

## **GOOD PRACTICE GUIDE FOR MEMBERS AND OFFICERS**

### **DEALING WITH LICENSING MATTERS**

#### **1. Introduction**

- 1.1 This Good Practice Guide has been adopted by the Council, in its role as the Licensing Authority, to regulate the performance of its licensing function. Its major objectives are to guide members and officers of the Council in dealing with licensing related matters and to inform licensees/potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. It applies to all Council members and officers involved in the licensing system. It is designed to ensure that licensing decisions are taken on proper licensing grounds, are applied in a consistent and open manner and that members making such decisions are, and are perceived as being, accountable for those decisions.
- 1.2 The Guide is also designed to assist members in dealing with and recording approaches from applicants, licensees and objectors and intended to ensure that the integrity of the decision making process is preserved.
- 1.3 The Guide also draws attention to the different status of the Licensing Committee and its Sub-Committees from other Council Committees by virtue of its quasi-judicial nature when considering individual applications/reviews and the requirement to comply with the rules of natural justice. In practice individual applications and reviews will be considered by a Licensing Sub-Committee. If, however, the Licensing Committee considers an individual application/review this Guide will also apply to it.

#### **2. Role of Members**

- 2.1 Members set the Council's licensing policy and determine licensing applications and licensing reviews within the context of that policy. When members come to make a decision on a licensing matter, they must:
  - 2.1.1 **Act** fairly and openly.
  - 2.1.2 **Approach** each application/review with an open mind.
  - 2.1.3 **Carefully** weigh up all relevant issues.
  - 2.1.4 **Determine** each application/review on its own merits.
  - 2.1.5 **Ensure** that there are clear and substantial reasons for their decisions and that those reasons are clearly stated.
- 2.2 The majority of this document relates to the position of members while making decisions as members of the Licensing Committee or one of its Sub-Committees. The Guide applies to all members, but its relevance will most frequently be seen when members are involved in decisions, either on individual applications, individual reviews or licensing policy matters.

### 3. Role of Officers

- 3.1 The officers' function is to advise and assist members in matters of licensing policy and in their determination of licensing applications and reviews by
  - 3.1.1 **Providing** impartial and professional advice.
  - 3.1.2 **Making** sure that all the information necessary for the decision to be made is given.
  - 3.1.3 **Setting** applications and reviews against relevant legislation and Council policies and all other relevant considerations.
  - 3.1.4 **Providing** a clear and accurate analysis of the issues
  - 3.1.5 **Carrying out** the decisions of members in Committee or Sub-Committee.
  - 3.1.6 **Communicating** with applicants/their agents in accordance with laid down procedures.
- 3.2 Officers involved in the processing and determination of licensing applications must act, not only in accordance with the Council's Code of Conduct for Officers, protocols and procedures, but also the Code of Conduct of their profession.
- 3.3 The two main categories of officers who will be concerned with licensing matters are the Director for Environment and their staff and the Solicitor to the Council, (as Monitoring Officer), and their staff. Their respective roles are explained in the two paragraphs below.
- 3.4 The Director for Environment and their staff are employed to administer the Council's licensing functions as set out above.
- 3.5 The Council is required to appoint one of its officers as Monitoring Officer. The Monitoring Officer's role is, broadly to ensure that the Council acts at all times in accordance with the law and the principles of good administrative practice and they are required to report on any potential or actual illegality to the Council. They are the lead adviser to the Council's Standards Committee and are concerned to ensure that the requirements of the law in the Council's Codes of Conduct for Members and Officers and other material guidance are understood and complied with by all concerned. The Council's legal officers assist in this respect.
- 3.6 If any Council officer who is involved in reporting or advising on licensing applications/reviews has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application/review being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer should inform the Director for Environment and the Monitoring Officer and take no part in the processing or consideration of the application.

### 4. Quasi-Judicial Nature of the Licensing Sub-Committee

- 4.1 When considering individual applications/reviews at a Licensing Sub-Committee, members are exercising quasi-judicial functions and must therefore comply with the rules of natural justice. Members must
- 4.1.1 **Be seen** as having no pre-conceived bias for or against any particular outcome.
  - 4.1.2 **Not sit** on a Licensing Sub-Committee and determine a matter if they are likely to be influenced by an interest they have in the matter to be considered or where it might appear to the public that they had been so influenced. To ensure that this objective is achieved, a member should not sit on a Licensing Sub-Committee which is to hear any application/review in respect of which the member, his/her relative, friend or acquaintance is the applicant, agent, licensee or an objector.
  - 4.1.3 **Make** an objective and impartial determination of the issues based on the evidence and should not make, or give the appearance of making, a biased decision.
- 4.2 The rules of natural justice also require there to be a fair hearing: the right to a fair hearing is:
- 4.2.1 **A right** for an individual to know the opposing case
  - 4.2.2 **The right** to call witnesses
  - 4.2.3 **The ability** to question witnesses
  - 4.2.4 **The right** to legal representation, and,
  - 4.2.5 **The right** to be given reasons for any decision made.
  - 4.2.6 **Questions** should relate only to licensing considerations relevant to the licensing application/review and the hearing must be conducted by the Chair in a fair and reasonable manner
5. Licensing Matters and Members' Interests
- 5.1 It is always important for members to consider whether they have a personal or prejudicial interest. Full details of this are contained in the Council's Code of Conduct and its Preamble setting out the General Principles, which was adopted by the Council on 17 May 2007. In essence a member has a personal interest if the issue being discussed affects their well being or finances, or those of their family or close associates more than most other people who live in the Ward affected by the issue or if it relates to or is likely to affect an interest that the member must register. If a member has a personal interest they must declare it and the nature of that interest but may normally speak and vote unless the interest is also a prejudicial interest. However, as stated in section 4 of this Guide, when members who sit on a Licensing Sub-Committee are considering individual applications/reviews they are exercising quasi-judicial functions and therefore must not sit on the a Licensing Sub-Committee to hear an application/ review in which they have a personal interest.

- 5.2 A member has a prejudicial interest if a member of the public knowing the relevant facts would reasonably think their interest is so significant that it is likely to prejudice their judgement of the public interest and
- 5.2.1 the issue being discussed affects their financial position or the financial position of any person or body which whom/which they have a personal interest, or
- 5.2.2 the issue relates to an approval, consent, licence, permission or registration that affects them or any person or body with whom/which they have a personal interest.
- 5.3 The standard rules regarding personal and prejudicial interests apply to all other members who may become involved in a licensing issue. Members who have a personal or prejudicial interest must disclose the extent and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other members. The interest should be disclosed at the beginning of the meeting and at the commencement of discussion on that particular matter.
- 5.4 Where a Member has a prejudicial interest but is not a member of the Licensing Committee or Sub-Committees considering an application/review. That Member has the same rights as a member of the public has to make representations, give evidence or answer questions about the matter under consideration and they may attend the meeting for that purpose, but must immediately leave the room once they have finished or when the Committee/Sub-Committee decides that they have finished (if that is earlier)
- 5.5 Any Member who has a personal or prejudicial interest should not seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of their position as a member. This would include using their position to discuss personally with officers, or other Members of any of the committees, an application in which they have an interest when other members of the public would not have the opportunity to do so. Any Member in such a position may seek to explain and justify any matter in which they have an interest to an appropriate officer (in person or in writing), but must notify the Monitoring Officer and the Director for Environment in writing of their own proposals and those where they act as agent for a third party – this notification should always be made no later than submission of the application. These proposals will always be reported to the Licensing Sub-Committee as main items and not dealt with by officers under delegated powers.

## 6. Lobbying

- 6.1 Applicants or other interested parties might wish to discuss a licensing application/review with members before it is determined.
- 6.2 There is no absolute definition of what constitutes “lobbying” in the sense of seeking to influence a decision; whilst it is a normal part of any democratic process it can lead to impartiality being called into question. For the purpose of this Guide lobbying is considered to be any involvement with a third party when that third party is advocating a certain or

particular outcome to the member although it would not normally include merely receiving copies of correspondence.

6.3 If a member who sits on a Licensing Sub-Committee is approached by persons wishing to lobby him or her as regards a licensing application/review then that member must

6.3.1 explain that they cannot discuss the matter;

6.3.2 refer the lobbyist to his or her ward member or the Licensing Authority who can explain the decision making process.

6.3.3 immediately notify in writing the Director for Environment of the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made and the action taken by the member concerned.

6.3.4 keep an adequate written record to enable the member to disclose the fact and nature of such an approach at any relevant Licensing Sub-Committee meeting.

6.4 It is recognised that it may not be easy, in practice, to discourage individuals or applicants from contacting members whom they consider will be influential in reaching a decision. However, if a consistent line is followed by Licensing Sub-Committee members this will allay the public's concerns and help to ensure that the decision that is made on any application/review will withstand scrutiny or challenge on procedure or propriety grounds.

6.5 It is important that at all stages members convey the clear impression that they have not made up their minds on an application/review and will not do so until they have considered the relevant report, all material factors that are contained within it and heard all points of view at the hearing.

## 7. Pre Hearing Discussions with Potential Applicants and Others

7.1 Where an applicant, interested party or responsible authority (e.g. the police) seeks advice from a member of a Licensing Sub-Committee in relation to an application/review, the member must ;

7.1.1 immediately notify in writing the Director for Environment of the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made and the action taken by the member concerned.

7.1.2 keep an adequate written record to enable the member to disclose the fact and nature of such an approach at any relevant Licensing Sub-Committee meeting.

7.2 Any discussion between the Licensing Authority and the applicant, interested party or responsible authority does not bind the Licensing Authority to any particular decision and when suggestions are made these are provisional only. Any advice given by the Licensing Authority must be consistent with the licensing objectives and the Statement of Licensing Policy and must be impartial.

7.3 Members should not attend presentations unless they have been organised by officers and an officer is present. If they attend a presentation members can ask relevant questions for the purposes of clarifying their understanding of the proposals. Members should remember

that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Licensing Sub-Committee. Members should be aware that a presentation is a form of lobbying and they must not express any view or state how they or other members might vote.

## 8. Site Visits

- 8.1 Site visits can put members and the Licensing Authority at risk of accusations of bias.
- 8.2 Members of the Licensing Sub-Committee shall not enter any premises which are the subject of a licensing application/review or known to them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, except in the course of a formal accompanied site visit.
- 8.3 The Licensing Authority may make a recommendation that the Licensing Sub-Committee visit premises prior to the hearing. In such cases, the Licensing Authority must provide full written reasons justifying a visit and this must be provided to the applicant, interested party or responsible authority either before or at the hearing.
- 8.4 Site visits should be undertaken by all members of the Licensing Sub-Committee accompanied by an officer of the Licensing Authority. Members will follow the officer and should form and continue to form a single group. Members should avoid expressing opinions on site visits to any person present and shall not engage individually in discussion with applicants, licensing agents or other interested persons present.
- 8.5 Site visits are fact finding exercises. They are not part of the formal consideration of the application and therefore public rights of attendance do not apply. Their purpose is to enable officers to point out relevant features, and, to enable questions to be asked on site for clarification. The applicant/licensee (or their agents) shall not be permitted to make representations to members or officers during a site visit. No discussion on the merits of any application must take place during the site visit and no offer of hospitality should be accepted.

## 9. The Party Whip

- 9.1 Members must not accept an instruction from anyone to determine an application/review in a particular manner. They must determine an application/ review on its merits and must not take into account any factor which they are not prepared to state in open committee. As a result, it is inappropriate for any party group to instruct its members to vote in a particular manner on an application/review or to apply or threaten to apply any sanction to any member who voted contrary to the group's collective view.

10. Recording of Reasons

- 10.1 The Licensing Sub-Committee must give all the reasons for its decisions.
- 10.2 The Licensing Sub-Committee must consider any application/review on the basis of the relevant legislation (Acts, Regulations and Guidance) and the Council's relevant policies.

11. Gifts and Hospitality

- 11.1 Gifts and hospitality give rise to particular problems in respect of the credibility of the licensing process and acceptance of gifts or hospitality by members or officers can be a very serious criminal offence. Members should have particular regard to the provisions of the Council's Code of Conduct. In particular, they must immediately report to the Monitoring Officer any offer of gifts or hospitality and they should avoid any behaviour which might be taken as indicating that they are open to such offers.

12. Licensing Applications by Members or Officers of the Council

- 12.1 The impartiality of the licensing process requires particular care when dealing with an application by anyone who might ordinarily be involved in the licensing process. Accordingly, whenever any member or any officer who might be involved in the licensing process submits an application to the Authority for himself or herself or on behalf of any other person, they must:-

- inform both the Director for Environment and the Monitoring Officer
- take no part in processing or determining the application

All such applications will be determined by the appropriate Licensing Sub-Committee and not under delegated powers.

13. Licensing Applications by the Council

- 13.1 Licensing applications by the Council will be treated in the same way as those from private applicants, but will always be determined by the appropriate Licensing Sub-Committee. The Licensing Sub-Committee will have regard solely to the relevant legislation and Council policies and other relevant considerations and must not have any regard to any extraneous gain or loss that might accrue to the Council as a result of a particular decision on a licensing matter.

14. Briefing Meeting and Conduct at Hearings

- 14.1 When a briefing meeting is held prior to any meeting of the Licensing Sub-Committee, it shall be open to the Chair, the members of the Sub-Committee and officers from the Council's Legal and Democratic Services Division and shall be for the purposes of officers clarifying the issues raised by the application/review and the procedures that the Chair and Sub-Committee should follow. The merits of an application/review must not be considered.

- 14.2 Members of the Licensing Sub-Committee shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents, supporters and objectors.
- 14.3 Members of the Licensing Sub-Committee should not communicate directly with the applicant, interested party or responsible authority (excluding the Council's democratic services and legal services' officers) either immediately prior to a hearing, during a hearing or after a hearing, other than publicly through the Chairman
- 14.4 Members must comply with the Council's Licensing procedures as approved.

15. Training

- 15.1 Members making decisions on Licensing applications/reviews, including those who may be called upon to substitute, should ensure that they have attended the licensing training prescribed by the Council

16 Complaints

- 16.1 Any issues of concern arising from this good practice guide and licensing matters can be raised with the Director for Environment or the Monitoring Officer. The Council also has a formal complaints system, details of which are available from reception points and on the Council's website.