include prisons, police stations, courts, tribunals and the premises of a professional legal advisor. Local Authorities are not able to use intrusive surveillance. Operations will only be authorised when there is sufficient, documented, evidence that the alleged crime or disorder exists and when directed surveillance is considered to be a necessary and proportionate step to take in order to secure further evidence.

Low level surveillance, such as 'drive-bys' or everyday activity observed by officers in the course of their normal duties in public places, does not need RIPA authority. If surveillance activity is conducted in immediate response to an unforeseen activity, RIPA authorisation is not required. However, if repeated visits are made for a specific purpose, authorisation may be required. In cases of doubt, legal advice should be taken.

When vehicles are being used for directed surveillance purposes, drivers must at all times comply with relevant traffic legislation.

#### **Crime Threshold**

An additional barrier to authorising directed surveillance is set out in the Regulation of Investigatory Powers (Directed Surveillance and CHIS) (Amendment) Order 2012. This provides a 'Crime Threshold' whereby only crimes which are either punishable by a maximum term of at least 6 months' imprisonment (whether on summary conviction

or indictment) or are related to the underage sale of alcohol or tobacco can be investigated through Directed Surveillance.

The crime threshold applies only to the authorisation of directed surveillance by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD. The threshold came into effect on 1 November 2012.

Brentwood **will not** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

Brentwood may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e. that it is necessary and proportionate and where prior approval from a Magistrate has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.

Brentwood may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.

A local authority such as Brentwood **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences

#### 3. CHIS

A person who reports suspicion of an offence is not a CHIS, nor do they become a CHIS if they are asked if they can provide additional information, e.g. details of the suspect's vehicle or the time that they leave for work. It is only if they establish or maintain a personal relationship with another person for the purpose of covertly obtaining or disclosing information that they become a CHIS.

If it is deemed unnecessary to obtain RIPA authorisation in relation to the proposed use of a CHIS for test purchasing, the applicant should complete the form provided at Appendix 11e and submit to the Head of Public Protection for authorisation. Once authorised, any such forms must be kept on the relevant Trading Standards or Licensing file. (Note: the Trading Standards function is undertaken by Essex County Council)

The times when a local authority will use a CHIS are limited. The most common usage is for test-purchasing under the supervision of trading standards or licensing officers.

For some test purchases it will be necessary to use a CHIS who is, or appears to be, under the age of 16 (a juvenile). Written parental consent for the use of a juvenile CHIS must be obtained prior to authorisation, and the duration of such an authorisation is 1 month instead of the usual 12 months. The Authorising Officer must

be the Chief Executive or Deputy. NOTE: A juvenile CHIS may not be used to obtain information about their parent or guardian.

Officers considering the use of a CHIS under the age of 18, and those authorising such activity must be aware of the additional safeguards identified in The Regulation of Investigatory Powers (Juveniles) Order 2000 and its Code of Practice.

A vulnerable individual should only be authorised to act as a CHIS in the most exceptional circumstances. A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness, and who is or may not be able to take care of himself. The Authorising Officer in such cases must be the Chief Executive, who is the Head of Paid Service, or in his absence whoever deputises for him.

Any deployment of a CHIS should take into account the safety and welfare of that CHIS. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that an appropriate bespoke risk assessment is carried out to determine the risk to the CHIS of any assignment and the likely consequences should the role of the CHIS become known. This risk assessment must be specific to the case in question. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset.

A CHIS handler is responsible for bringing to the attention of a CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect the validity of the risk assessment, the conduct of the CHIS, and the safety and welfare of the CHIS.

The process for applications and authorisations has similarities to those for directed surveillance (see Appendices 11a-11d), but there are also significant differences, namely that the following arrangements must be in place at all times in relation to the use of a CHIS:

- There will be an appropriate officer of the Council who has day-to-day responsibility for dealing with the CHIS, and for the security and welfare of the CHIS; and
- 2. There will be a second appropriate officer of the use made of the CHIS, and who will have responsibility for maintaining a record of this use. These records must also include information prescribed by the Regulation of Investigatory Powers (Source Records) Regulations 2000. Any records that disclose the identity of the CHIS must not be available to anyone who does not have a need to access these records.

An Authorising Officer's Aide-Memoire is provided at Appendix 13 to assist Authorising Officers when considering applications for directed surveillance.

#### 4. Social Networking Sites (SNS)

NB This section should be read in conjunction with the Council's Fraud Policy. Please ensure any concern or uncertainty about use of SNS's is directed to the Council's Corporate Fraud Investigator in the first instance.

In March 2017 the OSC issued a guidance note on the use of social networking sites by public authorities when conducting investigations or otherwise acting on official business. Relevant update training has been provided by the Council to those officers most likely to be affected. There is a risk that staff acting in good faith when accessing "open source" material "can drift into covert surveillance which falls within the (RIPA) legislation". All staff should note carefully the following guidance issued by the OSC and seek Authorisation if they are or think they may be about to conduct covert surveillance through accessing social media sites:

- 4.1 The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the SNS being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.
- 4.2 Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as "open source" or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. Repeat viewing of "open source" sites may constitute directed surveillance on a case by case basis and this should be borne in mind.
- 4.3 Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance (subject to the 'crime threshold' referred to elsewhere in this Policy). An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content).
- 4.4 It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without an authorisation for directed surveillance when private information is likely to be obtained. The SRO should be satisfied that there is a process in place to ensure compliance with the legislation. Using photographs of other persons without their permission to support the false identity infringes other laws.
- 4.5 A member of a public authority should not adopt the identity of a person known, or likely to be know, the the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

#### 5. The Authorisation Process

The processes for applications and authorisations for CHIS are similar as for directed surveillance, but note the differences set out in the CHIS section above. Directed Surveillance applications are made using forms in Appendix 6 and CHIS applications are made using forms at Appendices 11a-11d.

The authorisation process involves the following steps:

#### **Investigation Officer**

- The Investigation Officer prepares an application. When completing the forms, Investigation Officers <u>must</u> fully set out details of the covert activity for which authorisation is sought to enable the Authorising Officer to make an informed judgment.
- 2. The Investigation Officer will obtain a unique reference number (URN) from the central register before submitting an application.
- 3. A risk assessment will be conducted by the Investigation Officer within 7 days of the proposed start date. This assessment will include the number of officers required for the operation; whether the area involved is suitable for directed surveillance; what equipment might be necessary, health and safety concerns and insurance issues. Particular care must be taken when considering surveillance activity close to schools or in other sensitive areas. If it is necessary to conduct surveillance around school premises, the applicant should inform the head teacher of the nature and duration of the proposed activity, in advance.
- 4. The Investigation Officer will submit the application form to an authorising officer for approval (see Appendix 5).
- 5. All applications to conduct directed surveillance (other than under urgency provisions see below) must be made in writing in the approved format.

#### Authorising Officer (AO)

- The AO considers the application and if it is considered complete the application is signed off and forwarded to the SRO for review and counter approval.
- 7. An Authorising Officer's Aide-Memoire is provided at Appendix 13 to assist Authorising Officers when considering applications for directed surveillance.
- 8. If there are any deficiencies in the application further information may be sought from the Investigation Officer, prior to sign off.

9. Once final approval has been received from the SRO (see below), the AO and the Investigation Officer will retain copies and will create an appropriate diary method to ensure that any additional documents are submitted in good time.

#### Senior Responsible Officer (SRO)

- 10. The SRO then reviews the AO's approval and countersigns it.
- 11. If the application requires amendment the SRO will return this to the AO for the necessary revisions to be made prior to sign off. Once the SRO is satisfied that concludes the internal authorisation procedure and he or she will countersign the application.

#### **Application to Magistrates Court**

12. The countersigned application form will form the basis of the application to the Magistrates Court (see further below)

#### Authorised Activity

- 13. Authorisation takes effect from the date and time of the approval from the Magistrates Court.
- 14. Where possible, private vehicles used for directed surveillance purposes should have keeper details blocked by the DVLA.
- 15. Notification of the operation will be made to the relevant police force intelligence units where the target of the operation is located in their force area. Contact details for each force intelligence unit is held by the Fraud Investigation Manager Fraud Investigation Department.
- 16. Before directed surveillance activity commences, the Investigation Officer will brief all those taking part in the operation. The briefing will include details of the roles to be played by each officer, a summary of the alleged offence(s), the name and/or description of the subject of the directed surveillance (if known), a communications check, a plan for discontinuing the operation and an emergency rendezvous point. A copy of the briefing report (Appendix 8) will be retained by the Investigation Officer.
- 17. Where 3 or more officers are involved in an operation, officers conducting directed surveillance will complete a daily log of activity as at Appendix 10. Evidential notes will also be made in the pocket notebook of all officers engaged in the operation regardless of the number of officers on an operation. These documents will be kept in accordance with the appropriate retention guidelines.
- 18. Where a contractor or external agency is employed to undertake any investigation on behalf of the Council, the Investigation Officer will ensure that any third party is adequately informed of the extent of the authorisation and how they should exercise their duties under that authorisation.

#### Conclusion of Activities

- 19. As soon as the authorised activity has concluded the Investigation Officer will complete a Cancellation Form (Appendices 6d or 11d).
- 20. The original document of the complete application will be retained with the central register.

#### 6. SRO Review and Sign Off

The SRO will review the AO approval prior to it being submitted for Magistrates/JP authorisation.

If in the SRO's opinion there are inconsistencies, errors or deficiencies, in the application such that the AO's approval requires amendments or augmentation, the SRO will return the application form to the AO with recommendation for alternative wording or further information and the AO will incorporate the same.

The form will then be returned to the SRO for countersigning.

Once the SRO has countersigned the form this will form the basis of the application to the Magistrates Court for authorisation.

#### 7. Magistrate Authorisation

From 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 are in force. This will mean that a local authority who wishes to authorise the use of directed surveillance, acquisition of CD and use of a CHIS under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a JP (a District Judge or lay magistrate) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.

The new judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined above and in this section. The current process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will therefore remain the same.

The appropriate officer from Brentwood will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and should contain all information that is relied upon. For communications data requests the RIPA authorisation or notice may seek to acquire consequential acquisition of specific subscriber information. The

necessity and proportionality of acquiring consequential acquisition will be assessed by the JP as part of his consideration.

The original RIPA authorisation or notice should be shown to the JP but also be retained by Brentwood Council so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The court may also wish to take a copy.

Importantly, the appropriate officer will also need to provide the JP with a partially completed judicial application/order form.

Although the officer is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

The order section of the form will be completed by the JP and will be the official record of the JP's decision. The officer from Brentwood will need to obtain judicial approval for all initial RIPA authorisations/applications and renewals and will need to retain a copy of the judicial application/order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

The authorisation will take effect from the date and time of the JP granting approval and Brentwood may proceed to use the techniques approved in that case.

It will be important for each officer seeking authorisation to establish contact with HMCTS administration at the magistrates' court. HMCTS administration will be the first point of contact for the officer when seeking a JP approval. Brentwood will need to inform HMCTS administration as soon as possible to request a hearing for this stage of the authorisation.

On the rare occasions where out of hours access to a JP is required then it will be for the officer to make local arrangements with the relevant HMCTS legal staff. In these cases we will need to provide two partially completed judicial application/order forms so that one can be retained by the JP. They should provide the court with a copy of the signed judicial application/order form the next working day.

In most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening).

Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the local authority's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time.

The hearing is a 'legal proceeding' and therefore our officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP.

The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.

The attending officer will need to be able to answer the JP's questions on the policy and practice of conducting covert operations and the detail of the case itself. Brentwood's officers may consider it appropriate for the SPoC (single point of contact) to attend for applications for CD RIPA authorisations. This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the authorising officer has considered and which are provided to the JP to make the case (see paragraphs 47-48).

It is not Brentwood's policy that legally trained personnel are required to make the case to the JP.

The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided. The JP may note on the form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.

If more information is required to determine whether the authorisation or notice has met the tests then the JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.

The JP will record his/her decision on the order section of the judicial application/order form. HMCTS administration will retain a copy of the local authority RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' courts are not public authorities for the purposes of the Freedom of Information Act 2000.

Brentwood will need to provide a copy of the order to the communications the SPoC (Single Point of Contact) for all CD requests. SPoCs must not acquire the CD requested, either via the CSP or automated systems until the JP has signed the order approving the grant.

#### 8. Authorisation periods

The authorisation will take effect from the date and time of the JP granting approval and Brentwood may proceed to use the techniques approved in that case.

A written authorisation (unless renewed or cancelled) will cease to have effect after 3 months.

Renewals should not normally be granted more than seven days before the original expiry date. If the circumstances described in the application alter, the applicant must submit a review document before activity continues.

As soon as the operation has obtained the information needed to prove, or disprove, the allegation, the applicant must submit a cancellation document and the authorised activity must cease.

CHIS authorisations will (unless renewed or cancelled) cease to have effect 12 months from the day on which authorisation took effect, except in the case of juvenile CHIS which will cease to have effect after 1 month.

#### 9. Urgency

The law has been changed so that urgent cases can no longer be authorised orally. Approval for directed surveillance in an emergency must now be obtained in written form. Oral approvals are no longer permitted. In cases where emergency approval is required an AO must be visited by the applicant with two completed RIPA application forms. The AO will then assess the proportionality, necessity and legality of the application. If the application is approved then the applicant must then contact the out-of-hours HMCTS representative to seek approval from a Magistrate. The applicant must then take two signed RIPA application forms and the judicial approval form to the Magistrate for the hearing to take place.

As with a standard application the test of necessity, proportionality and the crime threshold must be satisfied. A case is not normally to be regarded as urgent unless the delay would, in the judgment of the person giving the authorisation, be likely to endanger life or jeopardise the investigation or operation. Examples of situations where emergency authorisation may be sought would be where there is intelligence to suggest that there is a substantial risk that evidence may be lost, a person suspected of a crime is likely to abscond, further offences are likely to take place and/or assets are being dissipated in a criminal investigation and money laundering offences may be occurring. An authorisation is not considered urgent if the need for authorisation has been neglected or the urgency is due to the authorising officer or applicant's own doing.

**Deleted:** Urgent oral or written authorisations, unless renewed, cease to have effect after 72 hours, beginning with the time when the authorisation was granted.

**Deleted:** Urgent oral authorisations or authorisations will unless renewed, cease to have effect after 72 hours.

#### 10. Telecommunications Data - NAFN

The RIPA (Communications Data) Order 2003 came into law in January 2004. It allows Local Authorities to acquire limited information in respect of subscriber details and service data. It does NOT allow Local Authorities to intercept record or otherwise monitor communications data.

Applications to use this legalisation must be submitted to a Home Office accredited Single Point of Contact (SPOC). The Council uses the services of NAFN (the National Anti-fraud Network) for this purpose.

Officers may make the application by accessing the NAFN website. The application will first be vetted by NAFN for consistency, before being forwarded by NAFN to the Council's Designated Persons for the purposes of approving the online application. The Council will ensure that Designated Persons receive appropriate training when becoming a Designated Person.

The Council's Designated Persons are presently the relevant Senior Officer, Chief Executive and the Council's Monitoring Officer. NAFN will inform the Designated Persons jointly once the application is ready to be reviewed by the Designated Persons.

The relevant Designated Persons responsible for the area to which the application relates, will then access the restricted area of the NAFN website using a special code, in order to review and approve the application. When approving the application, the Designated Person must be satisfied that the acquiring of the information is necessary and proportionate. Approvals are documented by the Designated Person completing the online document and resubmitting it by following the steps outlined on the site by NAFN. This online documentation is retained by NAFN who are inspected and audited by the OSC.

When submitting an online application, the officer must also inform the relevant Designated Person, in order that they are aware that the NAFN application is pending.

#### 11. Handling of material and use of material as evidence

Material obtained from properly authorised directed surveillance or a source may be used in other investigations. Arrangements shall be in place for the handling, storage and destruction of material obtained through the use of directed surveillance, a source or the obtaining or disclosure of communications data. Authorising Officers must ensure compliance with the appropriate data protection requirements and any relevant Corporate Procedures relating to the handling and storage of material.

Where the product of surveillance could be relevant to pending or future proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

#### 12. Training

Officers conducting directed surveillance operations, using a CHIS or acquiring communications data must have an appropriate accreditation or be otherwise suitably qualified or trained.

Authorising Officers (Appendix 5) will be appointed by the <u>Chief Executive</u> and will have received training that has been approved by the Senior Responsible Officer. The Senior Responsible Officer will have appointed the RIPA Coordinating Officer who will be responsible for arranging suitable training for those conducting surveillance activity or using a CHIS.

All training will take place at reasonable intervals to be determined by the SRO or RSO, but it is envisaged that an update will usually be necessary following legislative or good practice developments or otherwise every 12 months.

#### 13. Surveillance Equipment

Any mobile surveillance equipment is kept in a secure area on the second floor of the Civic Offices. Access to the area is controlled by the Community Protection Team, who maintains a spreadsheet log of all equipment taken from and returned to the area.

#### 14. RIPA Record Audits

To ensure directed surveillance authorisations are being conducted in accordance with Council policy, a system of internal quality assurance has been put in place. At quarterly periods throughout the year, Directors acting in their capacity of authorising officers will in turn conduct an audit of the RIPA records pertaining to the previous 3 months. The audit must be recorded on the audit record form to be found at Appendix 14, and a copy submitted to the Senior Responsible Officer to be held centrally on file. The Senior Responsible Officer will inform the Chief Executive of the outcome of such audits.

#### 15. The Inspection Process

The OSC will make periodic inspections during which the inspector will wish to interview a sample of key personnel; examine RIPA and CHIS applications and authorisations; the central register and policy documents. The inspector will also make an evaluation of processes and procedures.

#### 16. Resources

OSC Procedures and Guidance

Full Codes of Practice can be found on the Home Office website: <a href="http://www.homeoffice.gov.uk/">http://www.homeoffice.gov.uk/</a>

Covert Surveillance & Property Interference:

https://www.gov.uk/government/publications/code-of-practice-for-covert-surveillance-and-property-interference

CHIS: https://www.gov.uk/government/publications/code-of-practice-for-the-use-of-human-intelligence-sources

Acquisition and Disclosure of Communications Data:

https://www.gov.uk/government/publications/code-of-practice-for-the-acquisition-and-disclosure-of-communications-data

Further information can also be found on The Office of Surveillance Commissioners website.

http://www.surveillancecommissioners.gov.uk/index.html

#### **GLOSSARY OF TERMS**

(For full definitions, refer to the Act)

#### **Collateral intrusion**

The likelihood of obtaining private information about someone who is not the subject of the directed surveillance operation.

#### Confidential information

This covers confidential journalistic material, matters subject to legal privilege, and information relating to a person (living or dead) relating to their physical or mental health; spiritual counselling or which has been acquired or created in the course of a trade/profession/occupation or for the purposes of any paid/unpaid office.

#### Covert relationship

A relationship in which one side is unaware of the purpose for which the relationship is being conducted by the other.

#### **Directed Surveillance**

Surveillance carried out in relation to a specific operation which is likely to result in obtaining private information about a person in a way that they are unaware that it is happening. It excludes surveillance of anything taking part in residential premises or in any private vehicle.

#### **Intrusive Surveillance**

Surveillance which takes place on any residential premises or in any private vehicle. A Local Authority cannot use intrusive surveillance.

#### **Legal Consultation**

A consultation between a professional legal adviser and his client or any person representing his client, or a consultation between a professional legal adviser or his client or representative and a medical practitioner made in relation to current or future legal proceedings.

#### Residential premises

Any premises occupied by any person as residential or living accommodation, excluding common areas to such premises, e.g. stairwells and communal entrance halls.

#### Senior Responsible Officer (SRO)

The SRO is responsible for the integrity of the processes in order for the Council to ensure compliance when using Directed Surveillance or CHIS.

#### Service data

Data held by a communications service provider relating to a customer's use of their service, including dates of provision of service; records of activity such as calls made, recorded delivery records and top-ups for pre-paid mobile phones.

#### Surveillance device

Anything designed or adapted for surveillance purposes.

## Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

The Order consolidates four previous Orders relating to directed surveillance and the use or conduct of covert human intelligence sources by public authorities under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) and to reflect the outcome of a public consultation which took place between April and July 2009.

It identifies the 'relevant public authorities' authorised to conduct RIPA and CHIS activities. This list includes local authorities in England and Wales. It also gives examples of such activity, as shown on page 3 of this document.

#### The Human Rights Act 1998

Articles 6 and 8 of the Human Rights Act are relevant to RIPA.

If it is proposed that directed surveillance evidence is to be used in a prosecution, or other form of sanction, the subject of the surveillance should be informed during an interview under caution

#### The Data Production Act 2018 (DPA)

The <u>following</u> principles of the Act relating to the acquisition of personal data need to be observed when using RIPA. To ensure compliance, the information must:

(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency');

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

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 $\textbf{Deleted:} \ \, \textbf{Be fairly and lawfully obtained and processed} \\ \P$ 

- Be processed for specified purposes only¶
- Be adequate, relevant and not excessive
- Be accurate¶
- Be processed in accordance with an individuals rights¶
- Be secure
- Not be transferred to non EEA countries without adequate protection.

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#### **List of Authorising Officers**

- 6.1 The following post holders may authorise RIPA applications where there is a likelihood of obtaining Confidential Information: <a href="mailto:Chief\_Executive or">Chief\_Executive or</a> deputy.
- 6.2 The following post holders may authorise the use of a vulnerable person or a juvenile to be used as a Covert Human Intelligence Source: Chief Executive, as Head of Paid Service or his or her deputy.
- 6.3 The following post holders may authorise applications, reviews, renewals and cancellations of Directed Covert Surveillance of Covert Human Intelligence Sources: <a href="mailto:Chief Executive">Chief Executive</a>, and <a href="mailto:or the named">or the named</a> Director</a>, or in their absence, the Head of Legal and Democratic Services.

#### **Principal RIPA Officers**

Daniel Toohey	Senior Responsible Officer	
Head of Legal Services	(SRO)	
Assaf Chaudry,	RIPA Co-ordinating Officer	
Information		
Governance Solicitor		

#### **Authorising Officers**

Phil Ruck, Chief Executive	Authorising Officer	
John Chance, Director of Finance and S.151 Officer	Authorising Officer	

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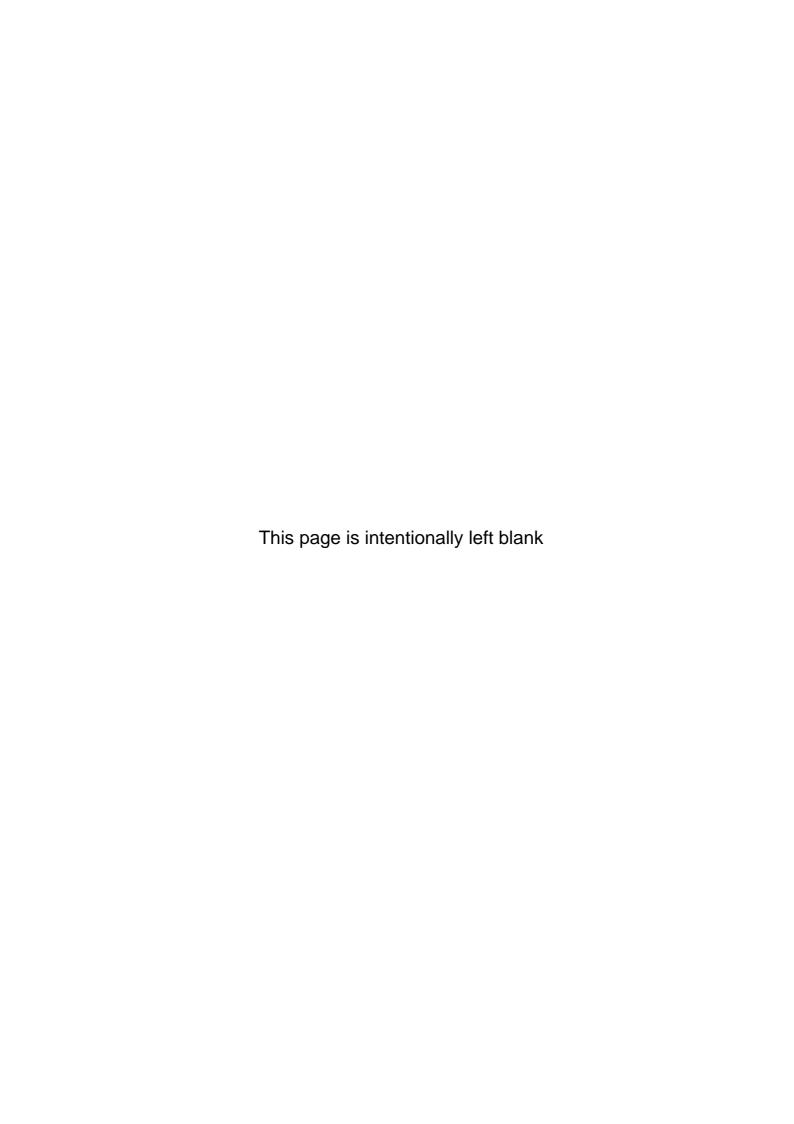
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Officer and Head of¶
Legal Services



# Agenda Item 4

# 11 July 2018 Regulatory and Governance Committee

# Adoption of Revised Members Planning Code of Good Practice into the Constitution

**Report of:** Gina Clarke, Corporate Governance Lawyer

Wards Affected: All

This report is: Public

## 1. Executive Summary

- 1.1 The purpose of this report is to seek the views of the Committee on the adoption by the Council of a revised and updated Members Planning Code of Good Practice for inclusion in the Constitution. Further, the Committee is asked to recommend that Full Council resolve to adopt the revised Planning Code of General Good Practice.
- 1.2 The Constitution Working Group has been working on changes to the Constitution since 2016, following a review of the Constitution being undertaken by external legal advisors, Bevan Brittan. One of the areas identified for further review was the Council's planning procedures to make sure that they comply with the current law, best practice in relation to the declaration of interests by Members, predetermination and bias and other wider planning considerations.
- 1.3 Following earlier consideration of the draft Members Planning Code of Good Practice by the Constitution Working Group, it has been substantially revised in the light of comments received. It has been shortened and made much clearer and up to date, both in style and in relation to revisions which are necessary since the passing of the Localism Act 2011, which changed the rules about the Code of Conduct and the types of interests that are now required to be disclosed.

## 2. Recommendation(s)

- 2.1 That the Regulatory and Governance Committee considers the revised Members Planning Code of Good Practice.
- 2.2 That the Planning Committee is asked to comment on the revised Members Planning Code of Good Practice:
  - (i) any comments made by the Planning Committee be reported back to the Constitution Working Group before going to next meeting of the Regulatory Committee;
  - (ii) if no comments are made by the Planning Committee, it is recommended to Full Council to adopt the revised Members Planning Code of Good Practice. attached as Appendix A to this report, for inclusion in the Council Constitution at its meeting on 12 September 2018.

#### 3. Introduction and Background

- 3.1 Section 9P of the Local Government Act 2000 requires the Council to prepare, keep up to date and publicise its Constitution.
- 3.2 The Council Constitution governs the way the Council operates and how decisions are made. Under the terms of the Council Constitution the Council is responsible for monitoring and reviewing the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect (Article 12.1(a) Duty to Monitor and Review the Constitution).
- 3.3 Subject to certain exceptions changes to the Constitution are only effective if approved by Full Council. Normally changes will only be considered by Full Council following a report and recommendation from the Constitution Working Group or the Regulatory Committee ("Member body") and having received advice from the Monitoring Officer, (Article 12.1(c)). The Monitoring Officer may submit a report direct to Full Council in any case where his advice is not accepted by the Member body (Article 12.2(f)).
- 3.4 Planning is a complex area and given that Members have an essential role to play in the planning system, Members need to act reasonably and fairly in a way that ensures public confidence in the planning system. The revised Members Planning Code of Good Practice provides updated guidelines as to the standards of conduct expected of Members within a planning context, and to ensure that all planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons. The draft revised Members Planning Code of Good Practice (Appendix A) draws upon guidance issued by, amongst others, the Local Government Association, the Local Government Association, Royal Town Planning Institute.
- 3.5 The draft revised Members Planning Code of Good Practice was presented to the last meeting of the Constitution Working Group, on 2 February 2018. Members of the Working Group were asked to submit to the Monitoring Officer any further queries they may have on the draft Planning Code of Good Practice, then for this item to be brought back to the next suitable meeting. No further queries or comments from Members the Constitution Working Group have been received by the Monitoring Officer.
- 3.6 The Regulatory and Governance Committee was established by Annual Council on 16 May 2018. The remit of the Committee extends to maintaining a review of the Constitution. Therefore, changes to the Constitution can be considered by the Regulatory and Governance Committee or the Constitution Working Group prior to approval by Full Council, as referred to in paragraph 3.3 above.

## 4. The draft Revised Members Planning Code of Good Practice

- 4.1 The main purpose of the Code is to: -
  - To inform developers and members of the public of the standards agreed by the Council in the performance of its planning functions
  - Protect the Council from criticism about the conduct of Members in the planning process
  - Facilitate good decision making in the planning process which is in the public interest
  - Ensure that there are no grounds for suggesting that a decision has been biased, partial or not well founded
  - Provide a framework to deal with potential problems.
  - Supplement the Members' Code of Conduct for the purposes of planning control
- 4.2 The adoption of, and compliance with the Members Planning Code of Good Practice may lead to:
  - minimising the risk of successful legal challenges as to the legality of planning decisions
  - minimising the risk of successful complaints to the Ombudsman of maladministration of related decisions
  - reduce the risk of breach of the Code of Conduct for Members.
- 4.3 The Committee is requested to consider the appended document (Appendix A) for adoption by Council.
- 4.4 The revised Members Planning Code of Good Practice covers the following:
  - (i) The aim and application of the Planning Code;
  - (ii) The relationship with the Council's Members' Code of Conduct;
  - (iv) Declaration of interests in planning matters;
  - (v) Predisposition, predetermination and bias;
  - (vi) Membership of other councils and bodies;
  - (vii) Pre-application discussions;
  - (viii) Contact with applicants, developers and objectors;
  - (ix) Lobbying of and by councillors;
  - (x) Site visits

- (xi) Officers;
- (xii) Decision Making;
- (xiii) Training and Review
- 4.5 Approval of the Members Planning Code of Good Practice by Full Council is anticipated at its meeting on 12 September 2018.
- 4.6 Training on the Code will be rolled out to all Members and incorporated into the Members induction training programme.

## 5. Issue, Options and Analysis of Options

- 5.1 The option of making no change to the existing Member Planning Code of Good Practice was not considered, since changes are required to comply with changes in the law, best practice and wider planning considerations.
- 5.2 It is important that the governance and processes of the Council comply with the law and are transparent and understood by Members and the public. The Council is required to keep its Constitution up to date. The revisions to the Members Planning Code of Good Practice ensures that the Council meets this requirement and minimises the risk planning decisions being successfully challenged in court, complaints of maladministration to the Ombudsman and Member conduct complaints.

#### 6. Reasons for Recommendations

- 6.1 The Council needs to ensure that all planning decisions are made in an open, impartial manner, with sound judgement and justifiable reasons. To maintain public confidence in the planning system, it is proposed that the Council adopt a Members Planning Code of Good Practice (Appendix A) which provides best practice and guidance for Members in relation to their conduct in the way in which they participate in the planning process.
- 6.2 It would be prudent for the Council to formally adopt the new Members Planning Code of Good Practice at its meeting on 12 September 2018. This would provide Members who serve on Planning Committee, or otherwise become involved in making a planning application with clarity and guidance about the essential ethical approach to Council business.
- 6.3 The adoption of the Code will assist Members when determining planning applications, some of which may perceived to be controversial or a risk of conflict could arise. When a planning decision is challenged it can be very useful for the Council to be able to refer to the principles set out in the Code, which Members have been trained on and observed by them during the planning process. If the Council does not have a Code it is much more difficult to establish that members were

properly aware of the way in which planning decisions should be made and of their role in the process; with the principles of good decision making set out and understood by Members, following training.

#### 7. Consultation

7.1 The Constitution Working Group was consulted on the proposed changes to the revised Members Planning Code of General Practice attached as Appendix A to this report.

#### 8. Reference to Corporate Plan

8.1 The Constitution sets out how the Council operates, and how decisions are made to achieve the Council's strategic outcomes.

## 9. Implications

#### **Financial Implications**

Name & Title: Jacqueline Van Mellaerts, Interim Chief Finance Officer Tel & Email: 01277 312809/jacquline.vanmellaerts@brentwood.gov.uk

9.1 There are no direct financial implications included in this report.

## **Legal Implications**

Name & Title: Daniel Toohey, Monitoring Officer and Head of Legal Services Tel & Email: 01277 312860/daniel.toohey@brentwood.gov.uk

- 9.2 Legal comments are set out in the main body of the report where appropriate.
- 9.3 Under section 5 of the Local Government and Housing Act 1989 as amended, the Monitoring Officer is responsible for the operation of the Council's Constitution. This includes monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect and matters of interpretation of the Constitution as necessary.

#### Other Implications

9.4 None.

## 10. Background Papers

10.1 None.

#### 11. Appendices to this report

Appendix A – Revised Members Code of Good Practice

## **Report Author Contact Details:**

Name: Gina Clarke, Corporate Governance Lawyer Telephone: 01277 312874

E-mail: gina.clarke@brentwood.gov.uk



#### PART 5.2 - MEMBERS' PLANNING CODE OF GOOD PRACTICE

#### 1. INTRODUCTION

- 1.1 The basis of the planning system is the consideration of private proposals against wider public interests. The key purpose of the planning system is to control development in the public interest.
- 1.2 The aim of this Code of Good Practice is to facilitate good decision making in the planning process and ensure that there are no grounds for suggesting that a decision has been biased, partial or not well founded.
- 1.3 Your role as a Member of the Local Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons.
- 1.4 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes when taking part in Planning Committee meetings or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It also applies to planning enforcement matters or site specific policy issues.
- 1.5 This Code is drafted in terms of what you should do and what you should not do. If you have any doubts about the application of this Code to your own circumstances you should try to seek advice early, from the Monitoring Officer or one of the legal team, and preferably well before any meeting takes place. However, it is better to seek advice late in the day than not at all.

#### 2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1 First, apply the Rules in the Members' Code of Conduct. These must be always be complied with.
- 2.2 Then apply the Rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - 2.2.1 the Council at risk of proceedings on the legality or maladministration of the related decision;

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- 2.2.2 yourself at risk of either being named in a report made to the Audit and Scrutiny Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer;
- 2.2.3 yourself at potential financial risk if the council suffers a challenge due to your non observance of these Rules; and
- 2.2.4 if the non-observance involves a breach of the Disclosable Pecuniary Interest Regulations, you could be prosecuted.

#### 3. WHERE YOU HAVE AN INTEREST IN A PLANNING MATTER

- 3.1 An interest could arise if it is your own application or the application of a family member; a close friend or associate of yours; or that of a company or organisation with which you are closely involved. In some situations your interest could amount to a Disclosable Pecuniary Interest; in other cases it may be one where you could reasonably be said to be at risk of bias (see below).
- 3.2 Whilst you are able to discuss your application with officers in advance of committee in the same way that a member of the public can, you should disclose the existence and nature of your interest at all relevant meetings, including informal meetings or discussions with officers and other Members. Your interest should be disclosed at the beginning of the meeting and not just at the commencement of discussion on that particular matter, unless you do not realise that you have an interest beforehand.
- 3.3 Where your interest is a disclosable pecuniary interest:
  - 3.3.1 unless you have been granted a dispensation beforehand, don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority;
  - 3.3.2 don't try to represent ward views, get another Ward Member to do so instead;
  - 3.3.3 don't get involved in the processing of the application; and
  - 3.3.4 never seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include,

where you have a disclosable pecuniary interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

- 3.4 When you have an interest, you should notify the Monitoring Officer in writing of the existence and nature of your interest and note that:
  - 3.4.1 this notification should be sent no later than submission of the application where possible;
  - 3.4.2 the application will always be reported to the Committee for decision and not dealt with by officers under delegated powers; and
  - 3.4.3 it is advisable that you employ an agent (either a planning consultant if one is involved or another person) to act on your behalf on the application to deal with officers and to carry out any public speaking at Committee.
- 3.5 Whilst you are not prevented from seeking to explain and justify an application in which you have a disclosable pecuniary interest to an appropriate officer the Code places limitations on you in representing that application. You may address the Committee after being granted a dispensation but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room- including the public gallery- whilst the meeting considers it.

#### 4. PREDETERMINATION, PREDISPOSITION AND BIAS

4.1 Bias (or apparent bias which is more usual) is where your interests are such that a member of the public might reasonably think that these will affect your view of the public interest – so for example where a planning application in front of the committee is from a family member or close associate of yours. Predetermination is a form of bias. Whilst you are able to express a view (predisposition), you should not make up your mind, or appear to have made up your mind (predetermination) on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning committee and after hearing the officer's presentation and evidence and arguments on both sides.

- 4.2 Do not speak and vote on any proposal where you are pre-determined. You do not have to withdraw, but you may prefer to do so. Where you are predetermined but take part in a decision you will put the Council at risk of a finding of maladministration and also of a risk of legal challenge on the grounds of there being a danger of bias or pre-determination or a failure to take into account all relevant factors. In some circumstances you may yourself face a claim if your behaviour led to the challenge.
- 4.3 Where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal, you are likely to be seen as predetermined. (This involves more than a matter of Membership of both the proposing and Planning Committees, but is where through a significant personal involvement in preparing or advocating the proposal you will be, or may be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.4 You are able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or are both a Borough and County Councillor), provided:
  - 4.4.1 the proposal does not substantially effect the well-being or financial standing of the consultee body;
  - 4.4.2 you make it clear to the consultee body that:
    - (a) your views are expressed on the limited information before you at that point;
    - (b) you are clear that you are reserving judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, until it comes before the Committee and you hear all of the relevant information; and
    - (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
    - (d) you disclose the personal interest regarding your Membership or role when the Committee comes to considers the proposal.

- 4.5 If you are unable to comply with 4.4 above but are present at the Planning Committee you should explain to the Committee that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- 4.6 You may exercise separate speaking rights as a Ward/Local Member (this is granted by the Procedure Rules via the consent of the Chair) where you have represented your views or those of local electors in a way which could be said to make you pre-determined (not pre-disposed), but only where you do not have a disclosable pecuniary interest.
- 4.7 Where you wish to speak in these circumstances:
  - 4.7.1 advise the Monitoring Officer or Chair that you wish to speak in this capacity before commencement of the item;
  - 4.7.2 remove yourself from the Member seating area for the duration of the item;
  - 4.7.3 ensure that your actions are recorded and that if required you have been granted a dispensation to speak in accordance with the Members' Code of Conduct; and
  - 4.7.4 do not vote on the matter.

#### 5. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 Refer those who approach you for planning, procedural or technical advice to officers.
- 5.2 Report to the Planning Officer or Monitoring Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- 5.3 Don't agree to any meeting with applicants, agents, developers or groups of objector, but speak to the Planning Officer where you feel that a formal meeting would be useful in clarifying the issues, and ask the Planning Officer to organise it and be present. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the

application file and the record of the meeting is disclosed when the application is considered by the Committee.

#### 5.4 Otherwise:

- 5.4.1 follow the Rules on lobbying (see Paragraph 7 below); and
- 5.4.2 consider whether or not it would be prudent in the circumstances to make notes when contacted (it usually is).
- 5.5 Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.
- 5.6 Ask relevant questions at any presentation for the purposes of clarifying your understanding of the proposals.
- 5.7 Remember that the presentation is not part of the formal process of debate and determination of any subsequent application,
- 5.8 Be aware that a presentation is a form of lobbying and so you must not express any strong view or state how you or other Members might vote as this could be classed as predetermination.

## 6. LOBBYING OF COUNCILLORS

- 6.1 Remember that your overriding duty is to the whole community not just to the people in your ward and you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 6.2 Explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, you cannot express an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.
- 6.3 Do not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum and that its acceptance is promptly registered in accordance with the rules on gifts and hospitality. You may also want to consider reporting offers of gifts and hospitality which are made to you which you refuse.
- 6.4 Pass on any lobbying correspondence you receive to the Monitoring Officer at the earliest opportunity, and inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches.

- 6.5 Inform the Planning Officer of any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 6.6 Unless you have a disclosable pecuniary interest, you will not have predetermined or breached this Planning Code of Good Practice through:
  - 6.6.1 listening or receiving viewpoints from residents or other interested parties;
  - 6.6.2 making comments on proposals to residents, interested parties, other Members or appropriate officers, provided they do not amount to predetermining the issue and you make clear you are keeping an open mind;
  - 6.6.3 seeking information through appropriate channels such as the Planning Officers; and
  - 6.6.4 being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that you are expressing the opinion or ward/local view, but you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

### 7. LOBBYING BY COUNCILLORS

- 7.1 Be careful of joining or representing an organisation whose primary purpose is to lobby to promote or oppose particular planning proposals. If you do, you will probably be unable to vote on the matter due to predetermination or bias, and you may have an interest which should be declared under the Code of Conduct.
- 7.2 This does not apply to general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society. Where you are a member of such a group you should disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal

- 7.3 Do not excessively lobby fellow Councillors or attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 7.4 Do not decide or discuss how to vote on any planning application at a political group meeting, or lobby any other Member to do so. Political group meetings should never dictate how Members should vote on a planning issue as these are decided upon material planning considerations.

#### 8. SITE VISITS

- 8.1 Site visits are an opportunity to seek information and to observe the site.
- 8.2 Do not request a site visit unless you feel it is strictly necessary because:
  - 8.2.1 particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection (increasingly unlikely given the technology now available); or
  - 8.2.2 there are significant policy or precedent implications and specific site factors which need to be carefully addressed.
- 8.3 Try to attend site visits organised by the Council where possible. All information gained from the site visit is reported back to the Committee, so that all Members making the decision have the same information.
- 8.4 Whilst you should ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection, you should not listen to representations from any party, with the exception of the Ward Member(s), whose address must focus only on site factors and site issues. If you are approached by the applicant or a third party on a site visit, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 8.5 Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

#### 9. OFFICERS

- 9.1 Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Management Manager, which may be incorporated into any Committee report).
- 9.2 Only discuss proposals, outside of any arranged meeting, with those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 9.3 Remember that officers must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily so far as Planning Officers are concerned with the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### 10. DECISION MAKING

- 10.1 Decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Planning Officers report will indicate what the material planning considerations are and it is only these factors that you must consider when deciding on an application.
- 10.2 If you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons will be recorded and repeated in the report to the Committee.
- 10.3 If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 10.4 Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 10.5 If you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan you must clearly identify your

reasons for doing so and understand the material planning considerations that justify this. These reasons must be given prior to the vote and will be recorded. If officers advise you that any reasons that are being put forward are not material planning considerations it is very difficult to justify any decision based on them, and it could give rise to the Council being challenged. You may be called to justify a decision against officer recommendation through giving evidence in the event of a challenge to them.

#### 11. TRAINING AND REVIEW

- 11.1 You must attend the mandatory planning training prescribed by the Council before you participate in the planning committee meetings.
- 11.2 Try to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan and so will assist you in carrying out your role properly and effectively.

#### 11 July 2018

#### **Regulatory and Governance Committee**

#### Strategic & Operational Risk

Report of: Jacqueline Van Mellaerts – Interim Chief Finance Officer

Wards Affected: None

This report is: Public

## 1. Executive Summary

1.1 The report updates members of the Regulatory & Governance Committee on the status of the Council's 2018/19 Strategic Risk Register and the progress being made across Services in delivering Operational Risk Registers.

## 2. Recommendation(s)

- 2.1 To agree the amendments to the Strategic Risk Register, as shown in Appendix A, and that the risk scores recorded for each risk accurately represents the current status of each risk.
- 2.2 To agree the risk exposure changes, as shown in Appendix B, to the Operational Risks

#### 3. Introduction and Background

- 3.1 The governance arrangements set out in the 'Insurance & Risk Management Strategy' and terms of reference of committees from our constitution require the Regulatory & Governance Committee to review the strategic risks every quarter.
- 3.2 The strategic and operational risk registers are monitored quarterly by the Corporate Leadership Board (CLB) who consider the risks, the mitigations and agrees the content. It is the responsibility of the Regulatory & Governance Committee to review the strategic risks and confirm they are confident that the risks associated within this register are those which are strategic and relevant to the organisation at this point in time and the considered future.

## 4. Issue, Options and Analysis of Options

#### Strategic Risks

- 4.1 In accordance with the Council's Insurance and Risk Management Strategy, risk owners have reviewed their risks and risk scores and updated them for the coming financial year 2018-19.
- 4.2 Attached to this report at Appendix A is a summary showing the current status of each risk and any movement in risk score compared with previous monitoring periods, together with explanatory commentary on the key issues for each risk.
- 4.3 As a result of the current risk review three scores have increased, two risk scores have decreased and one risk has been removed. The remaining scores have remained unchanged, totaling 13 Strategic Risks on the register.
- 4.4 The risk where the risk score has increased is as follows:
  - Amber risk RSK10 Failure to spend capital receipts (Row No.5)
     This risk has increased due to an increase in capital receipts for 2019/20.
  - Yellow Risk RSK5 Information Management and Security (Row No.10)
     RSK15 has now been incorporated into RSK5 and the risk score has been adjusted to reflect this and the potential financial impact to the Council.
  - Yellow Risk RSK10 Commercial Activities (Row. No 9)
     The Risk has increased due to the Council approving to borrow up to £30m to provide a Loan facility to SAIL, and the potential financial impact.
- 4.5 The risk where the risk score has decreased are as follows:
  - Green risk RSK4 Organisational Capacity (Row No.11)
     This risk has decreased following two additional senior appointments for Director of Operations and Director of Strategic Planning.
  - Amber Risk RSK2 Local development Plan (Row No.4)
     The Council have now received a response from the state that the Local Plan will not be subject to Government Intervention. Work remains on course to deliver the plan and the score has been adjusted accordingly.

- 4.6 The risk which has been removed is as follows:
  - RSK15 The General Data Protection Regulations
     GDPR has been adopted by virtue of the Data Protection Act 2018 and
     accordingly this Risk has now been incorporated within RSK5 –
     Information Management & Security of the Strategic Risk Register, which
     deals with data protection.

## Risk Matrix

4.7 The thirteen risks are plotted on the risk matrix in Table 1. The current assessment identifies that three risks will remain in the red area of the risk matrix.

Table 1 - Risk Matrix

	Definite	5	10	15	20	25 RSK1
bility	Very Likely	4	8	12	16 RSK11	20 RSK12
Likelihood / Probability	Likely	3	6	9	12 RSK3	15 RSK2 RSK10
Likelii	Less Likely	2	4	6	8 RSK5 RSK7 RSK8	10 RSK13
	Unlikely	1	2 RSK14	3	4 RSK4 RSK9	5
	1	Negligible	Minor	Moderate	Significant	Major
		Negative Impa	act / Severity			

No.	Risk	No.	Risk
1	Finance Pressures	9	Lack of strategic Direction
2	Local Development Plan	10	Failure to Spend Capital Receipts

3	Disaster Recover/Continuity Planning	11	Roll out of Universal Credit
4	Organisational Capacity	12	Extension of Right to Buy to registered provider tenants
5	Information Management and Security	13	Failure to deliver key Corporate Projects
7	Commercial Activities	14	Failure of Democratic Services
8	Contract/Partnership Failure		

## **Operational Risks**

- 4.8 Operational risk management is concerned with reviewing those risks that are faced in the day-to-day delivery of services, particularly where effective management of those risks could result in a reduction in insurance claims and related costs.
- 4.9 The Operational Risks have been reviewed by risk owners and updated and amended where necessary to reflect the actions being taken to manage the risks.
- 4.10 The table below shows the total number of risks identified in operational risk registers across the Council.

Risk Group	No. of open risks on register	Low Risk	Medium Risk	High Risk
Assets	6	5	1	
Community Services	5	2	3	
Corporate Services	5	1	4	1
Environment & Licensing	4		4	
Finance	7	5	3	
Housing	11	3	5	3
Parking	1		1	
Planning	6	1	5	
Street Scene	9	1	8	

4.11 Attached to this report at Appendix B is an operational risk summary report showing risk exposure changes.

#### 5. Reasons for Recommendation

- 5.1 Risk Management continues to be embedded quarterly within the Senior Management Team reports, where Service Heads discuss the top-level risks for their service areas to ensure that the risks are updated to reflect the ongoing changes.
- 5.2 In addition, the Risk & Insurance Officer will continue to work with risk managers to maintain the good progress to date and further develop a consistent application of risk management considerations across all operations of the Council.

#### 6. Consultation

6.1 None.

## 7. References to Corporate Plan

7.1 Effective risk management arrangements will enable the Council to achieve its corporate priorities. The process will allow identification of risks and issues enabling informed decision making to remove or reduce them in order for the priorities to be achieved.

#### 8. Implications

**Financial Implications** 

Name & Title: Jacqueline Van Mellaerts, Interim Chief Financial

Officer/Section 151 Officer

Tel & Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

8.1 None arising specifically from this report, but control measures identified in risk registers could have financial or resource implications.

Legal Implications

Name & Title: Daniel Toohey, Monitoring Officer and Head of Legal

**Services** 

Tel & Email: 01277 312860 /daniel.toohey@brentwood.gov.uk

8.2 Effective risk management provides a means of identifying, managing and reducing the likelihood of legal claims or regulatory challenges against the Council.

# 9. Appendices to this report

Appendix A – Strategic Risk Register Summary Report Appendix B – Operational Risk Exposure Changes

## **Report Author Contact Details:**

Name: Sue White, Risk & Insurance Officer

**Telephone:** 01277 312821

**E-mail:** sue.white@brentwood.gov.uk

	Row No	Risk No	Risk Description	Existing Controls	Ris	esidu k Rat	ing	F	rent   Ratin	g		Risk Response/Update on action required	Risk Owner
H					F	eb-1	8		Jun-1	8 	Noveme		
	1		As Revenue Support Grant from Central Government has ceased from 2018/19, the budget gap is a major management issue.	Medium Term Financial Planning is undertaken on an annual basis, with monthly budget monitoring and half year reports to Members. A Funding Volatility Reserve has been created to specifically address the uncertainty of Government funding levels. Currently healthy reserves and working balances held, although the Council still faces future funding Gaps. Commercial Activity Stream is being sought.	* <u>L</u> 5	* <b>!</b> 5	25	<u>*L</u> 5	5	25	₩ \$	COMMENT NOV 2017: Budget pressures still identified, however work in budget setting is underway to mitigate some of these pressures. Government have issued a Technical Consultation regarding Local Government Finance Settlement. Proposed changes to New Homes Bonus mechanism, business rates revaluation adjustment and views on council tax referendum principles have been requested. This may inform the finance settlement issued in December. COMMENT FEB 2018: Revenue Support Grant Income is confirmed as Nil for 2018/19 and subsequent years. Although The Council has set a breakeven Budget for 2018-19 utilising commerical activity as the driving force, the Council still faces financial pressures from the lack of Central Government funding.  COMMENT JUNE 2018: The MTFP still foresees future funding gaps, due to the current pressures on reduced funding. The Council has saving targets in place to reduce this funding gap, which is predomantly related to commerical activity. The Council still sees this financial pressure as its biggest risk.	Van Mellaerts
Page 61				We will continue to monitor progress and update Members.	4	5	20	4	5	20	<b>\( \( \( \) \)</b>	COMMENT AUG 2017: We have received no further information from DCLG, we will continue to monitor. COMMENT NOV 2017: We have received no further information from DCLG, we will continue to monitor. COMMENT FEB 2018: We have received no further information from DCLG, we will continue to monitor.  COMMENT JUNE 2018: There has been no regulation to bring into force the primary legislation. Whilst it remains on the statute books, there is no indication from government that it will be brought into effect. From a risk respect this will remain neutral, whilst high risk if in the event regulation came in. The risk rating will be reviewed in Sept to determine if still appropriate.	Steve Summers
	3		The direct payment of universal credit to claimants (previously Housing Benefit payments) may result in a reduction on the rent roll received, increasing the level of rent arrears.	Current tenants affected by Universal Credit are being monitored by Housing Officers on a regular basis, who can be referred for budgeting advice. Updated Income Management procedure to become more client based. Introduction of new Pre- Tenancy Service to instill a payment culture. Monthly rent arrears campaign to target high risk areas.	4	4	16	4	4	16	<b>⇔</b>	COMMENT NOV 2017: Universal credit full service went live on the 13th November which will affect HB tenants with a change in circumstance as they will automatically transfer to UC. No immediate effect has been impacted yet but is being closely monitored. COMMENT FEB 2018: There has been an issue with payments not being received due to a requirement for a creditor reference, which BBC did not have. This is still being looked into by Finance.COMMENT MAY 2018: Regular communication with UC has now been set up. SRS foms are helping with the processing of claims. Orchard is set up to flag UC making it easier to support tenants. COMMENT JUNE 2018: We are in regular communication with UC and receive the DWP updates to assist the monitoring. We are still reviewing the full impact of UC on our residents, particularly on the delay in claims being processed. We have seen a rise in arrears which is partially due to delays in claim processing. The Housing Manager is reviewing regularly and is still considered a high risk area.	Steve Summers

Row No	Risk No	Risk Description	Existing Controls		Residu sk Ra Feb-1	ting	Cu	rrent Ratir Jun-	ng		Risk Response/Update on action required	Risk Owner
				*1	*1	Ť	*	*1	T			
4		Local Development Plan Failure of the Council to adopt a Plan in line with National Planning Policy Framework resulting in planning applications judged against NPPF 'in favour of sustainable development'	Meeting targets set out in the Plan timetable, with ongoing discussion with neighbouring Local Planning Authorities. Retention of permanent staff. Risk impact is high but controls are in place to manage this and meet targets, which means likelihood is lower.		4 5	20		3 5	5 15	2 1	COMMENT AUG 2017: Further work ongoing to better understand emerging evidence relating to development needs, with revised target to approve document for consultation in November 2017. Risk continues to be managed in line with this process. COMMENT JAN 2018: Letter received from Secretary of State (DCLG) warning of intervention unless very special circumstances accepted. Response submitted with further details (and joint South Essex 2050 response) due by 31 January 2018. Elevated risk reflected, although this risk continues to be managed. COMMENT FEB 2018: Revised Local Plar timetable approved at Ordinary Council (Jan 2018). Decision from Secretary of State regarding intervention still awaited.  COMMENT JUNE 2018: Secretary of State response received in March 2018 stating that the Brentwood Local Plan would not be subject to government intervention, provided the Council's approved timetable was met. Work remains on course to deliver the Plan according to approved timescales.	
5 <b>P</b> 20 CD		Failure to spend Capital Receipts Faiure to spend capital receipts within the deadline will result in delays in delivering Affordable Housing programme	Monitoring by finance team. Affordable housing programme in place.		1 5	Ę	5	3 (	5 15	5 1		е

Row No	Risk No	Risk Description	Existing Controls	Ris	esidu sk Ra Feb-1	ting		rrent Ratin Jun-1	g	ement	Risk Response/Update on action required	Risk Owner
				*	*		*L	3un-1		Mo		
6	RSK3	Failure to respond effectively to an incident/event due to lack of robust Emergency Planning & Business Continuity Plans results in service disruption and	Business Continuity Plans in	3	_	12			12	<b>\(\psi\)</b>	COMMENT AUG 2017: The Corporate Emergency Plan has been rewritten and a draft submitted to the Chief Executive for approval. Basildon & Tendring DC have produced a generic Rest Centre Plan and training modules for staff and volunteers which is to be adopted by all Essex local authorities by 31 December 2017. A timetable has now been drawn up for the relocation of staff to various sites in Brentwood. Business Continuity Plans have still to be updated. COMMENT NOV 2017: To ensure that robust and practical solutions are deployed, we have asked for a "Healthcheck" to be carried out by Emergency Planning Expert from Basildon Council. COMMENT FEB 2018: The Health check has indicated that additional short-term resource is required to ensure we are fully covered (as much as we can be) and arrangements are in place to put this into effect.  COMMENT JUNE 2018: We are currently implementing recommendations of the Healthcheck. In addition senior employees have been, and are planned to be on a specialist Emergency Planning course.	
Page 63	RSK13	Corporate Projects There are a number of projects that are vital to supporting and delivering the vision for Brentwood.	PF&R Committee appointed as Programme Board. Continued communication on all projects. Owenership of delivery of projects identified at all levels within the Council.	2	5	10	2	2 5	10	<b>\( \)</b>	COMMENT AUG 2017: The Corporate Project Scrutiny Board has established the majority of the working groups to ensure that benefits / actions are not lost. COMMENT NOV 2017: Work continues to monitor key corporate projects to ensure they are on track, if there is a significant variance or issue within their resource, finance or timeline, whether positive or negative, it is reported to the appropriate owner or board for further scrutiny. COMMENT FEB 2018: A recent BDO (internal audit) report resulted in the higest surety rating that can be provided,. This clearly indicates the confidence and assurance that has been generated by our project and programme control systems. COMMENT JUNE 2018: Regular reports are made internally (via CLB) and also at Committe (PPR) to ensure the organisation continues to track its main aims.	
8	RSK8	benefits and outcomes relating to contracts is the way in which they are delivered. Management of contract/partnership	Service Level Agreements embedded within contract and penalties in place for non performance. Regular reporting on contract performance. Escalation and governance in place.	2	4	8	2	2 4	. 8	<b>*</b>	COMMENT AUG 2017: A highly successful Member training sessison has been held and run by EELGA. The EELGA exercise clearly stated that whilst there was still work to be done there were many examples of best practice in Brentwood and we can be held as a model of what good looks like to similar organiastions. COMMENT NOV 2017: The recommendations of the EELA study continue to be implemented. A case study citing BBC as a good example of best practice is being finalised. COMMENT FEB 2018: We continue to progress our work particularly on contract management.  COMMENT JUNE 2018: The organisations capability in this area is reflected in two major procurement exercises we are undertaking (The J/V partner and Housing R&M). this has introduced substantial training and increased knowledge and application of good procurement practice.	Phil Ruck

Row No	Risk No	Risk Description	Existing Controls	Ris	esidu sk Ra Feb-1	ting	Cı	Ra	rent Risk Rating Jun-18		me	Risk Response/Update on action required Risk	k Owner
				*L	*		*L	*	·1		M		
		identifying areas of sustainable development and revenue savings for the Council.	monthly budget monitoring. Regular reports to Policy,	2	3	6	6	2	4	8	û	COMMENT AUG 2017: The Council has an Asset Development Programme which is being updated at the next Policy Committee, to consider further options in mitigating this risk. COMMENT NOV 2017: A Project Board, supported by a Project Delivery Team has been formed. This has allowed progress to happen, such as the Soft Market Testing exercise currently being undertaken. COMMENT FEB 2018: Good progress has been made in procuring a development partner to assist with the Council's Asset Development Porgramme. Additionally arrangements to establish a wholly owned company early next financial year are nearly finalised.  COMMENT JUNE 2018: The JV is progressing in accordance with the approved timeframe, with a shortlist of 5 bidders having been selected. SAIL property investment advisors have been appointed and are actively advising on investments. The Risk has increased due to the Council approving to Borrow up to £30m, to invest in SAIL and the potential financial impact that could effect the Council.	ris Leslie
10	RSK5	Information Management and Security If a data breach occurs (e.g. Unauthorised release of personal information) the Council may be fined by the ICO and be subject to damages and loss of reputation.	Data Protection Policy Regular training	2	2 3	\$ E	6	2	4	8	Û	COMMENT AUG 2017: PPR Committee has now formally adopted the policies. The newly adopted policies will be rolled out along with DPA training to all staff by the end of September 2017 through an all staff email from CX followed by a dedicated intranet page where the policies and training materials will be available. COMMENT JAN 2018: Polices and training now rolled out to all staff as above. Moving to next stage involving GDPR 'sensitisation' training during January/February 2018. COMMENT FEB 2018: Compulsory training has occurred for officers regarding the DPA, with further update training to follow. GDPR Action plan has been approved by PPR committee, and data mapping exercise is underway. Project is on target according to schedule.  COMMENT JUNE 2018: The project plan is now completed for GDPR, data mapping has occured and privacy notices reviewed, as well as training undertaken. Thurrock Council have been engaged to undertake the DPO role to add capacity and capability. They are undertaking a gap analysis to address any exisitng or anticipated issues. RSK15 has been removed and incorporated into RSK5. The Risk score has been adjusted accordingly and increased due to the significant potential financial impact on the Council, if there was a data breach.	ris Leslie

R <sub>0</sub>	ow o	Risk No	Risk Description	Existing Controls	Ris	esidu sk Ra Feb-1	ting		rent Ratin Jun-1	g	vement	Risk Response/Update on action required Risk O	)wner
	11	RSK4	Organisational Capacity Lack of capacity to effectively govern the organisation will result in delay in delivery of business objectives	Medium Term Financial Plan Communications Protocol & Strategy Workforce Strategy Regular meetings between senior members & officers. Review options for alternative service delivery models	* <b>L</b> 2	* <b>!</b> 4	8	* <b>L</b>	4	4	. ⇔	COMMENT AUG 2017: A number of service reviews have been initiated to ensure that the organisation structure and capacity matches planned delivery. The current focus of the review is on Housing and Streetscene. COMMENT NOV 2017: Following the move from the Town Hall, the objective and focus on improvement in services continues. We have now commenced a review of the Depot services. The recent appointment of the Chief Operating Officer (COO) increases the focus on the reviews currently being undertaken, as the organisation continues to ensure that the delivery structure of the organisation is matched by appropriate management. COMMENT FEB 2018: Work on this continues as we review the organisations structure, recognising the impact of the commercialisation workstream. COMMENT JUNE 2018: The organisation now reflects goals of the organisation, following two additional senior appointments, (Director of Operations and Director of Strategic Planning)	ıck
Page 65	12	RSK9	danger of managing	Corporate Plan. Training and Development for Officers and Members Code of Conduct. Consultation / surveys. Project and performance Management Framework.	1	4	4	1	4	4	<b>↔</b>	COMMENT NOV 2017: This work continues via strong governance around projects and programmes. COMMENT FEB 2018: No change for the last comment (Nov 17)  COMMENT JUNE 2018: Work continues on ensuring delivery through the strong programme management ethos we have instigated and embedded within the organisation.	лск
	13	RSK14	Failure of Democratic Services - That outsourcing/shared service arrangements result in the Council's democratic duties not being fulfilled or ignored leading to a failure in the Council's obligations.	Statutory returns will be built into contracts relating to any outsourcing/shared arrangements. The Monitoring Officer to be involved at all times in relation to contracts and monitoring of performance.	1	2	2	1	2	2 2	<b>⇔</b>	COMMENT AUG 2017: All partnership arrangments are following client management best practice and any concerns are flagged to the Monitoring officer. COMMENT NOV 2017: The actions identified in August 2017 continue to be implemented. COMMENT FEB 2018: No change from the Nov 17 comment.  COMMENT JUNE 2018: Work continues to implement best practice.	JCK
			* L = Likelihood Rating (1 = L * I = Impact Rating (1 = Low,	- · · · · · · · · · · · · · · · · · · ·									

Maximum Score  $5 \times 5 = 25$ 

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# **Operational Risks**

# **Risk Exposure Changes**

Risk	Risk Description	Existing Controls	Residu	ıal Risk	Rating	Curre	nt Risk F	Rating	Movement	Risk Response/Update on action required
No				Feb-18			Jun-18			
			*L	*		*L	*I			
Page <sub>H9</sub>	collection targets in respect of Housing rents and leasehold service charges resulting in financial loss to the Council.	Rent arrears process well documented and programmed into Orchard. Pre-tenancy checks to ensure tenants can pay and do so through initial months of tenancy. Debt Recovery Officer appointed to look at former tenant arrears and sub accounts.	4	5	20	5	5	25		COMMENT JUNE 2018: The arrears remain a high concern, some of the factors are likely to be due to the impact of UC and processing delays. We did see a reduction in the arrears as part of a 1 month arrears drive, however, there are resource issues that also have an impact. We are preparing for additional resources to be recruited over the next 2 months.
де 67		Contract Management meetings in place. Resident liaison in place.	3	4	12	5	4	20		COMMENT JUNE 2018: There have been difficulties with the planning submission which have resulted in the need to withdraw the applications until further discussions have taken place with planning. Risk has been increased due to these problems, and not having staff with the relevant experience to drive forward new homes delivery, reputational risk to the Counicil and VFM.
Н3	community areas resulting in possible	Fire risk assessments in place. Properties fitted with hard wired smoke alarms which are checked annually. Estate inspections every 8 weeks.	4	5	20	3	5	15	v	COMMENT JUNE 2018: The draft fire policy due to be approved at CH&H committee on the 3rd July 2018. A safety 1st PM programme is being prepared following the updated risk assessments carried out by Rowans.

## Brentwood Borough Council - Summary Risk Report

H1	gas regulations resulting in possible loss of building(s)	Gas warrant procedure in place and regularly reviewed. Comprehensive 10 month gas servicing program implemented. Increased number of HO's that can apply for warrants. Battery CO detectors fitted on void properties.	4	5	20	3	4	12	ΰ	COMMENT JUNE 2018: The review of our existing compliancy procedures have been reviewed by Ridge and have been found to be robust. The draft gas policy is still awaiting draft.
CS2 Page H6	Hall Remodelling on time, to financial budget and to specification	Milestones communicated and decision points being monitored to ensure they are delivered. Regular updates to the management team and committee	4	5	20	2	5	10	Û	COMMENT JUNE 2018: Timescales remain on target, with residential completed ahead of 31/03/19 & full building completion scheduled for 19/05/19 Costs remain within financial envelope with the addition of £200k funding for sprinkler system approved at committee.
38	manage parterships and contractors resulting in delays in service delivery, costs escalating and reduction in customer satisfaction	Regular meetings with parners and contractors	4	4	16	2	4	8	Û	COMMENT JUNE 2018: There has been an ongoing improvement with both incumbant contractors, however, as we are due to award the new contract at the end of the year, this remains a risk. Ongoing, we now have a managed service agreement with Basildon and access to basildon staff who have contract management experience
Н8	and monitoring of costs resulting in financial loss and inability to	Repairs contract meetings. Temp Contracts Manager and M&E Compliance Officer recruited. Budget holders trained in Collaborative Planning. Accountant assigned to Department and regular CP/budget meetings.	3	4	12	2	3	6	Û	COMMENT JUNE 2018: Interim plans have been put into place to allow us to more effectively plan spend and predict where the spend will be. The immediate priority for spend is the areas of compliancy which are our highest risk.

## Brentwood Borough Council - Summary Risk Report

H7	Failure to properly consult with leaseholders resulting in costs being unrecoverable.	Leasehold Officer in place	2	3	6	1	1	1	Û	COMMENT JUNE 2018: We now have access to an RLO from Basildon who will assist in the notification to the Leaseholder Officer where consultation is required with residents.
H10	Failure to deliver on Transformation Plan resulting in business development targets not reached, financial loss and resident satisfaction reduced	Regular reviews of plan	2	3	6	2	2	4	Û	COMMENT JUNE 2018: The managed service has now been approved and is in the process of being implemented. Further discussion is required around the type of SLA required. There are further smaller scale reviews due to be taken forward and we are currently working on the cleaning & caretaking service jointly with Basildon.
H11 Page	Failure to manage Anti- social behaviour	Monthly case review meetings to manage cases Officers have received training in how to manage ASB	3	2	6	2	2	4	Û	COMMENT JUNE 2018: The secondment post from Housing has worked very well, and we have seen a marked improvement on dealing with higher level asb. Likelihood that the post will be made permanent.
<b>j</b> e 69										

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## 11th July 2018

## Regulatory & Governance Committee

### Member's Training Programme 2018/2019

Report of: Claire Mayhew – Corporate & Democratic Services Manager

Wards Affected: All

This report is: Public

## 1. Executive Summary

1.1 This report is before Member's to adopt the Member's Training Programme for the new municipal year 2018/19.

#### 2. Recommendation

2.1 That the Committee adopts the Member's Training Programme (Appendix A) for 2018/2019.

### 3. Introduction and Background

- 3.1 Previously, a Member's training programme was in place, however over the last few years this has lapsed. A more robust programme was required, to inform all new and existing Councillors of their roles, duties and responsibilities as a Borough Councillor.
- 3.3 New Members Induction and "How the Council Works" training for all newly and re-elected councillors took place on 8<sup>th</sup> May & 9<sup>th</sup> May 2018 in readiness for Annual Council. A format of the training received can be found in Appendix A.
- 3.4 Some sessions are mandatory:
  - New Members Induction Session
  - Planning and Licensing Training as required under Chapter 5.5 paragraph 2, 2.1 & Chapter 5.5 paragraph 4, 4.1 of the Constitution.
- 3.5 Committee members are advised to undertake training available to gain and enhance their knowledge of the Committee's responsibilities.

- 3.6 Training sessions are held mainly in the evening to ensure as many councillors as possible can attend. Most of the training sessions are desirable to Members i.e GDPR, Member's Portal and Safeguarding. These will be covered in two/three separate sessions with an additional "mop-up" if required.
- 3.7 Training opportunities will continue to be offered throughout the Municipal year.
- 3.8 Attendance at these sessions is monitored and entered on the Council's website and publicly available.

## 4. Issue, Options and Analysis of Options

4.1 Members will be given the opportunity to give feedback and comment on any further training that might be find of help by completing the feedback form at the Member's Training Programme (Appendix A).

#### 5. Reasons for Recommendation

5.1 To provide a Member's Training Programme in line with best practice.

#### 6. Consultation

6.1 None

## 7. References to Corporate Plan

7.1 Continue to improve our governance arrangements leading to faster more effective decision-making.

#### 8. Implications

**Financial Implications** 

Name/Title: Jacqueline Van Mellaerts – Interim Chief Finance

Officer/Section 151 Officer

Tel/Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

8.1 If any additional costs arise from implementing the Member Training Programme, they will be met from existing Budgets within the Medium Term Financial Plan for 2018/19.

**Legal Implications** 

Name/Title: Daniel Toohey - Head of Legal Services and Monitoring

Officer

Tel/Email: 01277 312860/daniel.toohey@brentwood.gov.uk

8.2 The Member's training programme will improve knowledge and awareness of Council processes and procedures and where appropriate, statutory requirements, therefore improving the Council's overall compliance with governance requirements.

# Other Implications.

- 8.1 None
- 9. Background Papers
- 9.1 None
- 10. Appendices to this report
- 10.1 Appendix A Member's Training Programme 2018/2019

# **Report Author Contact Details:**

Name: Claire Mayhew – Corporate & Democratic Services Manager

**Telephone**: 01277 312741

**E-mail:** claire.mayhew@brentwood.gov.uk



# Member's Development Programme 2018/2019



**Brentwood Borough Council** 

www.brentwood.gov.uk

# Member's Development Programme 2018/2019

# Introduction

- Welcome to the Member's Development Programme for 2018/2019. In the handbook which follows, you will find a range of course designed to increase your knowledge and awareness of the Council, both local and in national context.
- Some are designed to impart information, others to develop personal skills and the remainder to train you in essential tasks you will undertake as a Member of Brentwood Borough Council.
- Some are run by Council Officers and other by external specialist. Some are strongly participative, other more traditional in format. All are designed to be informal and to foster exchanges of views and questions.
- Some are designated "Mandatory". This mean that, for relevant Councillors, attendance is a necessary pre-requisite to becoming involved in the specific activity or serving on a particular member body. In other words, members will be unable to undertake those roles without this training. This designation is of relevance to newlyelected Members.
- There is a booking form at the end of the handbook. Please complete this and return it as soon as possible to the Claire Mayhew – Corporate and Democratic Services Officer (claire.mayhew@brentwood.gov.uk).

Remember to book yourself onto the courses which are "Mandatory".

**Please note**: that training attendance by individuals Councillor are published on the Council's website.

# **Training Courses**

Course Title Date/Time/Venue		Session Designation	Page
NEWLY AND RE-ELECTED COUNCILLORS – WELCOME AND INDUCTION Essential housekeeping for	Tuesday 8 <sup>th</sup> May 2018 at 6:00pm-8:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road,	Mandatory for all new and re-elected Members and group leaders.	7
new and re-elected Councillors	Brentwood, Essex		
HOW THE COUNCIL WORKS - Overview of the various committee	Wednesday 9th May 2018 at 6:00pm-8:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road,	Desirable for all new and re-elected Members.	8
DATA PROTECTION (GDPR)/ FREEDOM OF INFORMATION	Brentwood, Essex  Monday 21 <sup>st</sup> May 2018 at 10:00am-12noon or Wednesday 23 <sup>rd</sup> May 2018 at 6:00pm-8:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Desirable for all Members.	9
WHAT IS THE PLANNING SYSTEM?  "Life of a Planning Application", Enforcement, Green Belt, Design and Heritage Assets.	Tuesday 5 <sup>th</sup> June 2018 at 6:00pm-8:00pm Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Mandatory for all Members of the Planning & Licensing Committee.  Parish Councillors  Desirable for all Members.	10
CHAIRMANSHIP SKILLS How to chair meetings	Thursday 21 <sup>st</sup> June 2018 at 6:00pm-8:00pm Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Desirable for Chairman/Vice- Chairman/Mayor and Deputy Mayor	12
SAFEGUARDING (Child Protection) and Promoting the Welfare of Children and Young People	Monday 25 <sup>th</sup> June 2018 at 6:30pm-8:30pm  Monday 2 <sup>nd</sup> July 2018 at 6:30pm-8:30pm	Desirable for all Members	13

COMMUNICATIONS Dealing with the Press Enquiries/Interviews/Social Media.	Wednesday 4 <sup>th</sup> July 2018 at 2:00pm-4:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex  Thursday 5 <sup>th</sup> July 2018 at 6:00pm-8:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Desirable for all Members	14
PLANNING PROTOCOL	Monday 16 <sup>th</sup> July 2018 at 6:00pm-7:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Mandatory for all Members of the Planning & Licensing Committee  Parish Councillors  Desirable for all Members	15
CODE OF CONDUCT Outlines the Government's ethical framework and the duties and responsibilities of Councillors.  Overview of the equality duty in decision making.	DATE TO BE CONFIRMED at 6:00pm-8:00pm Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Desirable for all new and re-elected Members	16
LICENSING TRAINING	This training is over two sessions:-  Tuesday 10 <sup>th</sup> July 2018 at 7:00pm-9:00pm & Wednesday 18 <sup>th</sup> July 2018 at 7:00pm-9:00pm  Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Mandatory for all Members of the Planning & Licensing Committee.  Parish Councillors  Desirable for all Members	17
IT SKILLS Basic IT Skills and how to navigate the Council's systems.	DATE TO BE CONFIRMED at 6:00pm-8:00pm Venue: Meeting Room 3, 1-2 Seven Arches Road, Brentwood, Essex	Desirable for all Members	19

NEW MEMBERS DODEAL	Tuesday 17th July at 2,20mm	Desirable for all 20
NEW MEMBER'S PORTAL	Tuesday 17 <sup>th</sup> July at 3:30pm-	Desirable for all 20
	4:30pm	Members
	Monday 23rd July at	
	6:00pm-7:00pm Tuesday	
	24th July at 6:30pm-7:30pm	
	Venue: Meeting Room 3, 1-2	
	Seven Arches Road,	
	Brentwood, Essex	
A daliti a mal tura imin		ut the Municipal Vecu
	g sessions planned througho	
RISK MANAGEMENT	TBC	Desirable to Members of the
		Regulatory & Governance
		Committee
		Desirable for all Members
LOCAL AUTHORITY	TBC	Desirable to Members of the
FINANCE/BUDGET		Audit & Scrutiny
PROCESS AND TREASURY		Committee/Policy, Projects and
MANAGEMENT		Resources Committee
		Resources Committee
Budget Monitoring, E-learning		Desirable for all Manch and
		Desirable for all Members
HOUSING	TBC	Desirable to Members of
Understanding the service		Community, Health and Housing
area.		
		Desirable for all Members
STREET SCENE	TBC	Desirable to Members of
Understanding the service		Environment and Enforcement
area.		
		Desirable for all Members
CORPORATE	TBC	Desirable to Members of
ENFORCEMENT	150	Environment and Enforcement
Understanding the service		Liviloninent and Emorcement
		Desirable for all Members
area.	TDC	
ENVIRONMENTAL HEALTH	TBC	Desirable to Members of
Understanding the service		Environment and
area.		Enforcement/Members of
		Community, Health and Housing
		Desirable for all Members
ASSETS	TBC	Desirable to Members of Policy,
Understanding the Service		Projects and Resources
area.		Committee
		Desirable for all Members
LOCAL DEVELOPMENT	TBC	Desirable for all Members
	IDC	Desirable for all Methbers
PLAN		

Subject: NEWLY AND RE-ELECTED COUNCILLORS – WELCOME AND

INDUCTION

**Date/Time(s):** Tuesday 8th May 2018 at 6pm-8pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

#### **SUMMARY OF THE COURSE CONTENT:**

Session 1 – 6:00pm

Pigeon hole key

- ID badge
- Register of interests
- Joining a political party
- Personal contact info
- Payroll info
- Signing of declaration of Office

Session 2 – 6:30pm

- Welcome from the Leader of the Council, Cllr Louise McKinlay
- Welcome from the Chief Operating Officer, Mr Steve Summers
  - Senior Members of the Council
  - Committees
  - Senior Officers and Departments of the Council
  - What do we do
  - Where are the services situated?
  - Budget & Commercial Activities
  - What we don't do
  - Member's Casework
  - Paperless Agendas
  - Contact Details

**Question and Answers Session** 

#### **COURSE DESIGNATIONS:**

Mandatory for all New and Re-elected Members Desirable for Group Leaders

#### **HOUSEKEEPING DETAILS:**

Subject: HOW THE COUNCIL WORKS

**Date/time(s):** Wednesday 9<sup>th</sup> May 2018 at 6pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

**Course tutor(s):** Mr Daniel Toohey – Monitoring Officer and Head of Legal

Services

#### WHY YOU SHOULD ATTEND THIS COURSE:

It is easy to be confused by the workings of the Council's committees. This course seeks to explain how Full Council works in conjunction with the other committees on the Council and how you can make the best use of the constitutional rules.

#### SUMMARY OF THE COURSE CONTENT:

To describe the respective roles of the Council and Committee(s) in decision making.

- Council Function
- Committee(s) Function
- Role of the Leader
- Call In
- Budgetary Framework
- Duties of Chairman/Vice Chairman

To outline the conventions and protocols regarding meeting of Full Council

- Speaking
- Raising motion
- Asking question
- Moving amendments
- Role of Mayor and Deputy Mayor

# **COURSE DESIGNATIONS:**

Desirable for all Members

# **HOUSEKEEPING DETAILS:**

Subject: DATA PROTECTION (GDPR) AND FREEDOM OF

**INFORMATION** 

**Date/time(s):** Monday 21<sup>st</sup> May 2018 at 10:00am-12noon

Wednesday 23<sup>rd</sup> May 2018 at 6:00pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Philip Devonald - Governance Solicitor

#### WHY YOU SHOULD ATTEND THIS COURSE:

The General Data Protection Regulation (GDPR) is by far the biggest regulatory development in information law in 20 years. The Regulation imposes new obligations on controllers that all organisations must comply with from 25th May 2018.

As a councillor you are a data controller and the duties and responsibilities of the new law will apply to you.

# **SUMMARY OF THE COURSE CONTENT:**

#### **Data Protection**

- A brief view of how the new data protection law affects you as a councillor.
- The rights of individuals regarding their personal data
- The obligations of the council and individual councillors to manage and protect personal data.

#### Freedom of Information

- A brief overview of the FOI system
- How the Council handles requests
- How it interacts with data protection rules

# **COURSE DESIGNATIONS:**

Desirable for all Members

#### **HOUSEKEEPING DETAILS:**

Subject: WHAT IS THE PLANNING SYSTEM?

**Date/Time(s):** Tuesday 5th June 2018 at 6:00pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Nick Howard - Development Management Team Leader

Caroline McCaffrey - Development Management Team Leader

Phil Drane - Planning Policy Team Leader

Paulette McAllister - Design & Conservation Officer

Surinder Atkar – Planning Solicitor

#### WHY YOU SHOULD ATTEND THIS COURSE:

This Course is a must to understand the important role that members play in the planning application process, what decisions are made by members, what a planning meeting looks like and guidelines for making those decision. A great refresher for existing members.

# SUMMARY OF THE COURSE CONTENT:

#### Induction

- What is Planning
- Understanding the Planning System "plan-making" and decision-taking" processes

# What happens before a decision is made?

- Application types and validation procedures
- Officer delegation how these decisions are taken and when they are taken
- How member can call applications into Committee
- Avoiding the pitfalls of public canvassing
- Important role of Councillors
- So, what is it like being a member on Planning Committee
- Who makes the Decisions
- Application of Planning Policy
- What are Material Considerations?
- Non- Planning Matters
- Site Visits
- Making a Decision
- Types of Planning Permissions

# After a decision is made

- Planning Appeals
- Top Tips

# Q & A Session

# **COURSE DESIGNATIONS:**

Mandatory for all Planning & Licensing Committee Members Desirable for all

Open to Parish Councils

# **HOUSEKEEPING DETAILS:**

Subject: CHAIRMANSHIP SKILLS

**Date/time(s):** Thursday 21st June at 6:00pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Olwen Dutton - Partner of Anthony Collins Solicitors and

Corporate Governance specialist.

#### WHY YOU SHOULD ATTEND THIS COURSE:

To familiarise elected member with the techniques required to chair meeting effectively.

# **SUMMARY OF THE COURSE CONTENT:**

The Session will enable participant to:

- Identify what makes meeting effective
- Understanding the importance of preparation, structuring and management for the effective chairing of meetings.
- Explore ways of dealing with the problems that can affect meetings, such as conflict, negativity and lack of participation

#### **COURSE DESIGNATIONS:**

Desirable for all Chairman and Vice Chairman of various committees (including Mayor and Deputy Mayor)

#### **HOUSEKEEPING DETAILS:**

Subject: SAFEGUARDING AWARENESS TRAINING

**Date/time(s):** Monday 25<sup>th</sup> June 2018 at 6:30pm-8:30pm

Monday 2<sup>nd</sup> July 2018 at 6.30pm-8;30pm

Wednesday 4th July 2018 at 2:00pm-4:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

**Course tutor(s):** Kim Anderson – Partnership, Leisure & Funding Manager

#### WHY YOU SHOULD ATTEND THIS COURSE:

All elected Members have a role to play by adhering to best practice, participating in relevant training and reporting any concerns, incidents or allegations to a designated person in accordance with the Council's own procedures. Safeguarding reports cannot be anonymous and should be made in the knowledge that during the course of enquiries, they may be required as a prosecution witness. A briefing document will give more guidance about Members' responsibilities for reporting safeguarding issues. Further information on 'safe working practices' guidelines can be found in the Council's Safeguarding Policy and Procedures.

#### SUMMARY OF THE COURSE CONTENT:

Safeguarding is everyone's responsibility so by the end of the training Members will be able to:

- understand what is meant by safeguarding
- Know where safeguarding sits nationally and local contexts
- Understand Brentwood Borough Council's role and responsibilities and what this means in practice
- Know how Brentwood Borough Council responds to safeguarding concerns

# **COURSE DESIGNATIONS:**

Desirable for all Members

#### **HOUSEKEEPING DETAILS:**

Subject: COMMUNICATIONS

**Date/time(s):** Thursday 5<sup>th</sup> July 2018 at 6:00pm – 8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Ms Lorne Spicer - Senior Communications Manager

#### WHY YOU SHOULD ATTEND THIS COURSE:

All members, definitely committee Chairs/Vice Chairs and those with wards in which residents are particularly active.

#### SUMMARY OF THE COURSE CONTENT:

- Social media the pros and cons
- Social media privacy issues for the public and councillors
- The media agenda and how councils and councillors can make the most of it
- Handling community social media everyone today is a journalist and cameraman
- Forewarned is forearmed! How to deal with media enquiries
- What makes a positive story and how to create positive news

#### **COURSE DESIGNATIONS:**

Desirable for all Members

#### **HOUSEKEEPING DETAILS:**

Subject: PLANNING PROTOCOL

**Date/time(s):** Monday 16<sup>th</sup> July 2018 at 6.00pm-7:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

**Course tutor(s):** Surinder Atkar - Planning Solicitor

# WHY YOU SHOULD ATTEND THIS COURSE:

To be able to understand the implication for you as a Councillor, of the Council's planning protocol.

To avoid the pitfalls in the planning in terms of conflicts of interest which can arise.

To understand the new protocol and your obligations under of the Code of Conduct.

# SUMMARY OF THE COURSE CONTENT:

- The position of "duel hatted" councillors
- Fettering a Councillor's Discretion
- Conduct a Planning meeting
- Pre and post application discussions
- Handing Site Visits
- Lobbying and Public inquiries
- The position of Officers and Members who are applicants and objectors
- Addressing Planning and Licensing Committee where Councillors have a prejudicial interest

#### **Question and Answers Session**

#### **COURSE DESIGNATIONS:**

Mandatory for all Planning & Licensing Committee Members Desirable for all

Open to Parish Councils

#### **HOUSEKEEPING DETAILS:**

Subject: CODE OF CONDUCT

**Date/time(s):** DATE TO BE CONFIRMED at 6:00pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

**Course tutor(s):** Mr Daniel Toohey – Monitoring Officer and Head of Legal

Services

# WHY YOU SHOULD ATTEND THIS COURSE:

Understand the Government ethical framework and the duties and responsibilities of Councillors. Particular reference will be made how to avoid the pitfalls of the new Code of Conduct.

# **SUMMARY OF THE COURSE CONTENT:**

Description of the current code of conduct including:

- Responsibilities of Councillors & Attendance requirements
- Standards Committees
- Registration of Interests
- Acceptance of Office
- Gifts and Hospitality
- Complaints Process

Advice on the declaration of interest at relevant meetings including:

- Disclosable Pecuniary Interests
- Non-Pecuniary interest & bias
- Membership of other bodies

General obligations under the Code of Conduct and Protocol of Members/Staff relations.

#### **COURSE DESIGNATIONS:**

Desirable for all Members

# **HOUSEKEEPING DETAILS:**

Subject: LICENSING TRAINING

**Date/time(s):** This training is over two sessions:-

Tuesday 10<sup>th</sup> July 2018 at 7:00pm-9:00pm & Wednesday 18<sup>th</sup> July 2018 at 7:00pm-9:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Mr Paul Adams – Licensing Officer, Joe Cannon and

Asitha Ranatunga

#### WHY YOU SHOULD ATTEND THIS COURSE:

To ensure members of the Planning & Licensing Committee are kept up to date with licensing law and procedures of the committee/sub-committee.

#### SUMMARY OF THE COURSE CONTENT:

**Councillor as interested parties:** making representations, applying for reviews, appearing at hearings, Councillor Call for Action.

**Councillors as decision-makers:** running effective committee hearings, making appeal-proof decisions.

**Councillors as policy-makers:** developing policies which further your Town Centre vision impose appropriate standards, and incorporate effective restraints such as cumulative impact, hours and zoning.

#### **SESSION 1:**

# 7:00pm Introduction

- Role of the Planning and Licensing Committee
- Areas of Responsibility
- Licensing Sub-Committee
- Conduct of proceeding before the Licensing sub-committee
- Decision making

# **Licensing Act 2003**

- Brief overview of the act and current position
- Licensing objectives
- Licensing Activities
- Representations and Hearing
- Are you fully compliant?
- Offences penalties and enforcement power
- Closure powers
- Alterations to licenses

- Review and summary reviews
- Late night levy and early morning alcohol restriction orders
- Appeals

**Questions and Answers Session** 

# **SESSION 2:**

# 7:00pm Taxi Licensing

- A brief overview of the current structure of taxi licensing
- The purpose of taxi licensing
- · Licensing criteria
- Adoption of the 1976 Act
- Suspension and revocation of driver's licenses
- Renewal of licenses
- Hackney Carriage and Private Hire Drivers
- Hackney Carriage Vehicles
- Private hire Vehicles
- Private Hire Operators
- Child Sexual Exploitation

**Questions and Answers Session** 

#### **COURSE DESIGNATIONS:**

Mandatory for all Planning & Licensing Committee Members Desirable for all

#### **HOUSEKEEPING DETAILS:**

Tea/Coffee available at both sessions

Subject: IT SKILLS

**Date/time(s):** DATE TO BE CONFIRMED at 6:00pm-8:00pm

**Venue:** Meeting Room 3, Seven Arches Road, Brentwood, Essex

**Course tutor(s):** Mr Tim Huggins – ICT Manager

# WHY YOU SHOULD ATTEND THIS COURSE:

With the emphasis on using the computer in an informal and relaxed atmosphere, delegates are coaxed into discovering and exploring the functions of the IT world. This will help then gain the necessary experience and confidence when using existing and new application as part of their role as a Brentwood Borough Councillor.

# SUMMARY OF THE COURSE CONTENT:

- The Equipment
- The 'Window' environment
- Using the tools
- Internet theory
- The difference between an internet and an intranet
- The search engine
- The browser Internet Explorer basics
- Toolbars
- Favourites
- Where to start
- Hints and Tips

**Questions and Answers Session** 

#### **COURSE DESIGNATIONS:**

Desirable for all Members

# **HOUSEKEEPING DETAILS:**

Subject: NEW MEMBER'S PORTAL

**Date/time(s):** Tuesday 17<sup>th</sup> July at 3:30pm-4:30pm

Monday 23rd July at 6:00pm-7:00pm

Tuesday 24th July at 6:30pm-7:30pm

Venue: Meeting Room 3, Seven Arches Road, Brentwood, Essex

Course tutor(s): Lorraine Jones & Adrian Poole

# WHY YOU SHOULD ATTEND THIS COURSE:

Demonstration of new Members Portal

# **SUMMARY OF THE COURSE CONTENT:**

- 1. Learn how to log in to the new Members Portal and create an account
- 2. Learn the features of the portal
- 3. Learn how to track an enquiry

# **COURSE DESIGNATIONS:**

Desirable for all Members

# **HOUSEKEEPING DETAILS:**

# **BOOKING FORM**

# Member's Training Courses

Name:	
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I wish to attend the following course/s.

Course Title	Date/Time/Venue	Please tick
NEWLY AND RE-ELECTED COUNCILLORS – WELCOME AND INDUCTION	Tuesday 8 <sup>th</sup> May 2018 at 6:00pm- 8:00pm	
HOW THE COUNCIL WORKS	Wednesday 9th May 2018 at 6:00pm-8:00pm	
DATA PROTECTION (GDPR)/ FREEDOM OF INFORMATION	Monday 21 <sup>st</sup> May 2018 at 10:00am- 12noon	
	Wednesday 23 <sup>rd</sup> May 2018 at 6:00pm-8:00pm	
PLANNING TRAINING	Tuesday 5 <sup>th</sup> June 2018 at 6:00pm- 8:00pm	
CHAIRMANSHIP SKILLS	Thursday 21st June 2018 at 6:00pm-8:00pm	
SAFEGUARDING	Monday 25 <sup>th</sup> June 2018 at 6:30pm- 8:30pm	
	Monday 2 <sup>nd</sup> July 2018 at 6:30pm- 8:30pm	
	Wednesday 4 <sup>th</sup> July 2018 at 2:00pm- 4:00pm	
COMMUNICATIONS	Thursday 5 <sup>th</sup> July 2018 at 6:00pm- 8:00pm	
PLANNING PROTOCOL	Monday 16 <sup>th</sup> July 2018 at 6:00pm- 7:00pm	
LICENSING TRAINING	Tuesday 10 <sup>th</sup> July 2018 at 7:00pm- 9:00pm & Wednesday 18 <sup>th</sup> July 2018 7:00pm-9:00pm	

	Please note, this training will be over 2 sessions.		
IT SKILLS	*DATE TO BE CONFIRMED at 6:00pm-8:00pm		
CODE OF CONDUCT	*DATE TO BE CONFIRMED at 6:00pm-8:00pm		

MEMBERS WILL BE NOTIFIED IMMEIDATELY ONCE TO DATE HAS BEEN CONFIRMED	
Please indicate any assistance, access or dietary requirements:	

# **FEEDBACK FORM**

Name:					
Date:					
Title of Training	Title of Training Course:				
Course Provide	er:				
Please tick the a	ppropriate b	oox for e	ach line an	d add a	ny further comments as necessary.
	Excellent	Good	Average	Poor	Comments
Format of the session					
Was the duration of the training adequate?					
Content covered					
Ease of understanding					
Trainers style					
Supporting materials					
Did the course many further comments	•	quireme	nts?	Ye	es / No
Do you feel that you would like training on a subject not included in the Member's Training					
Programme? Please state the training required.					

# **PLEASE RETURN TO:**

Claire Mayhew, Corporate & Democratic Services Manager Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY

Email: <a href="mailto:claire.mayhew@brentwood.gov.uk">claire.mayhew@brentwood.gov.uk</a> Tel: 01277 312741

#### **Members Interests**

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

# What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

# Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

# What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

# Other Pecuniary Interests

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

# Non-Pecuniary Interests

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a 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.

# **Regulatory and Governance Committee**

- 1) To maintain an overview of the Council's Constitution including contract procedure rules, financial regulations and codes of conduct and behaviour.
- 2) To review any issue referred to it by a Statutory Officer of the Council or any Council body.
- 3) To monitor the effective development and operation of risk management and corporate governance in the Council.
- 4) To monitor Council policies and strategies on:

Whistleblowing

Money Laundering

Anti-Fraud and Corruption

Insurance and Risk Management

**Emergency Planning** 

**Business Continuity** 

**Corporate Complaints** 

- 5) To consider the Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice.
- 6) To consider the Council's compliance with its own and other published standards and controls.
- 7) To monitor and maintain an overview of the Councils requirements and duties under the General Data protection Regulations.
- 8) To monitor the Council's processes in relation to
- Freedom of Information Requests
- Members Enquiries
- 9) Data quality

