

Halton Borough Council

Members' Licensing Code of Good Practice

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Introduction

The aim of this code of good practice: to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

Your role as a Member of the Licensing Authority: to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the licensing process. (This includes, where applicable, when taking part in decision making meetings of the Council in exercising the functions of the Licensing Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to licensing enforcement matters as it does to licensing applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Council Solicitor or one of his staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do apply the rules in the Members' Code of Conduct first, which must be always be complied with.**
- **Do** then apply the rules in this Licensing Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of licensing control. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2. Decision Making

- **Do comply with relevant legislation such as the Licensing Act 2003. Voting on licensing matters is not a popularity contest.**
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient

time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.

- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or relevant adopted Council policies that you clearly identify and understand the licensing reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

3. Licensing Matters and Interests under the Members' Code

- **Do disclose the existence and nature of your interest at any relevant meeting**, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
 - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - **Don't** try to represent ward views, get another Ward Member to do so instead.
 - **Don't** get involved in the processing of the application.
 - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
 - **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)
 - **Do** notify the Monitoring Officer in writing of your own applications and note that:

- notification to the Monitoring Officer should be made no later than submission of the application, and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

4. Fettering Discretion in the Licensing Process

- **Don't fetter your discretion and therefore your ability to participate in licensing decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any licensing matter prior to formal consideration of the matter at the meeting of the licensing authority and of your hearing the officer's presentation and evidence and arguments on both sides.**

Fettering your discretion: in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and licensing determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)
- **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case. However, where:
 - you have been significantly involved in the preparation, submission or advocacy of a licensing proposal on behalf of:
 - another local or public authority of which you are a member; or
 - a body to which you have been appointed or nominated by the Council as its representative; or
 - you are a trustee or company director of the body submitting the proposal and were appointed by the Council,

you should always disclose a prejudicial as well as personal interest and withdraw.

- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward Member (*by the consent of the Chairman and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
 - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the member seating area for the duration of that item; and
 - ensure that your actions are recorded.

5. Contact with Applicants, Developers and Objectors

- **Do refer those who approach you for licensing, procedural or technical advice to officers.**
- **Don't** agree to any formal meeting with applicants or objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Council Solicitor or Licensing Manager to organise it. 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, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Council Solicitor any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the licensing file.

In addition in respect of presentations by applicants/developers:

- **Don't attend a licensing presentation unless an officer is present and/or it has been organised by officers.**
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** 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 Committee of the licensing authority.

- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

6. Lobbying of Councillors

- **Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.**
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a licensing proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Members' Code of Conduct
- **Do** copy or pass on any lobbying correspondence you receive to the Council Solicitor at the earliest opportunity.
- **Do** inform the Council Solicitor where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Licensing Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

7. Lobbying by Councillors

- **Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose licensing proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.**

- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any licensing decision is to be taken
- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a licensing issue.

8. Site Visits

- **Do try to attend site visits organised by the Council where possible.**
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views to anyone.

9. Communications with Members of the Public at Meetings

- **Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through proper procedures, as this may give the appearance of bias.**

10. Officers

- **Don't put pressure on officers to put forward a particular recommendation.** (This does not prevent you from asking questions or submitting views to the Council Solicitor, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Council Solicitor or those officers who are authorised by him to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of licensing matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. As a result, officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

11. Training

- **Don't participate in decision making at meetings dealing with licensing matters if you have not attended the mandatory licensing training prescribed by the Council (if any).**
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures, beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.