

Chapter ~~xxx~~5.3 – Licensing and Gambling Code of Conduct

(Updated: ~~Council 23/1/08~~)

THE LONDON BOROUGH OF ENFIELD LICENSING & GAMBLING CODE OF CONDUCT FOR COUNCILLORS~~CODE OF CONDUCT~~

1. DEFINITIONS

- 1.1 “Licensing Committee” (‘the Committee’) refers to the Committee established in accordance with Section 6 of the Licensing Act 2003 and consists of at least ten, but not more than fifteen, Members of the London Borough of Enfield (‘the Council’) as Licensing Authority.
- 1.2 “Licensing Sub-Committee” (‘the Sub-Committee’) refers to not less~~no more~~ than three Members of the Committee meeting as its Sub-Committee. The Sub-Committee is responsible for hearing applications made under the Licensing Act 2003 and the Gambling Act 2005.
- 1.3 Sub Committee meetings in relation to the Licensing Act 2003 matters will comply at all times with The Licensing Act 2003 (Hearings) Regulations 2005. Sub-Committee meetings in relation to Gambling Act 2005 matters will comply with The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (“the Proceedings Regulations”).

2. INTRODUCTION

- 2.1 This code~~This Licensing & Gambling Code of Conduct~~ (‘the Licensing Code’) relates to the conduct of all Members in respect of both licensing and gambling, including Members of the Committee and any Sub-Committees appointed.
- 2.2 The proceedings of the Licensing Committee are quasi judicial and the rules of natural justice apply. This imposes a higher set of standards on those Councillors who are involved in the decision making process. Failure to abide by these standards may render the Council or individual Councillors open to challenge through the Monitoring Officer and may be referred to the Councillor Conduct Committee.

2.3 This code provides a set of guidelines for Councillors on the standards which apply to the Licensing Committee. It is part of the Council's Member Code of Conduct and must be read in conjunction with this document.

3. BEFORE THE HEARING

3.1 TRAINING OF COUNCILLORS

The Council will arrange training on the work of the Licensing Committee for all Councillors who sit on the Committee; (i) before participating in a meeting of the Committee and (ii) annually while they remain a member of the Committee. For a Member who has previously undertaken the full training and is re-appointed to the Committee for a further year without a break, only a refresher session is required. Other Councillors are free to attend the training in order to gain an understanding of the licensing issues.

~~2.2 The Code is supplementary to the Members' Code of Conduct ('the Members' Code') adopted by Council on 27 June 2007.~~

3.4. MEMBERS' ROLE IN OPPOSING APPLICATIONS UNDER THE LICENSING ACT 2003 AND THE GAMBLING ACT 2005

3.14.1 The role of Members in opposing applications differs depending on whether the application was made under the Licensing Act 2003 (LA) or the Gambling Act 2005 (GA):-

~~3.2 When asked to do so~~ The role of Members in opposing applications for premises licence or club premises certificate under the Licensing Act 2003 is as follows:

4.1.1 ~~Members~~ may represent persons who:

- live in the vicinity (LA);
- live sufficiently close to premises (GA);
- or persons involved in a business in the vicinity (LA) or
- persons who have a business interest (GA)

~~3.2.1 , but only when asked to do so. Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, they~~ Members may choose to do so, but then must confine themselves to matters which arose during the hearing and/or were contained within the letters of representation;

~~3.2.2~~ 4.2 For both licences Members may make representations in a personal capacity, subject to the following restrictions; ~~as set out in paragraph 5.6 below.~~

~~3.3 The role of Members in opposing applications for premises licence under the Gambling Act 2005 is as follows:~~

~~3.3.1 Members may represent persons who live sufficiently close to the premises to be likely to be affected, or persons who have business interests that might be affected by the authorised activities but only when asked to do so. Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, Members may choose to do so, but must then confine themselves to matters which arose during the hearing and/or were contained within the letters of representations;~~

~~3.3.2 Members may make an oral representations in personal capacity, subject to the restrictions as set out in paragraph 5.6 below;~~

~~3.3.34.2.1 Members may send a letter of representation to the Licensing Unit and then may orally address the Sub-Committee without being asked by a resident specifically to do so (i.e. a general ward representation);~~

~~3.3.44.2.2 In order to make oral representations before the Licensing Sub-Committee, members must first send a letter of representation to the Licensing Unit within the specified timeframe. Where Members have a personal and prejudicial interest, the letter of representation must also outline the existence and nature of the interest;~~

~~3.3.54.2.3 If a Member decides not to attend the Sub-Committee hearing to make oral representations, their letter of representation will still be taken into account if it relates to one of the grounds for determination; (see paragraph 7.7);~~

~~3.3.6 If Members making a general ward representation have no interest, or a personal interest only, they may remain for the duration of the hearing;~~

~~3.3.7 If Members making a general ward representation have a personal and prejudicial interest, they may attend the Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided that the public are also allowed to attend the meeting for the same purpose), they must then leave the room for the duration of the meeting but may be present for the announcement of the decision.~~

~~4. GIFTS AND HOSPITALITY~~

~~4.1 Members of the Licensing Committee should have particular regard to public perception when accepting any gift of hospitality from licensed premises (being premises licensed under the Licensing Act 2003 or Gambling Act 2005) in respect of which they might be called upon to consider an application, and should~~

~~act with extreme caution when accepting any gift whatsoever, regardless of the monetary value.~~

~~4.2 It is generally acceptable for Members to accept light non-alcoholic refreshments (such as tea, coffee, soft drink, juice, biscuits, light snacks) whilst attending a meeting in an official capacity.~~

5. MEMBERS' INTERESTS – LICENSING AND GAMBLING APPLICATIONS

~~5.1 Members must comply with Part 2 of the Members' Code, which deals with interests.~~

~~5.2 Members must always declare any disclosable pecuniary, other pecuniary personal interest, or non-pecuniary personal and prejudicial interest, as defined by the Members' Code. The existence and nature of an interest must be declared when Members are sitting on the Sub-Committee or appearing before the Sub-Committee. This should include interests where Members have some doubt whether or not it is declarable and such an interest should be notified in advance of the hearing to the Legal Advisor for that hearing.~~

~~5.3 Members with a personal and prejudicial interest must not sit on the Sub-Committee and determine the application. As a general rule, Members are not invited to sit on any Sub-Committee which will consider applications relating to the ward which they represent.~~

~~5.45.1 Members with a personal and prejudicial interest may make an application under the Licensing Act 2003 or Gambling Act 2005, or act as a representative for the applicant, and may then attend the Sub-Committee hearing for the purpose of making the case, answering questions or giving evidence. (provided that the public are also allowed to attend the meeting for the same purpose).~~

~~5.5 Members may be present for the announcement of the decision whether or not they are representing a party or have a personal and prejudicial interest.~~

~~5.6 Members who live in the vicinity of a premises subject to an application under the Licensing Act 2003, or who live sufficiently close to a premises subject to an application under the Gambling Act 2005 so as to be likely to be affected by gambling, would generally be regarded as having a personal and prejudicial interest. In such circumstances Members with a personal and prejudicial interest may:~~

~~5.6.1 Send a letter of representation to the Licensing Unit within the specified timeframes for making representations. The letter of representation must also outline the existence and nature of the interest;~~

~~5.6.2 Attend the Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided the public are also~~

~~allowed to attend the meeting for the same purpose). In addition, whilst this is a matter for the Member, it is suggested that a Member with a personal and prejudicial interest may wish to consider whether or not their involvement could be such as to make it unwise for them to participate because of an adverse potential impact on the reputation of themselves or of the Council;~~

~~5.6.35.2~~ In order to be able to make oral representations before the Sub-Committee, Members must first send a letter of representation to the Licensing Unit, outlining the nature of any interest. - If a Member decides not to attend the Licensing Sub-Committee hearing to make oral representations, the letter of representation will still be taken into account if it relates to one of the grounds for determination (~~see paragraphs 7.6/7.7~~) and the Member lives in the vicinity (Licensing Act 2003) / sufficiently close (Gambling Act 2005).

~~5.7~~ ~~It is accepted that Members of the Sub-Committee may have visited the licensed premises in their personal lives. Members should declare if it amounts to a personal interest, or a personal and prejudicial interest.~~

~~5.85.3~~ Members involved in Council meetings which approved the Licensing Policy and the Gambling Policy, are not excluded from the Licensing Sub-Committee because of such involvement.

~~6.~~ Lobbying -

Of Licensing Committee Members

~~6.15.4~~ If a Sub-Committee Member is approached by persons wishing to lobby him/her ~~they must about a licence application under the Licensing Act 2003 or Gambling Act 2005 that they will be determining, then that Sub-Committee Member must politely~~ explain that they cannot discuss the matter and refer the lobbyist to the Licensing Unit or to his/her Ward Member. Councillors must not give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support ~~However~~ the application. ~~Members~~ ~~member~~ can explain the process of decision making in general terms:-

~~6.25.5~~ Any written/email presentations received by a Sub-Committee Member should be passed to the Licensing Unit and where. ~~Any such approach~~ received in time should also be reported at the hearing at which the application is being determined.

~~6.35.6~~ Requests for procedural advice with regards to licensing applications should be referred to the Licensing Unit for advice and information.

Lobbying - Of or by all other Members

~~6.45.7~~ Other Members must not lobby Members who sit on the Sub-Committee, directly or indirectly, in writing or otherwise, in respect of items to be decided by the Sub-Committee with a view to influencing their decision. Any representation by other Members, on behalf of an interested party, should be sent to the Licensing Unit for inclusion in his report.

~~7.6.~~ **GUIDING PRINCIPLES FOR SUB-COMMITTEE MEMBERS**

~~7.1~~ In respect of any application listed for consideration by a particular Sub-Committee, Members of that Sub-Committee must avoid expressing personal opinions prior to the hearing. To do so would indicate that the Member has made up his or her mind before hearing all the evidence.

~~7.2~~ Those Sub-Committee Members must not take nor declare a view on the merits of the application nor organise support or opposition in advance of the hearing, and must keep an open mind until after they have considered all the evidence and arguments presented.

~~7.3~~ Those Sub-Committee Members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality nor give the impression that they have done so.

~~7.4~~ Those Sub-Committee Members cannot represent one of the interested parties or applicant.

~~7.5~~ Decisions of the Sub-Committee shall not be taken in accordance with a political party direction given at a previous party group meeting or otherwise.

~~7.6~~ For applications heard under the Licensing Act 2003 and Gambling Act 2005, the Sub-Committee must make their decisions based on the respective documents; Licensing Objectives, relevant ~~having regard to the Guidance and Licensing/Gambling Guidance; Policy.~~

~~7.7~~ For applications heard under the Gambling Act 2005, the Sub-Committee should aim to permit the use of premises for gambling in so far as they think it:

~~7.7.1~~ in accordance with any relevant Code of Practice;

~~7.7.2~~ in accordance with any relevant Guidance;

~~7.7.3~~~~6.1~~ reasonably consistent with the Licensing/Gambling Policy.-Objectives (subject to 7.7.1 & 7.7.2 above); and

~~7.7.4~~ in accordance with the authority's statement of Gambling Policy (subject to 7.7.1 & 7.7.3 above).

~~8.~~ **NATURAL JUSTICE**

~~8.16.2~~ Members of the Sub-Committee must comply with the rules of natural justice, ensuring that parties have an opportunity to be heard, whilst acting fairly and impartially. When the Sub-Committee is making its determinations, the following principles must be considered:

~~8.1.16.2.1~~ 8.1.16.2.1 Free from the appearance of bias – Sub-Committee Members must 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. Members of the Licensing Committee should not make any public statements which may give the impressions to the public that they may not be objective when sitting on any Sub-Committee. Bias may include pre-judged ideas based on his/her own prejudices or party political influences;

~~8.1.26.2.2~~ 8.1.26.2.2 Fair hearing – For a hearing to be fair a number of conditions must be satisfied, including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally the right to be given reasons for any decision made.

~~9.7.~~ **CONDUCT AT COMMITTEE HEARINGS**

~~9.17.1~~ 9.17.1 Members of the Sub-Committee should not communicate directly with the applicant, interested parties or responsible authorities (N.B. the Licensing Unit is *not* a responsible authority) either immediately prior to the hearing, during the hearing, or after the hearing, other than publicly through the Chair.

~~9.27.2~~ 9.27.2 Licensing Sub-Committee Members' questioning of speakers is to clarify arguments and views, and care should be taken not to express or indicate a view at that stage, nor to intimidate speakers.

~~9.37.3~~ 9.37.3 Any material considered by the Sub-Committee that does not comprise part of any material supplied by the Licensing Unit must originate only from the applicant, an interested party or responsible authority, and must be tabled through the Chair. The nature of any such material must be clear to all present at the hearing and available for inspection.

~~9.4~~ ~~Members must comply with the 'Procedures to be followed at hearings of the Licensing Sub-Committee', as amended from time to time.~~

~~9.57.4~~ Members should not take part or vote on an item if they have not familiarised themselves with the report and letters of representation and been present throughout consideration of the item.

10.8. RECORDING OF REASONS

~~10.18.1~~ The Sub-Committee must give reasons for its decisions ~~which.~~ ~~The reasons~~ will be published in the minutes.

~~10.28.2~~ Members of the Sub-Committee should be aware of the dangers in publicly discussing the reasons with persons other than relevant Council officers prior to the formal publication of the minutes and subsequently.

11.9. APPLICATIONS SUBMITTED BY THE LOCAL AUTHORITY

~~11.19.1~~ Where the Local Authority applies for a premises licence under the Licensing Act 2003 for open spaces or buildings which it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Sub-Committee must hear and determine this application / review in exactly the same manner as other applications / reviews. The Sub-Committee must give no regard to the interests of the Council itself, aside from receiving relevant representations on this issue.

~~11.29.2~~ A dispensation to hear such applications will not usually be necessary, as a Member will not have ~~ana personal and prejudicial~~ interest solely through being a Councillor.

~~11.39.3~~ Members who are part of the authority's decisions to apply for the licence, or who express a view in respect of such an application, should not also be part of the Sub-Committee.

~~11.4~~ ~~Members of the Sub-Committee must be aware of any potential appearance of bias and must endeavour to avoid giving any potential appearance of bias even though none exists.~~

12.10. SITE VISITS

~~12.1~~ Site visits are generally unnecessary and can risk putting the Members and the Licensing Unit at risk of accusations of potential bias.

10.1