

# **BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK**

## **MEMBERS CODE OF GOOD PRACTICE FOR LICENSING**

### **1. INTRODUCTION**

- 1.1 This Code has been prepared and adopted for the guidance of Councillors in their dealings with licensing matters.
- 1.2 The aim of this code is to ensure that, in the licensing process, there will be no grounds for suggesting that a licensing decision has been biased or otherwise not well founded. This document supplements the Members Code of Conduct.
- 1.3 This Code applies to all members of the Licensing Committee and Licensing and Appeals Board, substitutes and officers.
- 1.4 The process of arriving at decisions on licensing matters must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are: -
  - Your overriding duty as a Councillor is to all residents of the Borough Council area and in relation to licensing issues to help ensure that the council's licensing policies and statutory objectives are achieved.
  - Your role as a member of the licensing authority is to make decisions openly, impartially, with sound judgement, and for justifiable reasons.
  - Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which councillors have to decide.
  - When acting in your capacity as a Councillor you must have regard to the Council's adopted Code of Conduct.
- 1.5 If you have any doubts regarding whether this code of conduct for members or officers applies to their particular circumstances then you should take advice at the earliest possible opportunity from the Monitoring Officer or from a member of her staff. Any such advice should be sought well before any licensing meeting takes place.

### **2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT**

- 2.1 The Members' Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any licensing matter you should have primary regard for the Code, and particularly the requirement to properly declare all interests.
- 2.2 If you do not follow and apply the code then you may put the Council at risk of proceedings challenging the legality of the decision made and yourself at risk of sanction if there has been a failure to comply with the adopted Members' Code of Conduct.

### **3. DECLARATION OF INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT**

When considering licensing matters Members may find that they need to;

- declare interests in accordance with the requirements of the adopted Code of Conduct

or

- indicate whether or not they may have come to a fixed view on an application prior to the meeting (i.e. pre-determination)

- 3.1 The existence and nature of any interest should be disclosed in accordance with this Code at any Licensing Committee or Licensing and Appeals Board and any informal meetings or discussions with officers and any other Members.
- 3.2 Members should preferably disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter. Members receive papers for a licensing hearing prior to the hearing. Where Members read the papers and realise that they have an interest, Members should, where possible, contact Democratic Services so that a replacement Member can be found.
- 3.3 Members should notify the Monitoring Officer in writing of an interest and ensure that such notification should be no later than submission of that application and ensure that a proper record of the interest is noted at any meeting.
- 3.4 Where you have a Disclosable Pecuniary Interest (Your pecuniary interests (or those of your spouse/partner), are business interests; for example their employment, trade, profession, contracts, or any company with which you are associated and wider financial interests that you have for example trust funds, investments, and assets including land and property):

**Do not** participate or give the appearance of trying to participate in the making of any decision by the Licensing Authority.

**Do not** get involved with the processing of the application and direct any queries to the relevant officer.

**Do not** seek or accept preferential treatment or place yourself in such a position so as members of the public would think you are receiving preferential treatment because of your position as a Councillor. You may need to identify another local member who is prepared to represent local interests

**Do** note that there is a requirement to leave the room whilst the item is being discussed.

#### **4. PRINCIPLES FOR A FAIR HEARING**

The following general principles apply to the conduct of hearings by the Licensing Committee and Licensing and Appeals Board:

- (a) All parties have a right to a fair hearing
- (b) Each application shall be treated on its own merits
- (c) Decisions shall be lawful, proportionate, non-discriminatory, open and transparent
- (d) Decisions shall be made on the basis of the following considerations:
  - i. The merits of the application
  - ii. The promotion of the licensing objectives
  - iii. The relevant policies adopted by the Council
  - iv. Guidance issued from the Home Office or other Government bodies
  - v. The Human Rights Act

#### **5. PRE-DETERMINATION**

The allowance made for Councillors to be predisposed to a particular view is a practical recognition of:

- (a) The role played by party politics in local government and
- (b) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
- (c) The structure of local government which ultimately requires the same Councillors to make decisions.

Section 25 of the Localism Act 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, where the decision maker(s) had or appeared to have a closed mind (to any extent) when making the decision.

Councillors can listen to views expressed by applicants, objectors and licence holders, but should try to ensure that they are acting in an even handed manner.

## **6. CONTACT WITH APPLICANTS, OBJECTORS AND LICENCE HOLDERS**

**Do** refer those who approach you for licensing, procedural or technical advice to officers.

**Do not** agree to any formal meeting with applicants, objectors and license holders or any other parties involved in the licensing process. Where you feel that a formal meeting would be useful in clarifying the issues, such presentation or discussion should be part of a structured arrangement organised by officers. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and the record of the meeting is disclosed when the application is considered by the Committee.

## **7. LOBBYING OF MEMBERS**

Lobbying is a normal and perfectly proper part of the political process: those who may be affected by a licensing decision may seek to influence it through an approach to their elected ward Member or a Licensing Committee/Sub-Committee member. However, lobbying can, unless all parties concerned exercise care and common sense, lead to the impartiality and integrity of the Member being called into question.

Licensing Members should not attend private meetings with applicants or groups of objectors on their own. Such meetings, if considered helpful in order to clarify issues, should be arranged by or attended by relevant licensing officers so that those present at the meeting can be advised from the outset that the discussions will not bind the Council as licensing authority to any particular course of action and to ensure the meeting is properly recorded on the application file and disclosed when the matter is reported. The same principle applies to formal presentations which are sometimes requested by applicants particularly on major applications. Such presentations are a form of lobbying and whilst Licensing Members at such events may quite properly ask questions and seek clarification about the proposals, they should not express views or indicate how they are likely to vote when the matter comes before the Sub-committee.

**Do** remember that your overriding duty is to the whole community and not just the people in your own particular ward

**Do** explain to those lobbying or attempting to lobby you that whilst you can listen to what is being said it prejudices your impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.

**Do not** accept any gifts or hospitality from any person or group involved in or affected by a proposal. Whilst a degree of hospitality may be unavoidable, members must ensure

that such hospitality is of a minimum and its acceptance is declared as soon as is possible.

**Do** copy or pass on any lobbying correspondence you receive to the Executive Director at the earliest opportunity.

**Do** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.

**Do** note that you will not have pre-determined a matter or breached this Code if:

- You have listened or have received views from residents or other interested parties;
  - You have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and you have made it clear that you are keeping an open mind;
  - You have sought information through appropriate channels;
- or
- You are being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided that you explain your actions at the beginning of the meeting or item and make it clear that, having expressed the opinion or ward/local view.

## **8. LOBBYING BY MEMBERS**

It is recognised that Members who represent a ward affected by a particular application are in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances;

Being a ward Member does not in itself constitute an interest in an application or create a risk of apparent bias. Providing the ward Member does not have a disclosable pecuniary interest or prejudicial interest in applications or providing there is nothing to indicate any risk of bias or predetermination, a ward Member's local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives. Ward members may use their local knowledge to ask relevant questions and clarify facts.

## **9. SITE VISITS BY MEMBERS**

Sites inspections are occasionally helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision as outlined below. Any site visit should be with the Sub-Committee/Panel and include officers, applicant, applicant's representative, objectors, and any other person present at the hearing.

**Do** ensure that you treat the site visit only as an opportunity of seeking information and to observe the site.

**Do** ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection, but this is not the time for a debate.

**Do not** hear representations from any other party at the site visit.

**Do not** express opinions or views to anyone at a site visit.

**Do not** enter a site other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias.

**Do** stay with the rest of the Members officers and other parties during a site visit –it ensures that all members and persons affected by a decision see, hear and are able to comment on the site visit.

## **10. CONDUCT AT HEARINGS**

10.1 Members of the Licensing Committee and Licensing and Appeals Board should not communicate directly with the applicant, licence holder, interested party or responsible authority either immediately prior to the hearing, during the hearing or after the hearing, other than publicly through the Chairman.

10.2 Officers at the Hearing should refrain from engaging with the other parties at the Hearing, other than to offer procedural or housekeeping advice.

10.3 Questioning of those present is to clarify arguments and views and care should be taken not to express a view at this stage of the hearing, nor to intimidate speakers.

10.4 Any material considered at the hearing, that does not comprise any material supplied by the Licensing Authority must be tabled through the Chairman and the nature of any such material must be clear to all present at the hearing and available for inspection.

10.5 All questions, comments and requests during the hearing must be directed through the Chairman.

## **11 MEMBERS RELATIONSHIP WITH OFFICERS**

**Do** recognise and respect that officers in the processing and determining of licensing matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. You should therefore appreciate that officer' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.

**Do** consider the Council's protocol for member/officer relationships, which governs the working relationship you have with officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.

## **12. DECISION MAKING BY MEMBERS**

**Do** come to a meeting with an open mind on a matter and do demonstrate that you are open-minded.

**Do** make decisions in accordance with the Council's Licensing Policy and Statutory Objectives and guidance.

**Do** come to your decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to consider new information or there is insufficient information before you then you should request that further information and, if necessary, defer the application.

**Do not** ~~vote~~ or take part in a discussion at a meeting or make a decision unless you have been present for the entire meeting or for the whole of the matter in question. If a

member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.

**Do** ensure that the reasons you give for a decision are your reasons. You cannot ask an officer to give the reasons for you. An officer may assist in the drafting of your reasons.

**Do** not engage in social media or electronic communications, passing or receiving notes during the meeting.

### **13. SANCTIONS**

A failure to adhere to the Code gives rise to potential consequences to individual Members. Any allegation of a serious breach of this Code should be made in writing to the Monitoring Officer.