



Havering

LONDON BOROUGH

GOVERNANCE COMMITTEE AGENDA

7.30pm	Wednesday 7 October 2009	Havering Town Hall Main Road, Romford
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Members 10: Quorum 4

COUNCILLORS:

**Conservative Group
(6)**

Frederick Thompson
(Chairman)
Gary Adams
(Vice-Chairman)
Robert Benham
Steven Kelly
Eric Munday
Michael White

**Residents' Group
(2)**

Clarence Barrett
Gillian Ford

**Independent Local
Residents' Group
(1)**

Jeffrey Tucker

**Labour Group
(1)**

Keith Darvill

For information about the meeting please contact:

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NOTES ABOUT THE MEETING

1. HEALTH AND SAFETY

The Council is committed to protecting the health and safety of everyone who attends meetings of its Committees.

At the beginning of the meeting, there will be an announcement about what you should do if there is an emergency during its course. **For your own safety and that of others at the meeting, please comply with any instructions given to you about evacuation of the building, or any other safety related matters.**

2. MOBILE COMMUNICATIONS DEVICES

Although mobile phones, pagers and other such devices are an essential part of many people's lives, their use during a meeting can be disruptive and a nuisance. Everyone attending is asked therefore to ensure that any device is switched to silent operation or switched off completely.

3. CONDUCT AT THE MEETING

Although members of the public are welcome to attend meetings of the Committee, they have no right to speak at them. Seating for the public is, however, limited and the Council cannot guarantee that everyone who wants to be present in the meeting room can be accommodated. When it is known in advance that there is likely to be particular public interest in an item the Council will endeavour to provide an overspill room in which, by use of television links, members of the public will be able to see and hear most of the proceedings.

The Chairman of the meeting has discretion, however, to invite members of the public to ask questions or to respond to points raised by Members. Those who wish to do that may find it helpful to advise the Committee Officer before the meeting so that the Chairman is aware that someone wishes to ask a question.

PLEASE REMEMBER THAT THE CHAIRMAN MAY REQUIRE ANYONE WHO ACTS IN A DISRUPTIVE MANNER TO LEAVE THE MEETING AND THAT THE MEETING MAY BE ADJOURNED IF NECESSARY WHILE THAT IS ARRANGED.

If you need to leave the meeting before its end, please remember that others present have the right to listen to the proceedings without disruption. Please leave quietly and do not engage others in conversation until you have left the meeting room.

AGENDA ITEMS

1 CHAIRMAN'S ANNOUNCEMENTS

The Chairman will announce details of the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

**2 APOLOGIES FOR ABSENCE AND ANNOUNCEMENT OF SUBSTITUTE MEMBERS
(if any) - receive.**

3 DECLARATION OF INTERESTS

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

4 MINUTES

To approve as a correct record the minutes of the meetings of the Committee held on 8 July 2009 and 9 September 2009 (to follow), and to authorise the Chairman to sign them.

**5 REVISIONS TO THE PROTOCOL ON PROBITY IN PLANNING AND MEMBERSHIP
OF REGULATORY SERVICES COMMITTEE – Report Attached**

6 WEBCASTING OF COUNCIL AND OTHER MEETINGS – Report to Follow

**Cheryl Coppel
Chief Executive**

Governance Committee, 7 October 2009

**MINUTES OF A MEETING OF THE
GOVERNANCE COMMITTEE
Havering Town Hall
8 July 2009 (7.30pm – 8.35pm)**

Present:

COUNCILLORS:

Conservative Group Frederick Thompson (in the Chair), Gary Adams, Robert Benham, Steven Kelly, Eric Munday and Michael White

Residents' Group Clarence Barrett and Gillian Ford

Rainham & Wennington Independent Residents' Group Jeffrey Tucker

Labour Group Keith Darvill

Except where shown otherwise, all decisions were taken with no vote against.

The Chairman reminded Members of the action to be taken in an emergency.

5 MINUTES

The Minutes of the meeting of the Committee held on 28 May 2009 were agreed as a correct record and were signed by the Chairman.

6 NEW EXECUTIVE ARRANGEMENTS

The Committee received an oral update on a consultation exercise about the options for the new Executive arrangements.

The Committee was informed that there had not been a large response to the borough wide consultation that had been undertaken. Of 75 responses received back, 19 preferred the Leader and Cabinet system and 56 stated the Mayor and Cabinet system as their option. These responses were not, however, considered to be statistically significant.

The Committee agreed that, a special meeting of the Committee be held on 9 September in order to consider a report on the new requirements so that Council would consider the issues at its October meeting.

7 WEBCASTING OF COUNCIL AND OTHER MEETINGS

The Committee received a report that proposed that the Council employ

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webcasting (i.e. the broadcasting of meetings over the internet) as a means of making its proceedings available to a wider public and invited the Committee to recommend to the Council that the facility be made available and that the Council Procedure Rules be amended to make provision for it.

A number of local authorities had already arranged for key meetings and other events to be available to the general public via the internet through webcasting.

During discussion, it was suggested that the proposal be deferred to enable further consideration to be given to it and to allow Members to have an opportunity to examine in more detail the implications of webcasting proceedings.

It was **RESOLVED** by 9 votes to 1 that the report be **DEFERRED** until the October meeting.

Note: Councillor Tucker voted against the resolution.

8 ADULT SOCIAL CARE COMPLAINTS – statutory delegation of authority

The Committee was informed that the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (the Regulations) had recently come into force, requiring complete revision of the Council's procedures for dealing with complaints about social care issues for adult. The Regulations applied to both local authorities and NHS bodies, and enable complaints that relate to services provided to an individual by both sets of authorities to be investigated jointly.

The Committee was informed that in the new system, the Council was required to designate certain officers to undertake functions related to the management and conduct of complaints' investigations.

The report identified the designations required and sought authority for the required changes in the Council's Constitution.

RESOLVED:

That the Committee **RECOMMEND** to the Council that, in accordance with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009:

1 The Chief Executive be designated as the person responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint

2 The Group Director, Social Care and Learning, be authorised to act on behalf of the Chief Executive as the responsible person

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3 The Adult Customer Care & Complaints Manager, Adult Social Services, be designated as statutory complaints manager, responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under these Regulations

4 That, where the circumstances require the Council to investigate a complaint jointly with another local authority or one or more NHS bodies, and in the interests of justice, it is preferable for another authority or body to take the lead in that investigation, the Chief Executive (or the Group Director on her behalf) be authorised to designate an officer nominated by that lead authority or body to act a complaints manager in the specific case.

9 AMENDMENTS TO THE CONSTITUTION

The Committee was reminded that the Monitoring Officer was authorised to amend the Constitution to correct errors, or to comply with any legal requirements or to reflect organisational changes to the Council's structure.

Amendments to the Constitution made by the Monitoring Officer in Amendment No. 35 of 1 July 2009 were now noted.

Chairman
7 October 2009



MEETING	DATE	ITEM
GOVERNANCE	7 October 2009	5

REPORT OF THE CHIEF EXECUTIVE

SUBJECT: REVISIONS TO THE PROTOCOL ON PROBITY IN PLANNING AND MEMBERSHIP OF REGULATORY SERVICES COMMITTEE

SUMMARY

The Local Government Association (LGA) has made revisions to their Guidance Note on good planning practice which have been incorporated into the Council's Protocol on Probity in Planning.

The Administration have suggested an amendment to the membership of Regulatory Services Committee the details of which are set out below.

RECOMMENDATION

1. To agree the revised Protocol on Probity in Planning and recommend the same to Council for adoption.
2. To consider and decide upon the Administration's request to have two Members of the Executive permitted on Regulatory Services to enable substitution, to take place, if necessary.

REPORT DETAIL

Protocol on Probity in Planning

1. The LGA has made revisions to their Guidance Note on good planning practice for Councillors and Officers. The Council's Protocol on Probity in Planning has been amended in the light of the new Guidance and in

addition the Committee's attention is drawn to paragraphs 10(c), (d) and (e) which have been added as new proposals. A track changed version of the Protocol is attached as an Appendix.

2. This Protocol has been considered by the Standards Committee on 10th September as advice to the Council on the revision of the Planning Protocol falls to that Committee. Standards Committee were of the view:
 1. The Chairman should not give any direction as to the decision of any planning application.
 2. Paragraph 10(e) should be amended to ensure it is clear that Members can seek clarification from staff.
 3. Members should ensure they are careful in the way they phrase questions at planning committee to ensure balance, lack of bias and that they are seen to have a fair approach.
 4. There was a great deal of discussion around the length of speeches and particularly those of ward members as set out in paragraphs 10(d) and 11(d) and the following comments were made:
 - (a) Speech time should be discussed with the Chairman and agreed at Committee
 - (b) Major/controversial applications might need longer
 - (c) Two minutes is too short for applicants/objectors despite reduction being to constrain long meetings. 10(d) should provide for chairman to exercise his discretion. The "standard" time permitted for non-Members of the Committee and for members of the public to speak should be set at four minutes, but that there should continue to be discretion to alter that time, either generally for a particular application.
 - (d) Ward Members wishing to speak on a particular planning matter for longer than the time permitted to members of the public should apply to do so in advance of the meeting.
 - (e) Decisions on whether to adjust the time for speaking should be taken by the Committee as whole, and not decided by the Chairman alone
3. The LGA has recommended in its guidance that any call-in procedure should include provisions requiring the reasons for the call-in to be expressed in writing so that there is a record of decision, and should refer solely to matters of material planning concern. The Council's Protocol has been adjusted to reflect this.
4. In respect of the amendments to paragraphs 10(c), (d) and (e), referred to above these provide for a Councillor calling-in a planning matter to

attend the Committee or send a substitute; speeches by a Ward Councillor being limited to four minutes and speeches not involving a cross examination of staff. On this matter the LGA Guidance states that clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, Ward Councillors and third party objectors. In the interest of equity, the time allowed for presentations for and against the development should be identical, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the Council in writing.

Membership of Regulatory Services Committee

5. The Constitution in Part 2, Article 8 and Part 3. Section 1 restricts the membership of various committees of the Council to one Executive Member (Adjudication and Review; Regulatory Services; Standards Committee); at least one Executive Member (Appointments Committee; Governance Committee) or makes no restriction (Audit; Pensions; Licensing).
6. By their very nature some functions cannot be exercised by the Executive and these fall into various categories but cover in general terms specific functions related to planning, licensing, bylaws; footpath and highway matters. In very simple terms the Local Government Act 2000 split functions between the Executive and Council and set out lists of functions which cannot be Executive functions.
7. The Guidance issued in 2000 and updated in 2007 – Local Government Act 2000; Guidance to English Local Authorities sets out in Chapter 5 in respect of Development Control that development control decisions will not be the responsibility of the Executive although residual planning functions such as supplementary planning guidance, designation of conservation areas; removal of permitted development rights etc., will be the responsibility of the Executive.
8. The Guidance goes on to recommend that full exchange of information between the Executive and any committee which takes development control decisions is essential. In addition, local authorities should consider including a member of the executive, if possible with responsibility for the Development Plan, on one or more committees which take development control decisions although he or she should not normally be the Chair.
9. Only the membership of the Standards Committee is restricted by legislation to one Executive Member who cannot be the Leader of the Council.
10. Nonetheless a restriction on the number of Executive Members who sit on Regulatory Services would still appear to be appropriate given planning is not an Executive function.

11. The Administration has suggested that it would prefer the Membership of the Executive on Regulatory Services Committee to be increased to two merely to facilitate difficulties experienced from time to time in finding a suitable substitute for the Committee. To enable a substitute of an Executive Member the increase would need to be to two but this could be suitably restricted, if Members preferred, to substitution occasions. Members are asked to consider this proposal.

Financial Implications and risks:

No relevant matters arising

Legal Implications and risks:

Recent LGA Guidance has led to the review of the Council's Protocol on Probity in Planning which has also been considered by the Council's Standards Committee in accordance with its' terms of reference.

In relation to Members of the Executive on Regulatory Services Committee there is no legislative restriction; the statutory guidance makes reference to a Member of the Executive being included and it is considered that if the restriction is amended to two Members then this would fall within the spirit of the legislation and the Executive and Council split.

There may be further minor amendments to the Protocol on Probity in Planning arising from the review of the Constitution to ensure that this Protocol and the Committee Procedure Rules relate.

Human Resources Implications and risks:

No relevant matters arising

Equalities and Social Inclusion Implications and risks:

No relevant matters arising

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CHERYL COPPELL
Chief Executive

Background Papers List

None

PROTOCOL ON PROBITY IN PLANNING MATTERS

Summary

The Council's function of development raises various issues of conduct and procedure for members including sometimes difficult matters of reconciling their role as ward member with their role as decision maker. The planning process allows decisions to be challenged either through the appeal process or the courts, or to be tested through the Ombudsman for maladministration or the District Auditor in some cases, with potentially severe consequences if decisions cannot be justified.

Consequently, it is of the utmost importance that the Council's processes and decision making should be open, accountable and objective.

This protocol applies to members and staff involved in the planning process and is concerned with maintaining the integrity of the planning system, including the conduct of members and staff in its processes and procedures. This Protocol should be read in conjunction with the Members Code of Conduct, the Staff Code of Conduct, and the Protocol on Member/Officer Relations.

It has been drafted in accordance with the guidance issued by the Local Government Association (LGA) in May 2009.

Provisions

The following general areas of advice take into account LGA guidance on planning issues for local authorities. They require members and staff involved in the planning process to conduct themselves according to certain standards.

1 Declaration and registration of interests

- (a) Members are required to declare and register their interests, and should review their interests regularly. A register of members' interests will be maintained by the Monitoring Officer.
- (b) Where a member has a personal interest in a matter, he must declare it, but he is not necessarily debarred from participation in the discussion of the matter.
- (c) If a member has personal interest which is also a prejudicial interest, then he should leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter either because they have a statutory right to do so or because the Constitution permits them to do so. In this case a member can attend the meeting to exercise this right but must immediately leave the room afterwards and cannot remain in the public gallery. A member

with a prejudicial interest cannot participate in the discussion of the item by the committee or vote, and must not seek to improperly influence a decision on the matter.

- (d) A member must regard him or herself as having a personal interest in a planning matter:
- (i) if the matter relates to an interest in respect of which the member has given notice in the statutory register of members' interests; or
 - (ii) if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the ward, the well-being or financial position of themselves, members of their family, or people with whom they have a close association or
 - an employment or business carried on by such persons
 - any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors
 - any corporate body in which such persons have a personal interest in a class of securities exceeding the nominal value £25,000 or one hundredth of the total issued share capital (whichever is the lower)
 - any body which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.
 - The interests of any person from whom a member has received a gift or hospitality with an estimated value of at least £25 within a period of 3 years before the date of the meeting.
- (e) A member with a personal interest in a planning matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest and (i) the matter does not fall within any exempt categories (ii) the matter affects a member's financial interests or relates to a licensing or regulatory matter. Further information on personal and prejudicial interests is contained in the Members' Code of Conduct and the Guide for Members 2007 issued by the Standards Board.
- (f) Members who are unsure whether an interest should be declared should seek advice of the Monitoring Officer. However, the ultimate decision is for the member.

2 Role and Conduct of Members and Officers

(a) Role of Councillors

- (i) It is most advisable for Members not to become directly involved in pre- or post-submission discussions or negotiations with applicants or objectors.
- (ii) Members serving on planning committees or who become involved in making planning decisions (where the full Council deals with a planning application) must not in their official capacity, or in any other circumstances, use or attempt to use their position as a member improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.
- (iii) Members should take account of opposing interests involved in planning decisions, but should not favour any person, company or group or locality, nor put themselves in a position where they appear to do so.
- (iv) Members must treat others with respect and must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
- (v) Members should not bully staff nor seek to put undue influence on staff for a particular recommendation nor to instruct staff to make a particular recommendation. Instructions to staff may only be given through a decision of the Council, Executive, or committee decision.
- (vi) Members can seek information from staff on behalf of constituents in the normal way. Members will need to be aware that there is often a fine line between seeking information and appearing to support or oppose an application. Further advice is given in the section on lobbying.
- (v) Confidential information must not be disclosed save for and strictly in accordance with the limited circumstances set out in the Members' Code of Conduct and only after seeking legal advice.

(b) Role of staff

- (i) Unless given clear delegation by the Council to act on behalf of the authority, staff can only advise.

- (ii) It is part of the normal role of staff, and acknowledged as good practice, to give advice and guidance to potential applicants, landowners, or interested third parties in relation to an application being made.
- (iii) All advice is given “without prejudice” either to the applicant’s rights or the Council’s decision.
- (iv) Staff must always act impartially.
- (v) It is part of the role of staff to facilitate consultation with appropriate interest groups and third parties – for example, statutory consultees, nearby occupiers to a proposal etc. – and to guide them, as necessary, to enable their participation and understanding of schemes.
- (vi) Wherever possible, staff of the Council should decline offers of hospitality from people with an interest in a planning matter. If the receipt of hospitality is unavoidable, officers should ensure that it is of a minimal level and declare its receipt as soon as possible in the hospitality register. Offers of hospitality should be recorded whether accepted or not and the register will be reviewed regularly by the Monitoring Officer. Reference should be made to the Gifts and Hospitality Protocol which contains more detailed advice.
- (vii) Professionally qualified staff are bound by the relevant codes of conduct of their own institutes or societies and the Staff Code of Conduct. All officers involved in the planning process should comply with the relevant parts of the Royal Town Planning Institute’s Code of Professional Conduct
- (viii) The Council as a whole is entitled to unbiased and carefully considered professional opinion.

3 Development proposals submitted by the Council, members and all Planning staff, Chief Officers and Heads of Service

Proposals for a Council’s own development can easily give rise to suspicions of impropriety. So indeed can proposals to their own authority by Members and staff and their close friends and relatives. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.

- (a) Proposals for a Council’s own development should be treated in the same way as those by private developers.

- (b) Members who act as agents for people pursuing planning matters with the authority should play no part in the decision-making process for those proposals.
- (c) Members who submit their own proposals to the authority on which they serve, should play no part in its processing and a member should not seek to improperly influence a decision about the matter. The consideration of a proposal from a member in such circumstances would be considered a prejudicial interest and the member would be required to withdraw from any consideration of the matter, save that a member attends on the same basis as a member of the public in accordance with the Constitution and in order to make representations but must not attend any other part of the meeting.
- (d) Staff responsible for processing planning applications shall not act as agents for people pursuing a planning matter within the borough.
- (e) Staff described above who submit their own planning proposals to the authority, shall take no part in its processing.
- (f) The Monitoring Officer shall be informed of development proposals submitted by the Council, members and staff described above when they occur.
- (g) Proposals by Members and staff described above should be reported to the Regulatory Services Committee as main items and not dealt with by staff under delegated powers; as part of the report the Monitoring Officer should confirm whether it has been processed normally.

4 Pre-application/post submission discussions

Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit. However it would be easy for such discussions to be seen as part of a lobbying process by the applicant. In order to avoid this perception pre-application and post-application discussions should take place within the guidelines outlined below.

- (a) It should be made clear at the outset that any discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- (b) Any advice given to an applicant should be consistent and based upon the development plan and material considerations. Advice should only be given after careful consideration and must be unbiased. Members should avoid giving separate advice on

the development plan or material considerations as they may not be aware of all the issues at an early stage. Members should not become drawn in to any negotiations.

- (c) All members and staff taking part in such discussions should make clear whether or not they are the decision-maker.
- (d) A written note should be made of all potentially contentious meetings. At least one member of staff should attend such meetings and a follow-up letter should be written. A note should be made of all similarly contentious telephone discussions.
- (e) Care should be taken to ensure that any advice given is not partial.

5 Lobbying

- (a) In making a decision on a planning application the need for impartial assessment is sometimes at variance with the role which a member may feel they should fulfil as a ward member representing their own constituents' views.
- (b) Lobbying is a normal and proper part of the political process. Those who may be affected by a planning decision or an applicant who is aware of a likely adverse recommendation by a member of staff will often seek to influence it by approaching their elected ward member or a member of the committee which will determine the application.
- (c) However such lobbying can, if not properly handled, lead to the impartiality of a member serving on the committee which determines the application being called into question.
- (d) Ward members and members of the planning committee who are lobbied should avoid expressing an opinion that may be taken as indicating they have already made a decision on the issue before they have been exposed to all the evidence and arguments.
- (e) Members of the planning committee should not openly declare which way they intend to vote in advance of the planning meeting, and of hearing evidence and arguments on both sides.
- (f) A member can easily find his or her position prejudiced by inadvertently participating in advocacy, lobbying and the use of pressure on other members. Unless common sense is exercised by all parties concerned, such situations could lead to the impartiality of a Councillor being called into question and the need for an interest to be declared.

- (i) If a member expresses an opinion in public on a planning application before it comes to committee it will be virtually impossible for that member to argue convincingly when the committee comes to take its decision that he or she has carefully weighed the evidence and arguments presented. Many of these may only become apparent when the item is discussed at committee.
- (ii) If it is difficult or inappropriate not to express an opinion members are advised to make it clear that they have yet to hear all the arguments and see the evidence before forming a final view. Ideally this caveat should be put in writing to the applicant/objector.
- (iii) Political group meetings prior to the planning committee meeting should not be used to decide how Councillors should vote. The use of political “whips” at group meetings over planning applications is contrary to the guidance and could amount to maladministration.
- (iv) If a meeting or phone call with objectors or applicants is likely to be contentious, members are advised to make a note at the time of what is said and, preferably, to arrange for a member of staff to be present.
- (v) In committee, members should ensure that they are able to concentrate on the application and the discussion.
- (vi) If a member decides that they must lobby for or against a proposal, or publicly expresses support of a particular outcome, they should attend the committee as an individual and not take part in the decision making process for any matter being considered at that meeting.

6 Pre-disposition and Pre-determination

In addition to declaring personal or prejudicial interests under the Members’ Code of Conduct, members of a planning committee need to avoid any appearance of bias or having pre-determined their views before taking a decision on an application. The Standards Board has provided guidance on pre-determination, pre-disposition and bias.

The following should be noted:

- (a) Pre-determination occurs where a Member has clearly expressed an intention to vote in a particular way before a meeting and/or has made his views known and is firm in those views. Such a Member should not take part in the Committee discussion or vote on the matter.

- (b) Pre-disposition is where a Member expresses an initial view but where the Member is clear and has made it clear to applicants &/or objectors that he is willing to listen to all the material considerations before deciding how to exercise his vote.
- (c) In cases of pre-determination a Member should also consider whether this is such that a personal interest should also be declared.
- (d) Bias or the appearance of bias must be avoided and the passing of notes between Members of the planning committee and objectors or applicants or discussions with applicants or objectors before or during the meeting should be avoided.

7 Written reports to committee

To avoid public concern and loss of confidence in the probity, quality and consistency of decision making and the possibility of maladministration or judicial review, committee reports will:

- (a) normally be available to the public five clear days prior to the meeting
- (b) be accurate, objective and fair and cover amongst other things, the proposal, policy and background issues, the substance of any objections, and the views of those consulted
- (c) include an exposition of the development plan; site or related history; and any other material considerations
- (d) contain a recommendation clearly justified by technical appraisals.
- (e) if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.
- (f) oral reporting to committee will as far as possible be confined to updating the meeting on developments since the publication of the report – for example, late representations or suggested additional conditions.

8 Decisions contrary to staff recommendation and/or the development plan

- (a) Decisions on planning applications are to be made in accordance with the development plan unless material considerations dictate otherwise. This is a requirement of the Planning and Compensation Act 2004.
- (b) Decisions contrary to the development plan should:

- (i) be identified as soon as possible.
 - (ii) be advertised in accordance with the Planning and Compensation Act 2004 .
 - (iii) if it is intended to approve such an application, the material considerations leading to the conclusions must be clearly identified, and how the considerations justify overriding the development plan clearly identified.
- (c) If a member of the Planning Committee is minded to move a motion contrary to staff recommendation the following steps should be actively considered:
- (i) encouraging the formation of tentative reasons by discussing a pre-disposition with planning staff prior to the meeting
 - (ii) writing down the reasons as part of the mover's motion
 - (iii) adjourning for a few minutes for those reasons to be discussed
 - (iv) if there is a strong objection by staff on the validity of those reasons, considering deferring to another meeting to have the putative reasons tested and discussed
- (d) Where the planning committee makes a decision contrary to a staff member's recommendation:
- (i) a detailed minute of the committees reasons should be made and a copy placed on the application file.
 - (ii) the staff member should be given the opportunity to explain the implications of the contrary decision.
 - (iii) reasons for departing from the recommendation should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds (a notable exception is where a planning policy allows for this).
 - (iv) Members should be prepared to explain in full their reasons for not agreeing with staff recommendations and in doing so should take all material considerations into account and ignore all non-material matters.
- (e) A senior legal officer will always attend committee meetings to ensure appropriate procedures are followed.

9 Committee site visits

- (a) Site visits are used for fact finding and members are always accompanied by staff.
- (b) Committee site visits can only be authorised by the Regulatory Services committee, should only be made where the expected benefit is substantial, and will be arranged by staff.
- (c) A site visit will only be necessary if the impact of the proposed development is difficult to visualise from the plans and supporting material, or there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- (d) Site visits are not decision-making meetings.
- (e) All committee members will be invited and will be accompanied by staff. Relevant ward members will be invited.
- (f) Where applicant and objector are present it is important that the interested parties are not allowed to make further submissions so as to avoid inappropriate lobbying. The format and conduct of the meeting will be clearly established at the outset by staff.
- (g) To avoid prejudice to third parties, the landowner/operator/ applicant will be advised that only factual answers/information should be given and that lobbying will be unacceptable.
- (h) Where the committee consider it appropriate, objectors premises may also be visited and similar rules on lobbying will apply. Members should be aware that a site visit would be official business and therefore the Members' Code of Conduct would apply.
- (i) Site visits consisting simply of an inspection by a 'viewing' panel, with staff assistance are in most cases, the most fair and equitable approach. An inspection could be unaccompanied (i.e. without applicant and objectors) or accompanied but run on the strict lines of a planning inspector's site inspection with no arguments to be expressed on site.
- (j) site visits and the reasons they were made will be recorded.

10 Call in of planning decisions and Ward Councillors

The Head of Development and Building Control has certain constitutional delegations to approve planning permission, subject to Member call in. If a planning application is called in it will be referred to the Planning Committee. Such call in operates:

- (a) In accordance with paragraph 4 of Section 3.7.8 of the Constitution.
- (b) Any request for call in by a Member must be received by the Head of Development and Building Control in writing and setting out detailed reasons for the call in which must be related solely to matters of material planning concern. Any Member of the planning committee calling in a matter must take care to express themselves in a manner which would not amount to bias or pre-determination should they intend to take part in the meeting.
- (c) A Councillor calling in a planning matter must attend the Planning Committee or appoint a substitute to explain the reasons for the call in.
- (d) A Councillor calling in an application or speaking as a Ward Councillor on an item shall be limited to four minutes in addressing the Planning Committee.
- (e) Speeches should not involve a cross examination of staff.

11 Public speaking at Planning Committee

Where one or more objections have been received to an application, the objector(s) shall have an opportunity to address the committee before the application is determined provided:

- (a) Any objector wishing to speak must notify the Head of Development and Building Control not less than three working days before the meeting at which the objection is to be heard
- (b) If there is more than one objector, they shall be invited to agree among themselves before the meeting, who shall speak for them all. In the event that no agreement can be reached, the Chairman shall draw lots.
- (c) If an objector speaks against an application, the applicant or their designated representative shall be entitled to respond.
- (d) Addresses by both objector and applicant shall not exceed two minutes each unless the planning committee by resolution, either generally or in relation to a specific application may agree.

12 Reviews

- (a) A review of planning decisions should be undertaken annually. Such a review should include samples from a broad range of planning decisions and briefing notes should be prepared on each case. The planning committee should formally consider the

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review and decide whether it gives rise to the need to reconsider any policies or practices.

GOVERNANCE COMMITTEE

SUPPLEMENTARY AGENDA

7 October 2009

Additional report

- 4 **MINUTES** (9 September 2009) - Attached
- 6 **WEBCASTING OF COUNCIL AND OTHER MEETINGS** – Report Attached

Cheryl Coppel
Chief Executive

Governance Committee, 7 October 2009

**MINUTES OF A MEETING OF THE
GOVERNANCE COMMITTEE
Havering Town Hall
9 September 2009 (7.30pm – 8.45pm)**

Present:

COUNCILLORS:

Conservative Group Frederick Thompson (in the Chair), Robert Benham, Steven Kelly, +Pam Light and Eric Munday

Residents' Group Clarence Barrett and Gillian Ford

Rainham & Wennington Independent Residents' Group Jeffrey Tucker

Labour Group

Apologies were received for the absence of Councillor Gary Adams.

+Substitute Member: Councillors Pam Light (for Gary Adams)

All decisions were taken with no vote against.

The Chairman reminded Members of the action to be taken in an emergency.

10 LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007: PROPOSALS FOR EXECUTIVE ARRANGEMENTS

The Committee received a report that proposed under Part 3 of the Local Government and Public Involvement in Health Act 2007 local authorities were required to make changes to the leadership of Councils. The Act introduced two models, both of which placed all executive powers in the hands of one individual, either an elected Mayor or a "strong" Leader who, in the normal course of events, would serve an uninterrupted term of four years. Under the new arrangements, the Leader or Mayor once elected would appoint and dismiss his or her Cabinet of between two and ten Councillors and would decide what (if any) executive powers they would exercise.

The report considered the public consultation which had taken place and sought agreement to the proposals to be put to Council for formal resolution.

RESOLVED to RECOMMEND to the Council:

1. That the outcome of the public consultation on the proposals for Executive Arrangements be noted.

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2. That, having considered the response to the consultation, it be agreed to proceed with new Executive Arrangements based on the status quo of a Leader and Cabinet model.
3. That Council be **RECOMMENDED** to adopt the Proposals for Executive Arrangements in the form set out in Appendix 2 to this report and based on the Leader and Cabinet Model, to be implemented on 9 May 2010.
4. That, in order to comply with the legislation the proposal be published describing the main features and the extent to which they secure continuous improvement and the proposals be advertised in one or more newspapers and made available at the Council's offices.
5. That a draft Constitution be prepared for decision by the Council in due course, to meet the requirements of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and the new Executive Arrangements chosen.
6. That the Proposals and the Constitution contain the power to Council that the term of office granted to the Leader can be taken away by majority vote in full Council.

11 **DELEGATION OF POWERS TO THE LONDON ILLEGAL MONEY LENDING TEAM**

The Committee received a report that proposed that Council be recommended to delegate to the London Borough of Tower Hamlets powers of enforcement in relation to money laundering

The report described the work of the London Illegal Money Team that was operated by the Council of the London Borough of Tower Hamlets and also requested that Havering delegate powers to enforce and prosecute under the Consumer Credit Act 1974 to that Council.

RESOLVED:

1. To **RECOMMEND** that the Council, in pursuance of Section 101(1)(b) of the Local Government Act 1972, Section 19 of the Local Government Act 2000 and Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 delegate to the London Borough of Tower Hamlets:
 - (A) Enforcement of Parts III and IV of the Consumer Credit Act 1974, and
 - (B) the enforcement functions and powers under Parts XI and XII of the Consumer Credit Act 1974, and

- (C) the power of prosecution under section 222 of the Local Government Act 1972

all in connection with money-lending or the activities of money lenders and/or their agents and associates, and the laundering of the proceeds of illegal money-lending.

2. That Part 3, Section 2.3 of the Constitution (functions exercised by another authority on behalf of this authority) be amended accordingly
3. That the Assistant Chief Executive be authorised to agree the terms of the delegation agreement with the London Borough of Tower Hamlets.
4. To agree that the Council will enter into a joint Cross Border Working Protocol with the London Borough of Tower Hamlets in respect of illegal money lending.
5. To note that the Chief Executive will exercise her powers within Part 3, Section 3.1.8 of the Council's Constitution to temporarily delegate the above powers to the London Borough of Tower Hamlets to allow an investigation to proceed prior to the full Council meeting.

12 **POLICY FOR THE SUPPLY AND USE OF PERSONAL COMPUTERS, LAPTOPS, RSA TOKEN AND COMMUNICATION EQUIPMENT BY MEMBERS – Consideration of a modification: Faxes**

The Committee was reminded of the current policy relating to provision of fax machines and telephone lines for Members to enable it consider whether the previously agreed policy should be modified in the light of recent request from Members.

The report set out the current position that, while the Council would no longer provide fax machines for Members, some had been provided with them before the policy came into effect. Consumables (print cartridges and paper) continued to be supplied but such machines were neither repaired or replaced.

One Member who had a Council pc and data line had now returned his equipment. The data line had been enabled to receive faxes but the Member could not use the Council-funded data line to send faxes.

A second Member who never had a data line installed and had requested the provision, by the Council, of a fax and a telephone line to send and receive faxes.

In accordance with policy neither of the Members had been given the provision they sought. There were seven Members who did not have a Council pc, laptop or RSA token: none of these Members use a pc so far as was known.

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Following discussion, Members felt that all Members should comply with the cvdf policy and be encouraged use email. The Committee noted that two Members were trialling a paperless initiative using laptop pcs.

RESOLVED by 7 votes to 1: That the current policy remain unchanged.

Note: Councillor Tucker voted against the resolution.

Chairman
7 October 2009



**GOVERNANCE
COMMITTEE**

REPORT

7 OCTOBER 2009

Subject Heading:

**WEBCASTING OF COUNCIL AND
OTHER MEETINGS**

Report Author and contact details:

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Manager

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Policy context:

To use webcasting as a tool in the
Council's programme for improving
community engagement

Financial summary:

The estimated cost of £... will be met from
existing budget provision

**The subject matter of this report deals with the following Council
Objectives**

Clean, safe and green borough	□
Excellence in education and learning	□
Opportunities for all through economic, social and cultural activity	X
Value and enhance the life of every individual	X
High customer satisfaction and a stable council tax	X

SUMMARY

A number of local authorities now arrange for key meetings and other events to be available to the general public via the internet through “webcasting”.

This report proposes that the Council employ webcasting as a means of making its proceedings available to a wider public and invites the Committee to recommend to the Council that the facility be made available and that the Council Procedure Rules be amended to make provision for it.

RECOMMENDATIONS

- A. That the Committee approve the use of webcasting as a tool in the Council’s programme of community engagement, and that the Head of Communications be empowered to make webcast-able recordings of addresses to the public by Members, staff and others as appropriate for display through the Council’s website.
- B. That the Committee **RECOMMEND** to the Council:
- 1 That, in principle, webcasts of certain Council and other meetings be made available through the Council’s website, both as “live” transmissions and for downloading after the event and that the protocol set out in Appendix 1 to this report be approved and adopted.
 - 2 That, as an initial trial, the webcasting of meetings of the Council and Cabinet commence as soon as practicable and that the Chairman of this Committee and relevant Committee Chairman be authorised to approve the extension of webcasting to other Committees and meetings as appropriate (and within any relevant contractual constraints).
 - 3 That Council Procedure Rule 23 be amended as follows:
 - (a) That the heading be reworded to read: **WEBCASTING, BROADCASTING AND RECORDING OF PROCEEDINGS**
 - (b) That a new paragraph 23.1 be inserted:

23.1 A webcast may be made of any meeting (or part thereof) of the Council (but not so as to permit the webcasting of any confidential or exempt information) but the Mayor is authorised to

determine that a particular meeting, or part of a meeting, shall not be webcast.

- (c) That the existing paragraphs 23.1 and 23.2 be renumbered as 23.2 and 23.3 respectively.

4 That the Committee Procedure Rules be amended as follows:

- (a) Insert a new Rule 10:

10. WEBCASTING OF PROCEEDINGS

1 A webcast may be made of any meeting (or part thereof) of any full Committee of the Council (but not so as to permit the webcasting of any confidential or exempt information).

2 Such a webcast may only be made where the Chairman of the Committee in question and the Chairman of the Governance Committee have jointly agreed that the Committee should be included on the list of those that may be webcast.

3 Notwithstanding (2) above, the Chairman of any Committee included on that list is authorised to determine that a particular meeting, or part of a meeting, shall not be webcast.

- (b) That the existing Committee Procedure Rules 10 and 11 be renumbered as 11 and 12 respectively.

REPORT DETAIL

1 The Committee considered this issue at its meeting in July but referred the report back for further investigation and re-submission to this meeting. This report is an up-dated version of that submitted in July.

2 Since then, the following has happened:

- A trial webcast – available only to Members and senior staff – was made of the Cabinet meeting on 15 July
- Arrangements were made for those Members who wished to, to visit Epping Forest District Council (“Epping”) to see meetings being webcast

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- Staff visited colleagues at Epping to learn more about webcasting from their perspective (see notes attached as Appendix 2)
 - Two briefing sessions were held for Members, attended by legal, communications and committee staff and a representative of the prospective contractor
- 3 The contacts with Epping arose because that Council was a pioneer in the use of webcasting and has amassed considerable experience of the technology, using it for a wide range of meetings (as well as other types of communication), as well neighbouring Havering. In summary, Epping's experience of webcasting has been wholly positive.
 - 4 The Council is committed to improving its engagement with local people. The most recent Place Survey results demonstrate that Havering residents do not in the main feel engaged with the democratic process and do not feel able to influence local decision making in the borough.
 - 5 The first step towards improving this perception is to help local people understand how local democracy works. The webcasting of certain meetings will provide a simple way for people to view the democratic process in action, at a time and in a place that suits them.
 - 6 The webcasting platform can also be used to increase access to other information through the Havering Council website. Webcasts can be used to show voxpops (i.e. interviews with members of the public in which they express opinions or answer questions), events and other informative clips of video.
 - 7 In the past few years, as Members will be aware, the use of the internet as a medium for broadcasting live entertainment and other events has grown at a remarkable rate. Concerts and films are now available widely for "as broadcast" viewing and for later downloading. Most domestic personal computers with a broadband connection to the internet are now able to receive such webcasts and that medium is increasingly being seen as the primary source of TV and other broadcasts for the future.
 - 8 Following the appropriate procurement procedures, discussions have taken place with the leading provider of webcasting facilities for local authorities, Public-i, and the facilities are available for an initial period of two years at a cost per annum of the order of £18,000, including the hire of essential equipment and provision for up to 120 hours per annum webcasting (and unlimited after-the-event downloading). Given the time limitation, care will be needed to ensure that optimum use is made of the facility and thus not every meeting will, or could, be webcast.
 - 9 Initially, it is proposed to webcast certain Council meetings – subject to finalisation of the contract, the first such webcast would be of the meeting on 21 October – and Cabinet meetings. Once experience is gained, other Committees could be webcast and it is also intended that other events, such as major planning inquiries would be, subject to those responsible for

such events – for example, a planning inspector – agreeing to that. The webcasting facility will also be used to broadcast other items of interest, such as corporate news and events. In all cases, the ability to webcast a particular meeting or event will be subject to there being adequate capacity available within the webspace contractually available to the Council.

- 10 The Committee is, therefore, invited to recommend to the Council that the use of webcasting be approved, to be introduced as outlined in paragraph 9. For Council meetings, adjustment of existing Council Procedure Rules is required to extend their scope from the existing limited provision for broadcasting to cover webcasting; a similar change to the Committee Procedure Rules is also proposed subject, in both cases, to the Mayor or Chairman having authority to direct that a particular meeting, or part of a meeting, should not be webcast. The Committee is also invited to approve the Protocol for webcasting set out in the Appendix 1 to this report.
- 11 Once a webcast has been aired live, it will be retained on the Council's website for up to six months (depending on the website storage capacity available at any one time) and thereafter held indefinitely in electronic format, in an archive to be maintained by Communications Services (for non-meeting material) and Democratic Services (for meeting-related material).

IMPLICATIONS AND RISKS

Legal implications and risks

The contract between the Council and Public-i will conform to legal requirements.

Members present at meetings of the Council and its Committees convened under the Local Government Act 1972 enjoy qualified privilege from action for defamation – comments made in the course of meetings are not liable to action for libel or slander provided that they are not made with malicious intent. Nonetheless, Members would have to be very careful about making possible defamatory comments in the course of debate that was being webcast live (webcasts recorded for downloading would be monitored and any defamatory matter expunged before being made available).

The Member presiding at a meeting would need to take careful control of proceedings in the course of which possible defamatory comments were made. The Monitoring Officer will prepare guidance for the Mayor and Committee Chairmen on the conduct of meetings that are being webcast.

There is also the possibility that if webcasting is popular, an increase in Standards complaints might arise as meetings will be opened up to more people. It should also be noted that in any Standards complaints resort might be had to the webcast for evidential purposes.

The Council will retain copyright in all webcast material, whether webcast live or held as a recording, either on the website or as an archived electronic file.

The Protocol set out in Appendix 1 has been drafted to ensure compliance with the Data Protection Act 1998 and the Human Rights Act 1998.

Financial implications and risks

The contract and other costs will be met from existing budget provision. This will include monitoring service usage to ensure the maximum contracted web casting limit is not exceeded.

Human Resources and equalities implications and risks

There are no apparent direct implications or risks.

Some additional training of relevant staff in Media & Communications and Democratic Services will be required but the cost to that will be met from existing budget provision.

BACKGROUND PAPERS

Other local authorities' webcasting arrangements

The Public-i website: http://www.public-i.info/example_webcasts.php

PROTOCOL FOR WEBCASTING OF COUNCIL AND OTHER MEETINGS

The Council has agreed that certain meetings should be the subject of live web transmission ('webcasting'), or recorded for subsequent transmission. Cameras located within the Council Chamber and Committee Room 3 will be used for this purpose and there is a mobile unit for use in other locations. Items in the confidential or exempt part of any Agenda will not be webcast.

This protocol is intended to assist the conduct of webcast meetings and to ensure that in doing so the Council is compliant with its obligations under the Data Protection Act 1998 and the Human Rights Act 1998. Accordingly the following will apply to all meetings to be webcast by the Council:-

Agenda Front Sheets and Signage at Meetings

On the front of each agenda and on signs to be displayed inside the meeting room there will be the following notice:-

"Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chair will confirm if all or part of the meeting is being filmed. The images and sound recording may be used for training purposes within the Council.

Generally the public seating areas are not filmed. However by entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes.

If you have any queries regarding this, please contact the Committee Administration Manager, or the Committee Officer for the meeting."

Meetings of the Regulatory Services Committee and Licensing Committee and Sub-Committees

In any correspondence notifying applicants, supporters or objectors of the meeting date on which an application will be heard, the following advice will be included:-

"Please note that Council meetings may be filmed for live or subsequent broadcast via the Authority's internet site. If you do not wish the hearing of your application to be filmed, please contact the Committee Administration Manager, or the Committee Officer for the meeting, to discuss arrangements."

Conduct of Meetings

At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being or may be webcast, and that the Chair may also terminate or suspend the webcasting of the meeting. This will be confirmed by the Chair making the following statement:-

"It is the Council's agreed practice to film certain meetings for live or subsequent broadcast via the Council's internet site. The images and sound recording may be used for training purposes within the Council.

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As Chairman of the meeting, I have the discretion to terminate or suspend filming, if in my opinion continuing to do so would prejudice the proceedings of the meeting or be likely to lead to a breach of any legislation Code of Conduct or Protocol of the Council."

Cessation of Webcasting for the confidential or exempt of the Agenda

The confidential or exempt part of any Agenda will not be webcast. The Committee Officer for the meeting will ensure that filming and/or recording of the meeting has ceased and will confirm this to the Chair of the meeting before any discussion of confidential or exempt items begins.

Brief notes of meeting with Epping Forest DC on Webcasting

- Epping had been webcasting for three years. No major hiccoughs had occurred, and the provider's equipment had proved reliable.
- When supplying files of webcasts, Epping made clear that they asserted copyright protection, which they would not hesitate to invoke if necessary. They had never experienced problems.
- In every case, when the content of a webcast had been challenged – e.g. a claim that a member had made a particular comment – it had been found that the challenger was wrong and the comments claimed had not been made. This had proved particularly helpful/useful in the context of planning committee issues and in Standards Committee complaints
- In order to ensure value for money, Epping webcast as many meetings as possible.
- Democratic Services staff at Epping had found operating the webcast equipment straightforward. An additional member of staff attended meetings as webcasting operator.
- Epping's experience had been that Members welcomed webcasting, as did many residents. Staff's impression was that webcasting had led to a more professional approach by members (and media training had been provided for them).
- Although ample warning was given that members of the public were liable to be included in a webcast, both at the meeting and on the agenda, only one individual had ever declined to be seen (though his voice was heard) – and then it appeared that he subsequently regretted not allowing his image to be webcast. With that single exception, no member of the public speaking at a planning committee meeting had expressed reluctance to appear.
- On average, between 1,500 and 3,000 "visit" were being registered on webcasts.
- The availability of webcasting was promoted on the homepage of the Council's website and elsewhere (using a specific logo developed for the purpose).
- A strong sense of ownership and direction from both members and officers was essential to getting the best out of webcasting.
- Although webcasting of meetings was an important use of the facility, it was not the only use. Epping had gained much from using webcasting for publicising and informing on other events (for example, the visit on the weekend of 12-13/9/09 of the Royal Norwegian Air Force to North Weald Airfield, from which RCAF units had operated during WWII); and had also used internal-only-webcasting, for example to record a series of interviews with prospective contractors for a major contract (not for general webcasting but simply as a matter of record).