

Part 5 – Codes and Protocols

Chapter 3 – Councillors' Code of Conduct for Licensing Matters

1. Introduction

- 1.1 The Licensing Act 2003 (the "Act") transferred to the Council responsibility for the licensing of the supply and sale of alcohol, and rationalised this with the control of regulated entertainment and late night refreshment. The Council is required to determine applications for licensed premises and personal licences under the Act. There is a set period for consultation. During that period persons can make 'relevant representations'. These representations must relate to the four statutory Licensing Objectives as set out in the Act.

2. The Four Licensing Objectives

- 2.1 The Act requires that the licensing functions are carried out with a view to promoting the statutory Licensing Objectives of:
- (a) the prevention of crime and disorder
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm
- 2.2 If relevant representations are made and not resolved or withdrawn then the Act requires the application must be determined by a statutory Licensing Committee established under the Act. For Barking and Dagenham, the Licensing Committee functions have been delegated to the Licensing Sub-Committee of the Licensing and Regulatory Board. The Licensing and Regulatory Board reserves the right to consider any matter which has been delegated to the Licensing Sub-Committee, in which case any reference to "sub-committee" in this document shall also apply to the Board.

3. The Hearing

- 3.1 The determination of licensing applications must be held in a quasi-judicial manner. This means the Sub-Committee must ensure that the application is determined in a fair and impartial manner and in accordance with natural justice. The hearing is further subject to statutory regulation.
- 3.2 If an applicant or person who made relevant representations is dissatisfied with the decision, then they can appeal to the Magistrates' Court within 21 days of receiving written notice of the decision.
- 3.3 Members must be mindful of the requirements of the Councillors' Code of Conduct and to avoid predisposition to a party, predetermination or bias. The Sub-Committee's hearing of applications need to be compliant with these requirements, as alleged breaches could lead to judicial review applications to the High Court or complaints under the Code of Conduct. Members can ensure that challenges are avoided by following a fair and impartial procedure. This means that all parties entitled to address the hearing must be given a full

and fair opportunity to present their case before a committee of Members who have an open mind about the application.

4. Ward Councillors

- 4.1 The Council's Licensing Policy requires that Members shall not hear cases that relate to premises in their own ward to avoid the impression of bias. Due regard shall be given to this requirement when establishing the membership of the Licensing Sub-Committee.
- 4.2 Should a situation arise where a Member is also a ward councillor for the premises to be considered, the Member must declare they are a ward councillor and step down from the Sub-Committee. The Member may remain in the room but should sit within the public gallery.

5. Members' Interests in Proceedings – General Principles

- 5.1 The first general principle is that if a Member taking part in a meeting has an interest in an item of business they must declare it. In accordance with the provisions of the Localism Act 2011 there are two possible interests, namely disclosable pecuniary interests and non-pecuniary interests.
- 5.2 To minimise the risk of challenge, Members are strongly recommended that as soon as they receive their papers they should check each application to make sure that they do not have an interest. If they consider themselves to have an interest they should notify the Democratic Services Officer responsible for the Sub-Committee as soon as possible in advance of the meeting.
- 5.3 If it later becomes apparent to the Member that he/she has an interest (which may not be until the meeting) this should be declared as soon as the Member is aware. The Member should immediately withdraw from the meeting by leaving the room, thereby taking no further part in that business. If any doubt exists in a Member's mind, they are advised to seek advice from the Monitoring Officer in advance of the meeting, though in the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with officers.

6. Interests and what to do

Disclosable Pecuniary Interests

- 6.1 These are defined in the Councillors' Code of Conduct at Part 5, Chapter 1 of this Constitution and are set by law. If an interest is disclosable as defined under the Localism Act 2011 then the Member should not take part whilst that matter is being considered, unless they have been issued with a dispensation. The process for seeking dispensation is set out in the Councillors' Code of Conduct.

Non Pecuniary Interests

- 6.2 These are interests which are not disclosable by law but could still be necessary to be declared. An interest which is not within the disclosable pecuniary category may still prevent Members taking part because it is capable of being seen as bias or prejudicial to a party to the hearing. A

Member shall be regarded as having such an interest that would be prejudicial to the proceedings if it related to an item of business and the interest was one that a member of the public with the knowledge of the relevant facts would reasonably regard it to be so significant that it is likely to prejudice the Member's judgement . In such circumstances a Member is advised to leave the room, so that there can be no doubt that they did not influence the process and decision making. In case of doubt, the best advice is to withdraw from dealing with the application.

6.3 As a guide a Member will be likely to be regarded as having a prejudicial interest in a licensing application if:

- (i) they live near the premises in question, or
- (ii) they are a regular visitor to the premises, or
- (iii) they belong to a lobby group which may be affected by the outcome of the application.

6.4 If a Member has a concern as to whether they may have such an interest they are invited to seek advice from the Monitoring Officer.

6.5 A Member who declares they have a non-pecuniary interest should have regard to the following:

- If the Member is an applicant; or has an interest beyond representing their constituents they will have an interest in a matter being discussed at a meeting.
- A Member is only permitted to be in the room on the same terms as other members of the public who are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case and the Member is also eligible, then they can attend the meeting for that purpose only. A Member should not sit with Members of the Sub-Committee and the Member's right to address the Sub-Committee is the same as those other members of the public.
- In addition, a Member must not seek to improperly influence a decision in which they have an interest. This rule is similar to the general obligation not to use the position as a Member improperly to their or someone else's advantage or disadvantage.

Pre-determined Views and Bias

6.6 The Council has to ensure that justice is done and seen to be done.

6.7 Predetermination or bias would occur where a Member has a closed mind to the merits of any argument either for or against a particular issue and makes a decision without considering all the relevant facts.

6.8 This means any Member of the Board must be very careful about what they say in public about the Council's licensing policies or the way in which applications will be determined. While the Localism Act 2011 provides that it is not conclusive of a closed mind of pre-determination by the fact that a

Member may have said something about an application before a hearing, it may be very difficult to avoid such an impression.

6.9 For the avoidance of doubt, simply being a ward councillor in which the premises is located is not, in itself, an interest.

7. Councillors' right to address the Sub-Committee

7.1 Unlike other proceedings of the Council, the right to address the Sub-Committee is set out in legislation. The only persons who may address the Sub-Committee during a hearing of an application are those who have made relevant representations. A Councillor or a local MP may act as a representative and make relevant representations on behalf of any of these individuals or groups if they are specifically asked to do so. In such cases, evidence of the written authority to speak on an individual's behalf should be submitted to the Council's Licensing Officer in advance of the hearing. If you have a disclosable pecuniary interest, you cannot take part in that matter at all unless you have been granted a dispensation.

7.2 Constituents' concerns may be orally presented to the Sub-Committee by a Councillor if they:

- have been specifically asked to represent an interested party as set out above; or
- have either made a relevant representation within the requisite time or represent an interested party who has made a relevant representation within the requisite time.

and are not prevented from so doing by reason of an interest.

7.3 These are the only criteria that can be taken into account, and override any provisions in the Constitution enabling a Councillor to address a Council meeting as of right.

8. Member Participation and Voting

8.1 A Member of the Board who is not present throughout an entire item, for whatever reason, is not permitted to participate in the discussions or decision on that item.

9. Breaching the Code

9.1 Failure to comply with this Code of Conduct for Licensing Matters could lead to a Councillor being in breach of the Councillors' Code of Conduct. Breaches of the Code will be referred to the Council's Monitoring Officer.

10. Training

10.1 Members of the Board are required to attend training organised by the Council in order to demonstrate a level of knowledge before being permitted to take part in the decision making process of the Board. Members are also encouraged to attend any other specialised training sessions provided to assist them in carrying out their role properly and effectively.