

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS DEALING WITH LICENSING MATTERS

This Code of Practice supplements the Council's Code of Conduct for Councillors and where appropriate Councillors should refer to the Code of Conduct which is set out in the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

1. Introduction

- 1.1** Premises Licensing affects land and property interests, including the financial value of land and the quality of their settings. Personal Licences affect individuals. Licensing is often highly contentious because decisions affect the daily lives of everyone. Opposing views are often strongly held by those involved.
- 1.2** The licensing system can only function effectively if there is trust among those involved. There must be trust between Councillors and Officers and between the public and the Council.
- 1.3** The general principles that underlie the Council's Code of Conduct for Councillors and apply to this Code of Practice are:
 - 1.3.1** Councillors should serve the public interest and should never improperly confer an advantage or disadvantage on any person.
 - 1.3.2** Councillors should not place themselves in situations where their honesty or integrity may be questioned.
 - 1.3.3** Councillors should make decisions on merit.
 - 1.3.4** Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
 - 1.3.5** Councillors may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
 - 1.3.6** Councillors should respect the impartiality and integrity of Officers.
- 1.4** The Council is committed to open, fair and transparent decision-making. Licensing decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.5** This Code of Practice sets out practices and procedures that Councillors and Officers of the Council shall follow when involved in licensing. Licensing matters include the consideration of applications, the preparation of policy and the enforcement of licensing law.

- 1.6** Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Councillors. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.
- 1.7** This Code of Practice sets out principles to guide Councillors and officers in determining applications and making other decisions within the terms of reference of Licensing and Appeals Committee. Although of particular relevance to members of the Committee it applies to all members of the Council who may become involved in licensing matters.

2. The Role and Conduct of Councillors and Officers

- 2.1** Councillors and Officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole.
- 2.2** The role of a member of the Licensing and Appeals Committee is to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3** Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community.
- 2.4** Councillors' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, consider all of the relevant issues in the light of Council policies, Government advice and their own individual judgement.
- 2.5** Whilst Councillors should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6** Officers in their role of advising Councillors shall provide:
- 2.6.1** Impartial and professional advice;
 - 2.6.2** Complete written reports covering all necessary information for a decision to be made.
- 2.7** Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 2.8** Councillors shall follow the advice in the Councillor's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer

which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible.

3. Councillors Interests and Allegation of Bias

- 3.1** Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.
- 3.2** Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its merits, Councillors should consider withdrawing from the Committee.
- 3.3** These principles apply equally to Councillors who are not members of Licensing and Appeals Committee. Councillors who have such interests should consider whether it is appropriate for them to participate in the licensing process (as opposed to the Committee), and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.
- 3.4** The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process. However, Councillors may have other interests which may influence their decision which will not amount to disclosable interests for the purposes of the Code. In order to maintain the integrity of the licensing system, Councillors should be careful to ensure that such interests do not unduly influence their decisions or give rise to a perception of bias in decision making. Examples of such interests are:
 - 3.4.1** from being closely aligned with ward campaigns or issues;
 - 3.4.2** from membership of other Committees of the Council;
 - 3.4.3** from membership of other public or community bodies;
 - 3.4.4** from membership of voluntary associations and trusts (including where appointed by the Council);
 - 3.4.5** from a connection with a particular policy initiative of the Council;
 - 3.4.6** from membership of clubs, societies and groups;
 - 3.4.7** from hobbies and other leisure interests; and
 - 3.4.8** from political affiliations.

Such interests may mean that a Councillor is involved with a licensing application before the matter comes before the Committee. Such involvement need not on its

own debar a Councillor from participating in making the decision when the matter is considered by Licensing and Appeals Committee providing that the Councillor has not already decided how they will vote on the matter before the meeting. Councillors should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the merits of the application with an open mind. If the Councillor considers that this is not possible, the Councillor should withdraw from consideration of that item.

3.5 As a minimum, the integrity of the licensing system requires openness on the part of Councillors; it must operate fairly and be seen to operate fairly.

4. Applications by the Council or a Council Owned Company

4.1 Licensing legislation allows the Council to submit and determine proposals for licences. Council owned companies also submit proposals that are decided by the Council.

4.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.

4.3 Members of the Licensing and Appeals Committee who sit on the board of a Council owned company which has submitted an application shall declare an interest and take no part in the discussion and determination of that proposal.

4.4 Officers who are involved in the preparation of licensing proposals shall not advise on, or take any part in the consideration of, applications in respect of such proposals.

5. Statutory Duties

5.1 The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the licensing function except when such matters are clearly immaterial because they are not capable of relating to the proposal under consideration. Examples of these duties include:

5.2 Equality Act 2010

Section 149 provides that:

5.2.1 A council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a protected characteristic and persons who do not share it.

5.2.2 The above powers relate to the following protected characteristics:

- (a) Ages;
- (b) Disability;
- (c) Gender reassignment;
- (d) Marriage and civil partnership;
- (e) Pregnancy and maternity;
- (f) Race (including colour, nationality and ethnic or national origins);
- (g) Religion or belief;
- (h) Sex; or
- (i) Sexual orientation.

5.3 Human Rights

Section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

5.4 Best Value

Section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

5.5 Crime and Disorder

Section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

6. Lobbying of and by Councillors

6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal may seek to influence the

decision by an approach to their local Councillor or members of the Licensing and Appeals Committee. However, reacting to lobbying can lead to the impartiality of a Councillor being called into question and require that Councillor to declare an interest.

- 6.2** The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations. The views of consultees and the assessment of the case by the licensing officer all need to be considered before a Councillor is in a position to make a balanced judgement on the merits of the case. Councillors should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.
- 6.3** The time for individual members of the Licensing and Appeals Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.
- 6.4** A Licensing and Appeals Committee member shall be free to listen to a point of view about a licensing proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Councillors should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if Councillors do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Councillors who are lobbied should:
- 6.4.1** make clear that they reserve their final decision on a proposal until the committee meeting;
 - 6.4.2** only give procedural advice;
 - 6.4.3** consider referring those lobbying to the relevant Officer who can provide further advice; and
 - 6.4.4** not seek to meet an applicant or potential applicant alone.
- 6.5** Members of the Licensing and Appeals Committee shall not, in general, organise support or opposition for a proposal, or lobby other Councillors. Councillors shall not put improper pressure on officers for a particular recommendation.
- 6.6** If a member of the Licensing and Appeals Committee identifies himself or herself with group or individual campaigning for or against an application, he or she shall declare an interest and not vote or decide on the matter.
- 6.7** Councillors at a meeting of the Committee must be free to vote as they consider appropriate on licensing matters. A Councillor cannot be instructed how to exercise their vote on a licensing matter.

6.8 Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

7. Pre- and Post- Application Discussions and Negotiations

7.1 Discussions between an applicant and the licensing authority, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the licensing process. However, they should take place within clear guidelines, as follows.

7.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.

7.3 Advice should be consistent and based upon relevant licensing policies and considerations.

7.4 A written note should be made of all potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.

7.5 Councillors need to preserve their role as impartial decision makers and members of Licensing and Appeals Committee should not take part in pre- or post- submission discussions and negotiations with applicants.

7.6 Councillors may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Councillors should be provided to the officers dealing with the application. Councillors who are approached for procedural or technical advice should refer the applicant to the relevant officer.

8. Officer Reports to Committee

8.1 A Senior Enforcement Officer will submit written reports to the Licensing and Appeals Committee or Sub-Committee on licensing applications to be determined by the Council. The reports will give the background to the application including any relevant licensing history of the site, a description of the proposals, and the relevant law and Council or Government policy considerations. The reports will include a summary of representations made about the application.

8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.

8.3 The Senior Enforcement Officer will have available for inspection by Councillors the full application and representations from bodies consulted and members of the public.

9. Relevant Considerations

- 9.1** Local opposition or support for a proposal is not in itself a ground for refusing or granting application, unless that opposition or support is founded upon valid licensing reasons which can be substantiated.
- 9.2** It will be inevitable that all the considerations will not point solely to either grant or refusal. Having identified all the relevant matters and put to one side all the immaterial considerations, Councillors must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

10. The Decision Making Process

- 10.1** The Licensing and Appeals Committee will give reasons for all decisions.

11. Site Visits by the Committee

- 11.1** Site visits in licensing are rare but where they occur they should be conducted in a formal manner in compliance with the Human Rights Act 1998 and any subsequent legislative criteria.

12. Public Speaking at Licensing and Appeals Committee

- 11.2** Wherever possible, objections or representations to licensing applications should be made in writing and must comply with any relevant regulations. Written representations received will be made available for public inspection and objections summarised and reported to the Licensing and Appeals Committee Councillors have the opportunity to inspect all letters received before the decision on the application is made.
- 11.3** In relation to Licensing Act 2003 and Gambling Act 2005 applications those who may speak at a meeting are defined in regulations issued under the respective Acts.
- 11.4** In all other cases public speaking will be permitted where it is the interests of natural justice and a fair hearing to do so.

13. Training

- 13.1** Councillors should not participate in decision-making at meetings dealing with licensing matters if they have not attended training on an Introduction to Licensing Law and Practice.
- 13.2** Councillors should endeavour to attend any other specialised training sessions provided since these will be designed to extend Councillors' knowledge of licensing law, regulations, procedures, Codes of Practice and policies beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.