

BS REPORT - APPENDIX 1 PROPOSED CHANGES TO LICENSING CODE OF PRACTICE

Purpose of this Code

The Licensing Code of Practice has been adopted by Brent Council 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 potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. The Alcohol and Entertainment Licensing Sub-Committees exercise functions under the Licensing Act 2003 (the sale by retail of alcohol, the supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment), and the General Purposes Licensing Sub-Committee exercises the Council's licensing functions under all other legislation. Except where otherwise stated, references in this Code are to both committees and the expression "Licensing Committee" should be interpreted accordingly. The Licensing Code of Practice is in addition to the Brent Members Code of Conduct adopted under the provisions of the Localism Act 2011. Members should follow the requirements of the Brent Members Code and apply this Code in light of the Members Code. Government Act 2009. The provisions of this code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that members making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

This Code also draws members' attention to the different status of the Licensing Committees from normal Council committees, by their quasi-judicial nature and the requirement to strictly follow the rules of natural justice.

If a member does not abide by this Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision; and the member may be at risk of either being named in a report to the Standards Committee or Council; or if the failure to abide by the Code is also likely to be a breach of the Member Code of Conduct, of a complaint being made to the Monitoring Officer.

If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

The Code

A.

On the Licensing Committees, Members are exercising quasi-judicial functions and as a consequence have a duty to follow the rRules of nNatural jJustice and act in accordance with the council's duty to act in a way that is compatible with Convention rights under the Human Rights Act 1998.

-accordingly the following provisions apply:

B. The rules of natural justice include; the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That

principle means that members must be and be seen to be impartial and without bias, and that members should not take part in any decision that affects their own interests.

C. The Human Rights that are particularly relevant to the Licensing process are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions. Further information about these rights is set out in Annexe 1 to this Code.

1. **General provisions as to conduct**

Bias and predetermination

- 1.1 No one should decide a case where they are not impartial or seen to be impartial. Licensing members should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to a fair and informed observer that there was real possibility of bias, or where a member has predetermined the matter by closing their mind to the merits of the decision before they come to take it.
- 1.2 Section 25 of the Localism Act 2011 provides that a councillor 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.
- 1.3 Although the Localism Act recognises the reality of the role of members in matters of local interest and debate, it does not amount to the abolition of the concept of pre-determination. A member of the licensing committee must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the member hearing the evidence and arguments on both sides. A member should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind. Any licensing decision made by a member who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.

Accountability and Interests

- 1.42 If a member of the Council has a personal interest in any licensing application or other matter before the Licensing Committee, then the member shall, if present, declare a personal interest at that meeting unless the interest arises because the member is a member of or is in a position of general control or management in a body to which they were appointed or nominated to by the Council or that exercises functions of a public nature. In which case the member only needs to disclose the personal interest if they address the Licensing Committee meeting on that item.
- 1.5 If a member has a disclosable pecuniary interest in any application or other matter before the Licensing Committee, and the interest is not entered in the council's register, the member must disclose the interest to the meeting.

~~1.63~~ If a member has a disclosable pecuniary interest or personal interest in a matter and if that interest is also a prejudicial interest in a matter then the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that if the member has y made representations under the Licensing Act, and isare therefore entitled to speak at the meeting, the member may make representations, answer questions or give evidence in respect of the application or matter in question in so far as the public have the right to do so. A member must then withdraw from the room for the rest of that item and play no further part in the discussion.it.

~~1.4~~ ~~Additionally, Members should not determine a particular application when they are actually biased in favour or against the application or it might appear to a fair and informed observer that there was real possibility of bias.~~

1.75 Members of the Licensing Committees should not determine any application if the member, his/her relative, friend or associate is the applicant or agent for that matter or an objector.

1.86 Members who have business or other interests which may bring them into contact with the Council's licensing system on a regular basis should not be considered for membership of the Licensing Committees.

Approaches

1.97 If an approach is received by a member of a Licensing Committee from an applicant, objector, their agents or an interested party in relation to a particular licensing application or any matter which may give rise to a licence application, the member shall:

(a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected members who are not members of the Licensing Committees;

(b) forthwith notify in writing to the Monitoring Officer Director of Health, Safety and Licensing 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;

(c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

~~1.10~~ If an elected member who is not a member of Licensing Committee is contacted by an applicant objector or interested party then that member should discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will include the relevant information in the report to the Licensing committee. If an elected member

wishes to make their own representations about a matter they should likewise make those representations to the appropriate licensing officer.

1.11 4.8—Any elected member who is not a member of the General Purposes Licensing Sub-Committee but who is a member for the Ward in which the premises are located (or a member of an adjoining Ward which is affected by the application) shall be entitled to address a meeting of the General Purposes Licensing Sub-Committee on the subject of a particular licence application. However he/she shall disclose whether he/she has been in contact with the applicant, objectors their agents or an interested party and whether they have a personal or disclosable pecuniary interest or prejudicial interest in the license application. If a Ward member has a disclosable pecuniary interest or a prejudicial interest in a matter before the General Purposes Licensing Sub-Committee, the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that where a member of the public has the right to make representations, answer questions, or give evidence, then a member will have the same right, after which the member must then withdraw from the room for the rest of that item and play no further part in the discussion or vote.—(This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees)

1.129 No amendment to any licence application shall be considered at the Licensing Committees unless it can be taken into account without causing prejudice to objectors or persons who might otherwise have objected.

2. Site visits

2.1 If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committees. A site visit may also assist members in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Members should avoid expressing opinions during site visits to any person present, including other members.-

2.2 During site visits, members of the Licensing Committees shall not engage individually in discussion with applicants or objectors.

2.3 On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Members features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.

2.4 A Member of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:

- (i) their reason for the request; and
- (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the member provides these at least one week prior to the relevant meeting, the site visit will not proceed.

- 2.5 If any Member of a Licensing Committee wishes to informally view an application site then that viewing must only take place if it can be done from a public place. Members of Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a member is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out provided that the member is accompanied by a licensing officer.

3. Involvement of officers

- 3.1 Members of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 3.2 Any criticism by Members of the Licensing Committees or an officer in relation to the handing of any licence application shall be made in writing to the Strategic Director Environment and Neighbourhoods ~~Director of Health Safety and Licensing~~ and *not to the Officer handling the application*. No such criticism shall be raised in public.
- 3.3 If any officer feels or suspects that pressure is being exerted upon him/her by any member of the Council in relation to any particular application, he or she shall forthwith notify the matter in writing to the Monitoring Officer ~~Director of Health, Safety and Licensing~~.
- 3.4 If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application 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 shall declare a prejudicial interest in the public register held by the Monitoring Officer ~~Director of Health, Safety and Licensing~~ and take no part. This public register to be available for inspection at Licensing Committee meetings.
- 3.5 No officer of the Council shall engage in any paid work for any licensing matter for which Brent is the Licensing Authority other than on behalf of the Council.

4. Conduct of meetings

- 4.1 Members of the Licensing Committees shall refrain from personal abuse and party-political considerations shall play no part in the committee's deliberations. Members shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors and shall not bully any person. Members should not make up their minds before hearing and considering all relevant information at the meeting and should not declare in advance of the meeting how they intend to vote on a particular application.

- 4.2 The ~~Monitoring Officer~~ ~~Director of Health, Safety and Licensing~~ shall maintain a register of contact made by applicants, licensees, objectors, agents or interested parties with individual members of the Council on each and every licence application.
- 4.3 Members of the Licensing Committees should not speak to members of the public (including applicants and agents) during a meeting of the Licensing Committee or immediately prior to or after the meeting concerned other than in accordance with this Code or Standing Orders.
- 4.4 When questioning witnesses at a meeting of a Licensing Committee, members shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 4.5 The Licensing Committee should hear both sides of the case, in accordance with the rules of natural justice. ~~This means that .t The~~ ~~he~~ Committee must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity *in advance of the hearing* to prepare their case in answer to the objectors.
- 4.6 ——— It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 4.7 ——— Hearsay evidence, whilst admissible, must be treated with great reservation by members, who must make an assessment of its weight and credibility.
- 4.86 When new matters are raised as objections by any person at a hearing of the General Purposes Licensing Sub-Committee, the Committee is not obliged to hear them. However, if members feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees, as new objections cannot be raised at the hearing)

5 **Licensing Sub-Committee Procedures**

Alcohol and Licensing Sub-Committee

(A) The following procedure should be followed at meetings of the Alcohol and Entertainment Licensing Sub-Committees.

A.1 The Chair will ask the parties to the hearing to identify themselves and confirm whether they are represented or not.

A.2 The sub-committee will consider any requests that have been made by any party for another person to speak at the hearing.

A.3 The Chair will explain the procedure to be followed at the hearing.

A.4 Where there are a number of parties bringing representations either in support or objection to the granting of the licence application officers will attempt before the hearing to agree a limit in the number of people who will address the sub-committee.

A.5 If any party has indicated that they will not attend or failed to indicate whether or not they will attend and is absent, the Sub-Committee may hold the hearing in that party's absence or decide to adjourn.

A.6 A Licensing Officer will give details of the application and of the number and type of representations received as set out in the papers circulated.

A.7 Persons who have made representations will be allowed to address the sub-committee for up to 5 minutes each (unless the Chair permits a longer period). They should not repeat what is already set out in their representations or notice. In their address they should provide clarification on any points previously requested by the Council. Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.

A.8 The order in which persons making representations shall be called to speak is as follows;

- i. Statutory Parties including the Police, Environmental Health, Fire Authority, Child Protection Unit or other bodies as appropriate
- ii. Interested parties making representations in objection to the licence application
- iii. Interested parties making representations in support of the licence application

A.9 The members of the sub-committee may ask questions of the person making representations after their address.

A.10 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.11 Where a person making relevant representations has requested that another person be permitted to speak and the sub-committee have allowed this under 2 above, they ~~may will~~ be entitled to speak for up to 5 minutes (~~if unless~~ the chair permits ~~this a longer period~~) after questioning of the objector who made the request and provided that this does not disadvantage another party to the proceedings-

A.12 The members of the sub-committee may ask questions of such other person after they have spoken.

A.13 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.14 The same procedure as set out in 2.7 to 2.11 above is followed in respect of the applicant.

A.15 The members of the sub-committee may ask further questions of any party or other person allowed to appear at this stage.

A.16 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.

A.17 The sub-committee will consider its decision in private save that the licensing officer, legal adviser and committee clerk will be entitled to remain.

A.18 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.

A.19 Documentary evidence will only be considered by the Sub-Committee if this has been provided to the Council and the other party (or parties) prior to the hearing, or with the consent of other parties, at the hearing. The Chair does have the discretion to accept the filing of late evidence provided that all relevant parties agree and are not adversely affected by late disclosure. Each case will need to be looked at on its own merits and advice given by officers accordingly.

(B) General Purposes Licensing Sub-Committee

The following procedure should be followed at meetings of the General Purposes Licensing Sub-Committee.

B.1 The Chair outlines details of the application

B.2 The Chair invites identification of persons at the meeting:

- the applicant;
- those attending to object or give evidence; and
- those Officers and Members forming the Committee.

B.3 The Chair outlines the procedure of the hearing to those present

B.4 The Objectors state their case:

- The individual objectors (or their representatives) will be invited to state their case;

- The applicant (or their representative) will be invited to question the objectors or their witnesses; and
- Members of the Committee may ask questions of the objectors through the Chair.

B.5 Non-Members of the Committee (if any present) will address the Committee

- Non-members who are entitled to address the Committee (see 1.6 above) and wish to, will be invited to do so.
- The applicant (or their representative) will be invited to question the non-members who have spoken.
- The objectors (or their representative) will be invited to question such non-members.
- Members of the Committee may ask questions of such non-members through the Chair.

B.6 The Technical Officers Report

- Where appropriate, technical officers advising the Committee will make their observations.
- The applicant and objectors will be invited to ask questions of the technical officers.
- Members of the Committee may ask questions of the technical officers through the Chair.

B.7 The Applicants State Their Case

- The applicant is invited to state their case.
- The objectors (or their representative) will be invited to question the applicant.
- Members of the Committee may ask questions of the applicant through the Chair.

B.8 Summing Up

- The objectors will be permitted to “Sum Up”.
- The applicant will be permitted to “Sum Up”.

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6. Making the decision

- 6.1 The decision whether or not to grant a licensing application is a decision for the members of the Licensing Committee only. ~~–[The assessment of the weight and credibility of evidence is for Committee members alone to decide.]~~
- 6.2 Members shall retire to decide the matter in closed session. The Legal Officer, Licensing Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer and Licensing Officer will only provide advice on legal issues relating to the application. The Licensing Officer will not accompany the Members when they retire to make their decision where licensing officers acting on behalf of the Licensing Authority itself have requested the review of a licence or are making representations against the grant of a licence.
- 6.3 In accordance with regulations, members of the Alcohol and Entertainment Licensing Sub-Committees should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 6.4 The Licensing Committee will return to open session to announce its decision, and will confirm its decision in writing with reasons usually within 5 working days (in respect of the Alcohol and Licensing Sub-Committee) and 7 days (in respect of the General Purposes Licensing Committee). The written notice will set out comprehensively the reasons why the Licensing Authority arrived at its decision in considering the application together with the rights of appeal against a decision.
- 6.5 Members own knowledge of the circumstances surrounding an application is valid, provided that they are put to the applicant for a response. In reaching their decision members must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and members have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 6.6 Members considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Members must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.
- 6.7 Members should be aware that an unreasonable decision taking into account the above criteria, is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and may have to pay costs. The role of officers is to point this out and advise members as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council’s fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

7. Appeals

- 7.1 The Licensing Committee's decision is not a final one. In respect of decisions of the General Purposes Licensing Sub-Committee, the applicant has the right to appeal to the Magistrates Court, subsequently to the Crown Court (or in certain instances directly to the Crown Court), and beyond.
- 7.2 In respect of decisions of the Alcohol and Entertainment Licensing Sub-Committees, all parties (the Applicant(s), interested parties and responsible authorities) have the right of appeal to the Magistrates' Court. The Magistrates' decision is however final.
- 7.3 An appeal must be lodged with the Justices' Chief Executive for the Magistrates' Court within 21 days beginning on the day on which the appellant was notified by the Licensing Authority of the decision to be appealed against.
- 7.4 On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence.
- 7.5 Members who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 7.6 Taking this factor into account along with the real risk of costs against the Council, members must be wary of relying on any matters which could not readily be proved in evidence. In short, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

8. TRAINING

- 8.1 Members of the Licensing Committee (and alternate members) must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Member of the Licensing committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Licensing Committee.
- 8.2 Members should be aware that training is particularly important for members who are new to the Licensing Committee and for members who have not attended training in the recent past.
- 8.3 Where a member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

ANNEXE 1

Convention Rights

ARTICLE 6

Article 6 of the European Convention on Human Rights provides (in part):

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' or Crown Courts, so satisfying the provisions of Article 6.

The Committee must however conduct a fair hearing in accordance with the rules of natural justice.

ARTICLE 1 OF THE FIRST PROTOCOL

Article 1 of the First Protocol also has relevance to the licensing function. This states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

An existing licence is a possession under Article 1 of the First Protocol.

Any decision to, for example, revoke a licence must be according to the law. Any decision to impose terms and conditions on the grant of a licence will need to be proportionate and necessary to protect the interests of a democratic society.

Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.

ARTICLE 8

The impact of a decision on a neighbouring property also brings into play the right to respect for home, privacy and family life (Article 8)

Article 8 states:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."