

Standards Committee : 9 March 2010

Title of report: Proposed adoption of a revised and updated Councillors' Protocol for Licensing Committees

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected: All

Ward Councillors affected: N/A

Public or private: Public

1. Purpose of Report

To consider the attached draft Licensing Protocol for Councillors and refer to the Licensing Committee for consideration.

To recommend to Council adoption of the attached draft Licensing Protocol.

2. Key Points

It is essential that the Council's licensing process operates properly, lawfully and effectively and is seen by all parties involved in the process to do so. Decisions must be made fairly, openly, impartially and for justifiable licensing reasons. Failure to do so not only exposes both the Council and individual councillors to potential criticism and allegations of improper conduct, but can also increase the likelihood of legal challenges being mounted through the courts or complaints being made to the Ombudsman.

The Licensing Act 2003 regulates "licensable activities" namely the sale of alcohol, regulated entertainment and late night refreshment. The Gambling Act 2005 regulates gambling activities and permissions. The responsibility for these functions lies with the local authority. It is essential that members of the Licensing Committee should determine matters properly and in the interests of the whole of the community.

The attached draft protocol is intended to address the issues likely to be faced by members of the Licensing Committee.

3. Implications for the Council

The Council should have appropriate protocols in place to ensure that its licensing processes are robust and that, as far as possible, its decisions are not susceptible to legal challenge.

4. Consultees and their opinions

Various officers in Legal Services, Licensing and the Policy and Governance Service have been involved in discussions regarding the proposed protocol. The Chair of the Licensing Committee has been consulted and is in agreement with the proposal.

5. Officer recommendations and reasons

That the Standards Committee consider the attached draft protocol and refer it to the Licensing Committee for further consideration and thereafter that the draft protocol be referred to the Corporate Governance & Audit Committee and then Council for formal adoption.

6. Cabinet portfolio holder recommendation

N/A

7. Next steps

If approved by this Committee, the draft licensing protocol will be referred to the Licensing Committee on [] 2010, then to the Corporate Governance & Audit Committee on 14 May 2010 and then to Full Council on 26 May 2010 for formal approval.

8. Contact officer and relevant papers

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Background Papers:

N/A

KIRKLEES COUNCIL

Draft Licensing Committee Protocol

This Protocol sets out principles to guide members and officers in determining licensing applications and making other decisions within the terms of reference of Licensing Committee.

Although it is of particular relevance to members of Licensing Committee, it applies to all members of the Council who may become involved in licensing matters.

PROTOCOL - LICENSING COMMITTEE

1. INTRODUCTION

This protocol contains guidance for members of the Licensing Committee. If members are uncertain about the application of the Protocol, they should seek guidance from officers, preferably in advance of any meeting.

Licensing has a very important role to play in the life of the district. The Licensing Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005. The Licensing Act 2003 regulates 'licensable activities' which are defined in the Act as the sale of alcohol, regulated entertainment and late night refreshment. The Gambling Act 2005 regulates the licensing of gambling premises and certain permissions.

In this Protocol, reference to 'the Regulations' means The Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005 No 44) and/or The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (SI 2007 No 173)

2. INTERESTS OF THE WHOLE COMMUNITY

Members of Licensing Committee should determine licensing matters in the interests of the whole community of the district.

All applications should be determined with regard to the relevant legislation, the statutory guidance and the Licensing and Gambling policy adopted by the Council.

Members of Licensing Committee should not prejudge licensing applications nor do anything that may reasonably be taken as giving an indication of having prejudged licensing applications.

All other members should have regard to these principles when dealing with licensing matters and must avoid giving an impression that the Council may have prejudged the matter.

3. PARTICIPATION OF MEMBERS

Members must consider carefully whether it is right for them to participate in a matter before the Committee. There are two elements to this:

- where they have personal and prejudicial interests

- where members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its own merits.

While this Protocol seeks to guide Members each situation will be different and Members should seek guidance from Officers.

4. Personal and prejudicial interests

Members must comply with the provisions regarding personal interests and prejudicial interests set out in the Code of Conduct for Members. In particular, members must be mindful that if they have a “prejudicial interest” as defined in the Members’ Code of Conduct, they must withdraw from the meeting and take no part in the matter.

The only exception to this allowed under the Licensing and Gambling Act is where a member may attend to make representations, answer questions or give evidence provided that it is in their capacity as an interested party i.e. they live in the vicinity of the premises under consideration or have been asked to represent interested parties in the vicinity, which should be authorised in writing. See Section 8 below.

Pre-judgment

While the Code of Conduct for Members provides guidance as to personal and prejudicial interests which may affect a member's ability to take part in the decision-making process, members may have other interests which may influence their decision which will not amount to personal or prejudicial interests for the purposes of the Code. In order to maintain the integrity of the licensing system, members should be careful to ensure that such interests do not unduly influence their decisions. Such interests may arise:-

- from ward concerns
- from membership of other Committees of the Council
- from membership of other public or community bodies
- from membership of voluntary associations and trusts (including where appointed by the Council)
- from a connection with a particular policy initiative of the Council.

- from membership of clubs, societies and groups
- from hobbies and other leisure interests
- from employment or professional concerns

Such interests may mean that a Member is involved with a licensing application before the matter comes before the Licensing Committee. Such involvement need not on its own debar a member from participating in making the licensing decision when the matter is considered by Licensing Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

As a minimum, the integrity of the licensing system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

5. NATURAL JUSTICE

There are two elements to natural justice:

(a) Fairness

When the Licensing Committee is considering an application, the applicant will be given an opportunity to put his/her case before the Committee, in accordance with the Regulations governing such hearings and the procedure adopted by the Licensing Committee. If the applicant or his/her representative does not attend, the Licensing Committee may proceed in the applicant's absence in accordance with the Regulations and the Procedure.

The Licensing Authority will arrange a hearing when it receives relevant representations under the legislation.

All documentation to be considered by the Licensing Committee will be available in advance in accordance with the Regulations and the Procedure.

All Members of the Licensing Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once

consideration of the matter has started, that Member shall play no part in the decision-making process for the particular application. Where an application is adjourned it shall be heard by the same Members only, and no others.

(b) Prevention of Bias

The rules about personal and prejudicial interests are set out in the Code of Conduct for Members and should be firmly applied. Members are also referred to the guidance about prejudgement in paragraph 4.

When the Licensing Committee moves into private session to consider its decision, it should be accompanied only by its Decision Support Unit Officer and legal adviser who shall have taken no substantive part in the debate, and shall play no substantive part in the decision-making process other than to record and advise.

6. HEARINGS

Hearings shall generally be in public and the Committee shall retire to consider its decision and take advice from officers.

7. DEBATE

Only members of the Licensing Committee can take part in the decision making.

Members of Licensing Committee must:-

- a) listen to all arguments for and against an application and weigh them up carefully before deciding whether to support or oppose a particular application.
- b) make sure that they are not swayed by arguments which are not directly related to the merits of the application.

8. ROLE OF MEMBERS IN RELATION TO APPLICATIONS

Licensing Act 2003

S13 of the Licensing Act 2003 sets out the definition of 'interested parties'; - that is persons who may make representations to licensing authorities on applications for the grant, variation or renewal of a premises licence for the licensable activities covered by this Act.

There are four categories of 'interested parties' described in the Act:

- a) A person living in the vicinity of the premises in question;

- b) A body representing persons living in that vicinity, for example a residents' association;
- c) A person involved in a business in the vicinity of the premises in question; and
- d) A body representing persons involved in such businesses for example a trade association.

It can be seen that Members are not entitled as *of right* to make such representations in relation to this Act but can do so if they live in the vicinity of the premises (as is the case for any other member of the public) or are requested to represent another interested party.

This section of the Act is explained in paragraphs 8.5 – 8.11 of the Guidance issued by the government and a copy can be obtained from officers if necessary.

Gambling Act 2005

S 158 of the Gambling Act 2005 sets out who is an interested party in relation to an application under this Act for a premises licence for gambling. An interested party is a person who:

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)

Guidance issued under the Act by the Gambling Commission states at Para.8.11:

'Interested parties can be persons who are democratically elected such as councillors and MPs. Where appropriate this will include county, parish and town councillors. Other than these persons, authorities should require written evidence that a person 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or business interests that might be affected by the authorised activities. A letter from one of these persons requesting the representation is sufficient.'

9. LOBBYING

While recognising that lobbying of members has an important role in the local democratic process, this should not prejudice the licensing process.

Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

- Avoid organising support for or opposition to a licensing application or involving yourself in such a process and avoid lobbying other councillors on the issue.
- If applicants, potential applicants or objectors ask to meet you about a proposal, refer them to another councillor who does not serve on the licensing sub-committee and will not be involved in the decision; alternatively refer them to an officer.
- If any one (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why you have to remain completely impartial.
- Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of personal or prejudicial interests under the members' code of conduct.
- When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the sub-committee meeting. You can, if pressed, perhaps, indicate the sort of concerns or issues which you think you'll need to consider when making the decision, but remember that if you cannot clearly demonstrate that at the meeting you have an open mind and are balancing all the various issues and arguments, you run the risk of potentially invalidating the decision and making the Council subject to legal challenge. So make sure that you also say that you will not be making a decision until the meeting.
- If you cannot avoid expressing a clear opinion on the decision beforehand, you should not sit on the committee concerned with determining the application

- Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to get their views across, tell them how to contact another councillor who can help them, or refer them to officers who can explain the issues and reasons.

10. VISITS TO PREMISES

The main role of Licensing Committee is to decide individual applications which is a quasi-judicial function. The Committee may find it useful in the course of its deliberations on an application to visit the premises in question. While it is proper for the Committee to do this, care must be taken not to prejudice the integrity of the licensing process. The following ground rules will help to prevent this

Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should pass the person concerned on to officers.

- Members should not accept any gift or any hospitality during such visits.
- There should be no discussion of individual applications with anyone except fellow panel members
- At such visits, there should be no one-to-one discussions between Members and others.
- Officers should always be present at such visits.

11. PRESS COMMENTS

All members should ensure that any contact which they may have with the press should accord with the principles of this Code and should not affect the integrity of the licensing system.

12. TRAINING

Making good, justifiable licensing decisions is not something which can be done by instinct.

Before serving on any committee making licensing decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training in both the procedural issues outlined in this protocol and in the basic principles of licensing law, so that you can understand the basis on which decisions need to be made and on which officers prepare reports.

This requirement will also apply to training required to refresh and update knowledge and understanding.

Suitable training will be provided sufficient to ensure that councillors who wish to be involved in licensing decisions can do so, but you do need to make an effort to attend.

Annual updating training will also be provided. You will not be able to continue to take part in licensing decisions unless you take part in that training.