

REDDITCH BOROUGH COUNCIL LICENSING CODE OF GOOD PRACTICE

1. Introduction

- 1.1 This Code of Good Practice (the Licensing Code) gives advice to Members who:
- 1) Are members of the Licensing Committee and who sit on Sub-Committees, either as full members, or as potential substitutes.
 - 2) Wish to address the Committee or a Sub-Committee on any licensing issue.
 - 3) Are involved outside the Committee on licensing applications or other licensing matters – including informal occasions such as meetings with Officers or public and consultative meetings.
 - 4) Are involved in applications for licences under the Licensing Act 2003.
 - 5) Are otherwise “interested” in Licensing matters.
- 1.2 A key aim of the Licensing Code is to ensure that there are no grounds for suggesting that a Licensing decision has been biased, partial or is not well founded in any way. Members must make these decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as licensing applications will be subject to close scrutiny both because applicants may be seeking to maximise the business potential of their premises and because the quality of the environment in which local residents and the wider community live and work may be affected through inappropriate applications.
- 1.4 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision making.
- 1.5 The Licensing Code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of Councillors and the Council as a whole.
- 1.6 Although essentially intended for elected Members, this Code at the same time provides Officers with guidance in a number of areas.

2. Relationship with the Council's Code of Conduct for Members

2.1 The Members' Code of Conduct must always be complied with and the rules in that Code must be applied before considering the Licensing Code.

2.2 The Licensing Code is not intended to form a part of the adopted Members' Code of Conduct but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of licensing.

2.3 To distinguish it from the Members' Code, this document is referred to as the Licensing Code.

2.4 Both documents are appended to, and form part of, the Council's Constitution.

3. Declaration of interests

3.1 The Members' Code places requirements on Councillors on the registration and declaration of their interests and participation in the business of the Council in light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Whilst the Standards Board and, from time to time, the Council's Standards Committee, may produce guidance, and advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.

3.2 Councillors can have personal and prejudicial interests in licensing applications, which affect them, their friends, relatives or employers.

Examples include, but are not limited, to:

- 1) applications from existing or proposed licensed premises for increased licensing hours or an intensification of use in close proximity to a property owned / occupied by the Councillor, a friend, relative or employer.
- 2) situations where the Member or a relative or friend regularly visits the premises or is a Member of any club, organisation or team which uses the premises as their base.
- 3) applications made by a Member or a friend, relative or employer of the Member.

3.3 If a Councillor has a personal and prejudicial interest in an application then they:

- 1) must not sit on a Sub-Committee or otherwise take part in the business of the Sub-Committee when that application or those premises are discussed.
- 2) must leave the room when that item is being discussed and must not participate in or give the appearance of trying to participate in the making of a decision.
- 3) cannot represent general ward or local views – they will need to get another Member to do so instead (and must not seek to influence the Member concerned with their own personal views).
- 4) cannot participate as an “interested party” (see definitions below).
- 5) must not lobby Members who will be hearing the application.
- 6) must not get involved in processing the licensing application.
- 7) must not seek any preferential treatment. This includes using their position to discuss a proposal with Officers when other Members of the public would not have the same opportunity to do so.

As the Council’s quorum for Licensing Sub-Committees is 3 Members, Members will be expected to closely scrutinise the application they are nominated to hear, in advance of the meeting, to ensure that they do not have a prejudicial interest.

3.4 Declaration of interests (and appropriate subsequent action) is also a requirement in relation to informal meetings or discussions including those held with Officers and other Councillors.

3.5 Whilst having a personal and prejudicial interest does not prevent a Councillor from seeking to *explain* a proposal in which they have such an interest to an appropriate Officer, the Members’ Code does mean there are greater limitations on Councillors than on a member of the public (see also section below on Lobbying).

3.6 The Members’ Code provides that the following are not automatically personal and prejudicial interests:

- 1) matters relating to another relevant authority of which they are a Member or another public authority where they hold a position of management or control;
- 2) matters relating to a body the Councillor has been nominated as a representative of the Borough Council.

However the above are personal interests and a Councillor who has taken a leading role in the submission or negotiation of a licensing proposal for one of the above organisations would still have a personal and prejudicial interest. Regard should also be had to Section 4 of the Licensing Code in deciding whether or not to participate.

3.7 A personal interest must be declared as soon as a Councillor becomes aware of it. This should wherever possible be at the start of a meeting. A personal interest in itself does not prevent a Member from speaking and voting. Good practice dictates that Members with a personal interest in an application should wherever possible not sit on a Sub-Committee which will be deciding that application – although there will be fewer restrictions on participating in the full Committee.

3.8 Members should not sit on Sub-Committees for applications in relation to premises located within their own Wards. However they can represent ward views, if requested to do so by relevant interested parties (see below for definition), unless they also have a prejudicial interest.

4. Fettering discretion

4.1 If Councillors have taken a firm view on a licensing matter, or appear to have made up their mind before the formal consideration of an application, those Councillors are said to have “fettered their discretion”.

4.2 If a Member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or a failure to take into account all factors enabling the proposal to be considered on its merits.

4.3 There is acceptance that a Member may consider matters in several capacities as different factors may apply to different decisions. However, given the size of Licensing Sub-Committees, and the proportionately greater influence an individual Member will have, Members who sit on a Planning Committee which deals with granting (or refusing) a planning application for new premises are advised not to sit on a Sub-Committee which considers the subsequent application for a licence under the 2003 Act.

4.4 As long as a Councillor does not have a personal and prejudicial interest, they can still make representations to a Sub-Committee (on request / behalf of a relevant interested party).

4.5 Areas which need particular attention are set out below.

Membership of a Parish Council

4.6 Where a Parish Council makes representations on a planning application, then a Member who is also a member of that Council should not sit on a Sub-Committee. It goes without saying that a Member should not become involved at Borough Council level in applications for licences made by Parish Council on which they serve.

4.7 Even where a Parish Councillor who is also a Borough Councillor has fettered their discretion, they will have the same right as any other Member to address the Sub-Committee providing they do not have a prejudicial interest.

4.8 Membership of a Parish Council constitutes a personal interest where the Licensing Committee considers an issue where that Parish has been involved, and this must be declared in the usual way.

Lobbying by Councillors

4.9 If a Member leads, represents or belongs to a group whose primary purpose is to lobby to promote or oppose a licensing application, they will have fettered their discretion. Depending on their involvement they will probably also have a personal and prejudicial interest.

4.10 The position in 4.9 is distinct from membership of general interest groups, which reflect a Councillor's area of interest e.g. CAMRA (Campaign for Real Ale), a church group or a body supporting live music.

However the Member will have as a minimum a personal interest where that body has made representations on an application and should not sit on the Sub-Committee but can make representations in the usual way as long as the interest is not prejudicial. The Member will also have fettered their discretion if they have participated in making those representations and may also depending on the level of involvement have a personal and prejudicial interest.

4.11 Councillors should not excessively lobby other Councillors, or Officers, regarding their views on licensing applications. Nor should they, outside of the Sub-Committees, try to persuade other Councillors how to vote.

4.12 Members should not have access to papers and persons which would not be available to an ordinary member of the public, and must not be able to address or view the proceedings of the Licensing Sub-Committee, which are not available to members of the public. (Copies of Agenda papers will therefore only be issued to Licensing Sub-Committee members as a matter of course.)

4.13 Councillors should not decide or discuss how to vote on licensing applications at Political Group meetings or lobby other Members to do so. Political Group meetings should never dictate how Members should vote on licensing applications.

Lobbying of Councillors

4.14 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing application will often seek to influence it through an approach to their elected Ward Councillor, another Councillor or a Member of the Licensing Committee. However such lobbying can, where a Member subsequently sits on a Sub-Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question, which can in turn affect the validity of a licensing decision.

4.15 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that, whilst they can listen to what is said, it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting.

For the avoidance of doubt a Councillor will not have fettered their discretion ...

- 1) by just listening to viewpoints from residents or interested parties.
- 2) by making comments which fall short of prejudging the issue.
- 3) by seeking information through appropriate channels.
- 4) by asking questions at the hearing which reflect issues raised.

4.16 When a Councillor participates in a licensing hearing their overriding duty is to the community as a whole. As decisions need to be taken impartially, a Councillor should not improperly favour or appear to improperly favour or disadvantage any person, company, group or locality.

4.17 Councillors should not accept gifts or hospitality from any person involved in or affected by a licensing application. It is advisable to let the Head of Democratic Services, on behalf of the Borough Director / Monitoring Officer, know if they feel they have been exposed to excessive lobbying or offers of gifts or hospitality linked to a licensing application.

4.18 To avoid potential perceptions of bias, it may be appropriate that generally any gifts or offers are unacceptable. It is recognised that this is more stringent than the National Model Code of Conduct.

However, in particular circumstances where a gift or offer is accepted e.g. free drinks, meals, admission to events, etc. it is recommended that the details are registered and stored on the relevant Gifts and Hospitality and licence files.

4.19 It is good practice for Councillors to:

- 1) forward copies of lobbying correspondence to the Head of Democratic Services, on behalf of the Borough Director / Monitoring Officer;
- 2) comply with guidance on lobbying, or attending presentations or discussions as set out in Section 5 of the Licensing Code.

5. Contact with Applicants and other Interested Parties

5.1 Councillors should refer those who approach them for assistance on procedural or technical licensing matters to relevant Officers.

5.2 Councillors who wish to consider an application should not agree to formal or informal meetings with applicants, or other interested parties.

5.3 Members who will be considering an application should take advice as to whether they should attend presentations on, for example, a major new licensing proposal, even if it is part of a wider presentation organised by Officers, or other agencies.

6. Site Visits

6.1 Site visits by Licensing Sub-Committee members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias.

6.2 Formal site visits should be made only in accordance with the provisions detailed below. If a formal site visit is agreed, all relevant Sub-Committee Members must attend and be accompanied by an Officer.

6.3 No hospitality should be accepted at site visits.

6.4 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, parties who have made representations or third parties who may be present.

6.5 Councillors taking part in the licensing decision must not express views to anyone present. If this happens it will usually lead to a cessation of the process and a re-hearing by a new Sub-Committee.

6.6 It is acceptable to ask Officers at the site visit questions to seek clarification on matters relevant to the site visit.

6.7 If a site visit forms part of the formal hearing process, details of the visit should be properly recorded and reported back to the hearing.

6.8 Councillors who wish to determine an application should not enter a site which is the subject of a licensing proposal, in connection with their consideration of the application, other than as part of an official site visit - even in response to an invitation.

6.9 Any Member who wishes to acquaint him/herself informally with premises which are the subject of an application (or likely application) for a licence, should only do so with due regard to the guidance provided under this Code of Good Practice.

7. Contact with Officers

(To be read in conjunction with Section 3 above)

7.1 General guidance is given in the Council's Protocol for Relations between Councillors and Officers, attached to the Council's Constitution, which is not repeated here.

7.2 Members should not put pressure on Officers to put forward a particular recommendation (which is, in any case, prohibited by law). However this does not prevent a Councillor asking questions or submitting views to a relevant Officer.

7.3 Officers must act in accordance with the Employee Code of Conduct and any relevant professional codes of conduct which may, on occasion, be at odds with the views, opinions or decisions of the Committee or its members.

8. Applications submitted by Councillors, Officers or the Council

8.1 Proposals to the Council by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety, as can proposals for a Council's own applications.

8.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.

8.3 Councillors and Officers who submit their own proposal should notify the Head of Democratic Services, on behalf of the Borough Director / Monitoring Officer, of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect, with members of the Sub-Committee concerning the application.

8.4 All Borough Council applications shall be notified to relevant Ward Members for information. If no relevant representations are received during the statutory consultation process, and licences subsequently granted, these shall be listed and reported to the next available meeting of the Licensing Committee.
(paragraph amended by the Council 7th August 2006)

8.5 Recent decisions by the Standards Board Adjudication Panel make it very difficult for Members who have a professional qualification to act in presenting cases in that capacity for applicants, or to act as professional witnesses in hearings.

9. Decision Making

Councillors making licensing decisions must

- 1) come to meetings with an open mind and demonstrate that they are open minded;
- 2) not vote or take part in the meeting's discussions on a proposal unless present to hear the entire case;
- 3) come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- 4) request further information if it is felt there is insufficient information before the (Sub-)Committee to reach a decision.

10. Training

Councillors should not participate in Licensing Sub-Committee hearings unless they have attended prescribed training (in Licensing and quasi-judicial meetings).

11. Definitions

| | Term | Definition |
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| | "Interested parties" | This term has a specific meaning under the Licensing Act 2003 as follows: <i>"Residents and businesses in the vicinity of the premises, or bodies representing them."</i> |

END.