

## LICENSING CODE

All references to the Licensing Committee, refer to the Licensing and General Purposes Committee and its sub-committees (Licensing Panels) unless specified.

### 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 in accordance with the licensing legislation, guidance 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 The Licensing Committee determines overall policy in relation to licensing matters within the borough, including the review and approval of the Council's licensing policies such as those pursuant to the Licensing Act 2003 (including any cumulative impact areas), the Gambling Act 2005, street trading and special treatment licences.

2.2 The licensing sub-committee is a panel convened from members of the Licensing Committee to determine a contested licensing application, a review of an existing premise licence, or a first-stage appeal against a decision regarding a special treatment licence.

2.3 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 group positions.

2.4 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.

2.5 Decisions of the Licensing Committee and sub-committee may be challenged by way of judicial review in the High Court and they can be the subject of a complaint to the Local Government Ombudsman. Decisions of the sub-committee can also be appealed to the Magistrate's Court. 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.

2.6 Members should particularly note that 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.

2.7 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.

### **Licensing sub-committee**

2.8 Decisions are to be made in accordance with the relevant legislation under which the licensing application / review is submitted, along with any statutory guidance, regulatory codes and the council's own policies or protocols.

2.9 There are different considerations to be applied when considering matters submitted under different legislation, (e.g. the Licensing Act 2003, the Gambling Act 2005) and Members should ensure they are aware of these considerations and the legal basis for the same prior to sitting on a Licensing sub-committee to ensure they approach their decision making process in the correct way and only take in to account relevant matters. Members should therefore ensure they have attended licensing training before sitting on a Licensing sub-committee, and that they receive appropriate briefings from relevant Officers where necessary.

2.10 The decision should be evidence-based, taking in to account any valid representations made by any relevant party objector and should be appropriate

### **General roles of Councillors and Officers**

2.11 Members 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.

2.12 Members must not put pressure on Officers to 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.

2.13 When Members are making Licensing decisions, they must be open-minded: a Member must not make up their mind until they have heard all the relevant evidence, which will not happen until the meeting itself.

2.14 When a sub-committee has been organised to determine an application for a licence or a review of a licence, as part of the consultation process Members who are not part of the sub-committee are usually able to make representations in relation to the application or review. Officers acting for a Council department may also make a representation in relation to an application or seek a review of a licence. Where a representation is made by the Licensing Authority there must be a separation between the officer(s) making the representation and the officers presenting the report for Councillors

### **3. MEMBER INTERESTS**

Please refer to the Members Code of Conduct for the definitions of Disclosable Pecuniary and Other 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 they should raise this with the Monitoring Officer as soon as possible. Ward councillors will not be able to sit on the licensing panel if the application is in their ward.

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 Disclosable Pecuniary Interest.
- A Member being a frequent visitor to the premises in a personal capacity may lead the Member to be accused of bias, predetermination, or having an Other Interest.
- A Member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application may lead the Member to be accused of bias, predetermination, or having an Other Interest.

3.3 Where a Member sitting on the committee to make decisions has a Disclosable Pecuniary Interest or may be perceived to be predetermined or biased relating to an application they may not hear the application in question.

3.4 Members, not on the committee with a Disclosable Pecuniary Interest are precluded from making representations orally at a full committee meeting.

3.5 A Member with a pecuniary interest can still present their views to the committee by arranging for another Member to represent the views of the Councillor's constituents.

3.6 Members may not participate, or participate further in any discussion or vote on a matter where they have a Disclosable Pecuniary Interest. To do so is a criminal offence.

#### **Licensing Sub-Committee**

3.7 A party who has made a representation in respect of a licensing application may ask anyone, including a Member, to assist them and speak on their behalf at a licensing sub-committee. If a Member is asked and agrees to do this they must confine their comments to that party's representations and not add their own additional information. The weight given to Member's representations will depend on the relevance to licensing matters.

### **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 licensing application, on licensing policies or on other licensing 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 Member 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 licensing decisions.

4.4 The law provides that a Member 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 Member was biased.

4.5 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.

4.6 Participation as a Member in a Licensing Committee where a Member is or may be perceived to be biased, in addition to the risk of a complaint against the individual Member, 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.

4.7 A Member should not take part in 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 their representative before any decision is made.

## **5. APPLICATIONS SUBMITTED BY THE COUNCIL, COUNCILLORS (MEMBERS) OR OFFICERS**

5.1 Licensing 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 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.

5.3 If a Member 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 Member 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.

5.4 Where decisions relate to applications made by Officers 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.

5.5 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.

5.6 In respect of former Members or former Officers the above requirements shall apply for a period of three (3) years following their departure from the Council.

## **6. LOBBYING**

6.1 A Licensing Committee Member should explain to those lobbying or attempting to lobby them that they should not discuss the matter before the hearing. 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. LICENSING APPEALS**

7.1 Decisions made by the licensing sub-committee can be appealed to the Magistrates Court, they can be challenged by way of Judicial Review in the High Court and they can be the subject of a complaint to the Local Government Ombudsman.

7.2 Decisions of the Licensing Committee can be challenged by way of judicial review or be subject to 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.

## **8. COUNCILLOR TRAINING**

8.1 All Members of the Licensing Committee should be trained annually.

## **9. MEETINGS OF THE LICENSING PANEL**

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

9.2 The Chair should ensure:

- Members' comments at Panel only relate to the licensing merits of the application before them;
- reference at Panel 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; and
- residents and applicants understand that the late submission of further representations could lead to the deferral of the meeting and the further representations may not be permitted without agreement of all parties.