

# Members' Licensing Code

## 1 PURPOSE OF THIS CODE

- 1.1 This Licensing Code has been prepared to guide Members and Officers in the discharge of the Council's statutory licensing functions. This Code will also inform potential applicants and the public generally of the high standards of ethical conduct expected of the Council in the exercise of its licensing powers.
- 1.2 Members should abide by both this Licensing Code and also the Code of Conduct for Members.
- 1.3 The provisions of this Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds and in a consistent and open manner. The Licensing Code is also designed to assist Members and Officers in dealing with approaches from applicants and residents.
- 1.4 If Members have any doubts about the application of this Licensing Code they should seek early advice preferably well before any meeting takes place from the Monitoring Officer.

## 2 CONTEXT

- 2.1 Licensing decisions are often based on balancing competing interests and making an informed judgement having taken account of all the evidence presented. Decision makers need to make fair and open decisions that are in the wider public interest on what can be controversial proposals regardless of personal or political allegiances.
- 2.2 Licensing decisions can be controversial. Any application is likely to have significant impact on the neighbourhoods where people live and therefore they are subject to close public scrutiny.
- 2.3 Licensing decisions can be appealed to the Magistrates Court, they can be challenged in the High Court and they can be the subject of a complaint to the Local Government Ombudsman. Members are required to act in a quasi-judicial role, without reference to their political considerations and taking into account the issues which the law says are relevant to the decision.
- 2.4 One of the key aims of the licensing system is to balance private interests against the wider public interest. Opposing views are often strongly held by those involved. Whilst Councillors who sit on licensing committees must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so.
- 2.5 The aim of this Code is therefore to ensure that the Council's processes are sound and that decisions are lawful, consistent and procedurally correct.

## **General roles of Councillors and officers**

- 2.6 Councillors and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole through the Chief Executive, whilst Members are responsible to the electorate. In licensing matters, unlike planning, officers present only the facts and do not form a view as this is for Members of the committee alone to determine.
- 2.7 ~~Licensing 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. (officers are completely neutral)~~
- 2.8 Members must not put pressure on officers to ~~put forward a particular recommendation or~~ deal with a licensing matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views, when received in written form, will be placed on the licensing file and considered together with other material licensing considerations.
- 2.9 When Members are making Licensing decisions, they must be open-minded: a Member must not make up his/her mind until s/he has heard all the relevant evidence, which will not happen until the meeting itself.

## **3 MEMBER INTERESTS**

- 3.1 It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a particular matter to be discussed at a Licensing Committee he or she should raise this with the Monitoring Officer as soon as possible.
- 3.2 The following general advice should be considered by all Members likely to become involved in the Licensing process in any way:
- An application relating to premises in the vicinity of where a Member lives or has a legal interest in property is likely to involve a pecuniary interest as it may affect the Member's wellbeing.
  - A Member being a frequent visitor to the premises in a personal capacity is likely to involve a pecuniary interest as the decision may affect the Member's wellbeing.
  - A Member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application is likely to have a pecuniary interest.

3.3 Where a Member has a pecuniary interest relating to an application s/he may not sit on the committee (including sub-committee) hearing that application. Any Member, whether or not a Member of the committee, with a pecuniary interest is precluded from making representations orally to the committee either as a Member or in a private capacity and precluded from making representations on behalf of a party to the hearing. ~~item under discussion, the Councillor may not participate in any discussion of the matter at the meeting or participate in any vote on the matter. There is no obligation for that Councillor to withdraw from the Chamber although this is advisable so that it is transparently clear that the Member concerned has not taken part in the determination of this particular item. This also means that a Councillor with a pecuniary interest is precluded from making representations orally to the committee, either as a Councillor or in a private capacity, and precluded from making representations on behalf of a party to the hearing.~~

3.4 A Councillor with a pecuniary interest can still present their views to the committee through other means:

- make written representations to officers; the existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations;
- arrange for another Member to represent the views of the Councillor's constituents.

#### **4 PREDISPOSITION, PREDETERMINATION AND BIAS**

4.1 Licensing Committee Members need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application, on planning policies or on other planning matters, such as enforcement. Avoidance of bias or predetermination or the appearance of bias or predetermination is a legal requirement that the decision maker must respect.

4.2 A distinction needs to be made between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a "closed mind" approach and likely to leave the committee's decision susceptible to legal challenge by Judicial Review.

4.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the material considerations presented at the committee and keep an open mind before deciding on how to exercise their vote (predisposition). The latter is acceptable, the former is not and may result in a Court quashing such planning decisions.

- 4.4 The law provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in the light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 4.5 For example, a Councillor who states “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee” will be perceived very differently from a Councillor who states: “Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area”. The former has a closed mind and is predetermined, whereas the latter is predisposed but still has an open mind.
- 4.6 A Licensing Committee Member who has been lobbied and wishes to support their constituents or is a Ward Councillor and wishes to campaign for or against a proposal will not be able to sit on the committee hearing the proposal as this would amount to predetermination. ~~need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the licensing application. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that application.~~
- 4.7 Participation as a Member in a Licensing Committee where a Councillor is or may be perceived to be biased, in addition to the risk of a complaint against the individual Councillor, also places the decision of the Committee at risk from legal challenge. As such, if a Licensing Committee Member considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the matter.
- 4.8 A Member should stand down from any agenda item where they have a relevant and current or recent private business or personal relationship and association with any applicant or applicant’s representative. If in doubt about this Members should speak with the Monitoring Officer or his/her representative before any decision is made.

## **5 APPLICATIONS SUBMITTED BY THE COUNCIL, COUNCILLORS OR OFFICERS**

- 5.1 Licence applications by the council for its own use could give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for licences associated with the council’s own use will be treated no differently from any other application.

- 5.2 Certain Councillors may through their other roles outside of a Licensing Committee, have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at Committee the Councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. Applications submitted by Councillors or officers.
- 5.3 It is perfectly legitimate for licensing applications to be submitted by Councillors and officers. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
- 5.4 If a Councillor or an officer submits their own proposal to the Council which they serve, they should take no part in its processing and/or determination. A Councillor who acts as an agent or representative for someone pursuing a licensing matter with the authority should also take no part in its processing and/or its determination.
- 5.5 Where decisions relate to applications made by Members of staff or an elected Member these should be reported to Committee where they relate to the following:
- Members of the Council
  - Senior officers of the Council (Service Head and above)
  - Officers of the Local Licensing Authority.
- 5.6 The term "Officers of the Local Licensing Authority" means officers within the Council who are closely involved in the day-to-day work of the Council's licensing function and include all external persons such as lawyers, contractors and advisors who work for the Local Licensing Authority.

## 6 LOBBYING

- 6.1 Lobbying is not a permitted a normal part of the licensing process. Those who may be affected by a licensing decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Councillor or to a Member of the Licensing Committee.
- ~~6.2 It is essential for the proper operation of the licensing system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves.~~
- ~~6.3 Lobbying, however, can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.~~

~~6.4—A Licensing Committee Member should explain to those lobbying or attempting to lobby them that the law does not allow them to discuss the matter before the hearing., whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the Committee's decision making if they are asked to express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing. Licensing Committee Members should ensure that it is made clear to any lobbyists that they will only be in a position to reach a final decision on any licensing matter after they have heard all of the relevant arguments and looked at the relevant information during the sitting of the determining Committee.~~

~~6.56.2~~ Licensing Committee Members should therefore:

- suggest to lobbyists that they write to the Licensing Service in order that their views can be included in the officer reports prepared for determination under delegated powers or by Committee;
- pass on any lobbying correspondence received (including plans, data, correspondence in respect of an application) to the Licensing Service as soon as practicably possible so that, if appropriate,—it can be taken into account and included in the report on the application;
- remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to make decisions impartially and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- not accept gifts or hospitality from any person involved in or affected by a licensing proposal, but if a degree of hospitality is unavoidable (eg refreshments at a meeting), ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality and inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying.

## **7 POST-SUBMISSION DISCUSSIONS**

7.1 A Licensing Committee Member should not usually be involved in discussions with an applicant or agent when a licensing application has been submitted and remains to be determined. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.

7.2 In limited circumstances Licensing Committee Members may legitimately engage in post-submission discussions.

- 7.3 If a Licensing Committee Member is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether or not it would be prudent in the circumstances to make notes when contacted. A Licensing Committee Member should report to the chief licensing officers any significant contact with the applicant or other parties, explaining the nature and purpose of the contacts and their involvement in them, so that it can be recorded on the [licensing planning](#) file.
- 7.4 Licensing Committee Members should not attend post-submission meetings that are not organised through officers.
- 7.5 Councillors should report any substantive discussion with applicants to the chief licensing officer.

## **8 SITE VISITS**

- 8.1 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the licensing application and which would not be apparent from the licensing application to be considered by a Licensing Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted.
- 8.2 The Chairman (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.
- 8.3 Under the Chairman's guidance the role of the Licensing Officer attending the site visit will be to brief Members on the licensing applications(s) the subject of the visit.
- 8.4 Officers shall ensure, where practical, that applicants and Members are invited to attend the visit and that they are able to view all key parts within or adjoining the site.
- 8.5 Whilst on site visits, Members of Licensing Committee should not express an opinion on the licensing application or its merits, and should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination.
- ~~8.6 Members of the licensing committee who were not present at a pre-arranged site visit should not seek to defer consideration of the licensing application.~~
- 8.7 A site visit should not be on the basis of exposing Members of the Licensing Committee ([including sub-committees](#)) to local opinion but should be to explore the licensing issues in the application.

## **10. LICENSING APPEALS**

- 10.1 Licensing decisions can be appealed to the Magistrates Court, they can be challenged in the High Court and they can be the subject of a complaint to the

Local Government Ombudsman. Members are required to act in a quasi-judicial role, without reference to their political considerations and taking into account the issues which the law says are relevant to the decision.

10.2 An appeal against the decision of the Licensing Committee is made to the Court while a complaint about the way in which that decision was made can be made to the Ombudsman

10.3 Where the Licensing Committee refuses an application and there is an appeal ~~one Member of the Committee should attend any appeal on behalf of the Council and other~~ Members may attend as observers if they so wish. The decision of the Committee will be documented in the minute and set out in the decision notice. ~~The licensing officer will present the Council's case on its licensing merits, in accordance with the Committee's decision with such assistance from the nominated Committee Member as may be required.~~

## **11. LICENSING ENFORCEMENT**

11.1 Councillors should bring to the attention of the Licensing Service suspected breaches of licensing law so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the chief licensing officer.

## **12. COUNCILLOR TRAINING**

12.1 All new Members, newly appointed Chairmen and returning Members of the Council's Licensing Committees should attend annual induction or refresher training at the earliest date possible and ideally before the first committee meeting. Other Members are encouraged to attend the training so that they can ensure that they keep up-to-date on these matters.

## **13 MEETINGS OF THE LICENSING COMMITTEE**

13.1 No material revision to any licensing application which might lead to a change in the officer recommendation shall be considered at any Licensing Committee unless it has been submitted at least 14 clear days before the relevant Licensing Committee meeting, and has been the subject of a written report prepared by the licensing department and any necessary public consultation has taken place.

13.2 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chairman prior to dealing with the next agenda item This may be by recorded vote.

13.3 The Chairman should ensure:

- Members' comments at Committee only relate to the licensing merits of the application before them;

- reference at Committee to non-licensing issues by Members and those giving evidence are discouraged;
- the cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined;
- Residents and applicants understand that the late submission of [further representations evidence](#) could lead to the deferral of the meeting and [the further representations](#) may not be permitted without agreement of all parties.