

HYNDBURN BOROUGH COUNCIL

MEMBERS LICENSING CODE OF GOOD PRACTICE

A summary of some key points:

- This Licensing Code of Good Practice is supplementary to the Members Code of Conduct, which applies to Members at all times.
- Licensing Committees are “quasi-judicial” proceedings and the principle of natural justice applies – everyone has the right to a fair hearing, and the decision-making process must always be fair, and must be seen to be fair.
 - Individuals must be afforded a fair opportunity to present their case.
 - A decision maker should have no pecuniary or proprietary interest in the outcome of the proceedings and must not be suspected or show a likelihood of bias or predetermination.
- You should not take part in a decision if:
 - You have made up your mind beforehand or indicated to others that you have done so (predetermination);
 - You have a personal interest in the matter before the Committee that compromises your ability to give it a fair hearing, or gives the impression that you are prejudiced one way or the other (bias); or
 - You have a Disclosable Pecuniary interest in the matter.
- Be as open as possible about your interests, your actions and your decisions, and be prepared to give reasons for your actions and decisions.
- You can be predisposed towards a particular outcome provided that you don't have a closed mind and you are willing to listen to and consider everything presented to the Committee before you reach a final decision.
 - If you indicate a predisposition to anyone, always make it clear that you are still open to hearing all the evidence before making a final decision.
 - Always consider how what you say and do will look to others.
- Avoid being lobbied and having contact with interested parties where possible, but where it isn't possible make it clear that you must remain open minded, and then report the contact to the Head of Licensing.
- Political Group Meetings should never dictate how Members should vote on a licensing matter.
- Take account of relevant advice from the Council's statutory and other professional officers, taking all relevant information into consideration, remain objective and make decisions on merit.
- You must make decisions having regard to all of the relevant statutory criteria, policy and guidance relating to the determination of the matter.
 - If you are proposing, seconding or supporting a decision contrary to the licensing objectives, officer recommendations, statutory guidance or any relevant policies, then you must be satisfied that there are exceptional circumstances and justifiable reasons to do so and you must clearly identify and understand the licensing reasons leading to this decision, which must be recorded.

This summary sheet is designed to provide an overview only, and should be read in conjunction with the rest of this Code of Good Practice.

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1. INTRODUCTION

- 1.1. **The aim of this Code of Good Practice** is to make sure that the licensing process is fair, open and conducted in accordance with all relevant licensing law and policy, and to ensure that there can be no grounds for suggesting that any decision has been affected by bias, predetermination or is unreasonable in any way.
- 1.2. **Your role as a Member of the Licensing and/or Judicial Committee** is to make licensing decisions openly, impartially, with sound judgement and for legally justifiable reasons. You are entitled to be predisposed to make licensing decisions in accordance with your political views and policies provided that you do not predetermine any particular matter. You must weigh up all the relevant factors and give fair regard to all relevant points raised, both in the Officer's report and presentation and by any person addressing the Committee, with an open mind before making any decision.
- 1.3. **This Code applies to Members at all times when they are involved in the licensing process.** It applies to the conduct of Members appointed to both the Licensing and the Judicial Committee, including any sub-committee of those Committees. It applies to the taking part in Committee meetings of the Council when it is determining licensing matters, and also when you are involved on less formal occasions, such as meetings with officers or the public and consultative meetings.
- 1.4. **If you have any doubts about the application of this Code to your own circumstances you should seek advice from the Monitoring Officer or her staff, preferably well before any meeting takes place.**
- 1.5. **If you do not abide by this Code of Good Practice** your conduct may lead to the legal challenge of a Licensing/Judicial Committee decision, or invoke a finding of maladministration by the Local Government Ombudsman. You may also put yourself at risk of being reported to the Standards Committee, which could result in you being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1. You must apply the rules in the Members' Code of Conduct first, as they must always be complied with. This includes the rules on Personal Interests, Disclosable Pecuniary Interests and Conflicts of Interest, as well as the general rules contained therein.
- 2.2. You should then apply the rules in this Licensing Code of Good Practice, which explains and supplements the Members' Code of Conduct with specific reference to dealing with licensing matters.

3. INTERESTS

- 3.1. The Members' Code of Conduct requires you to notify the Council's Monitoring Officer of any Disclosable Pecuniary Interests, and any Personal Interests. You are also required to declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties, and to take steps to resolve any conflicts arising in a way that protects the public interest. This could be done by registering or declaring those interests in accordance with the Members' Code of Conduct.
 - 3.1.1. It is advisable for any Member to decline to sit on a Licensing or Judicial Committee if one of his or her friends, for example, is making an application or an objection.
 - 3.1.2. Any Member that has substantial interests, or other interests that would prevent taking part or voting on a regular basis, should avoid membership of the Licensing and/or Judicial Committees.
- 3.2. In addition, a Member should always seek to act with integrity when reaching a decision, which is defined in terms that:

*“Holders of public office must avoid placing themselves under an obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**”.*

3.3. Disclosable Pecuniary Interests

- 3.3.1. Disclosable Pecuniary Interests are dealt with in detail in the Members' Code of Conduct and this section should be read in conjunction with the rules set out therein. In short, a Disclosable Pecuniary Interest is an interest of yourself or your partner in employment, office, trade, profession, sponsorship, contract, land, licenses, corporate tenancies or securities.

3.3.2. If you have a Disclosable Pecuniary Interest in any matter that is being considered by the Council / Licensing or Judicial Committee;

- You must not participate in any discussion of the matter at the meeting (unless you have obtained a dispensation from the Standards Committee that permits you to speak on the item).
- You must not participate in any vote taken on the matter at the meeting (unless you have obtained a dispensation from the Standards Committee that permits you to vote on the item).
- You must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, you must register the interest in your register of member's interests within 28 days.
- You should leave the meeting room whilst the matter in which you have a Disclosable Pecuniary Interest is being discussed and voted on.

3.3.3. The Members' Code of Conduct explains how failure to comply with the requirements relating to Disclosable Pecuniary Interests can amount to a criminal offence.

3.4. Personal Interests

3.4.1. Personal Interests are also dealt with in detail in the Members' Code of Conduct and again this section should be read in conjunction with the rules set out therein. A Personal Interest can be any interest, no matter how small, that a Member may have in any matter before the Council.

3.4.2. If you have, or think that you might have a Personal Interest in any planning matter before the Council / Licensing and/or Judicial Committee then you must disclose that interest at the commencement of the meeting, or as soon as the interest becomes apparent. You do not, however, have to leave the meeting and you may still be able to take part in the discussion and voting, provided that you are satisfied that the interest will not affect your ability to deal with the matter fairly and with an open-mind, nor can it reasonably be perceived to do so.

3.4.3. You should notify the Monitoring Officer in writing of any personal licensing applications that you submit to the Council. This notification should be given to the Monitoring Officer no later than submission of the application.

3.4.3.1 The proposal should always be reported to the Committee as a main item and not dealt with by officers under delegated powers.

3.4.3.2 It would also be advisable to employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the Committee meeting. You are not prevented from seeking to explain and justify a proposal in which you have a conflict of interest to an appropriate officer, in person or in writing, but your role as a Member may place additional limitations on you in representing the proposal in which you have a Personal Interest. For example, you will need a dispensation from the Standards Committee if you wish to speak as a member of the public in respect of your own licensing application.

3.4.3.3 You must not sit on the Committee nor take part in any discussion or voting. You may wish to leave the meeting room altogether whilst the item is heard.

3.4.4. If you have a private interest in a matter before the Licensing and/or Judicial Committee you may consider that the only way to resolve any conflict of interest, and for the sake of the matter appearing to be fair and free from any bias, is not to vote or even participate in any discussion.

3.4.5. Any Member that is not a member of the Licensing or Judicial Committee and speaks at a meeting of one of those Committees on a particular item should, when addressing the Committee, make it clear whether that Member is speaking in their capacity as an interested party (as defined by section 13 of the Licensing Act 2003) or as a representative of interested parties.

4. PREDISPOSITION, PREDETERMINATION AND BIAS

4.1. “**Predetermination**” occurs where a Member’s mind is closed to the merits of any arguments relating to a particular matter and the Member makes a decision without taking them into account.

4.2. “**Bias**” occurs where a Member has a clear inclination or prejudice for or against one person or group relating to a particular item in a way that can be considered to be unfair.

4.3. Do not limit your discretion or appear to limit your discretion, and therefore limit your ability to participate in a licensing decision, by making up your mind, or clearly appearing to have made up your mind, on how you will vote on any licensing matter prior to formal consideration of that matter at the meeting of the Licensing or Judicial Committee and hearing the officer’s presentation and evidence and all of the arguments for both sides of a decision.

4.4. Restricting your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and/or a legal challenge on the grounds of there being a danger of bias or predetermination, or a failure to

take into account all of the factors enabling the proposal to be considered properly and fairly and on genuine licensing grounds.

4.5. This rule should not however be interpreted in such an unnecessarily restrictive way so as to limit the quality of debate or stifle valid discussion. You are entitled to have a “**predisposition**” towards a particular outcome, and even indicate your likely voting intentions, provided that you don’t have a closed mind and you are willing to listen to and consider all arguments and points being made on a matter before you reach a final decision.

4.6. Section 25 of the Localism Act 2011 clarifies the rules on predetermination by providing that:

“A decision maker is not to be taken to have had, or to appear to have had, a closed mind when making the decision just because –

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take, in relation to a matter, and,

(b) the matter was relevant to the decision”.

4.7. Members are able to publicise their views on issues, indicate their likely voting intentions and engage fully with their local communities (as this will help Members to better represent their constituents and enrich local debate) without this affecting participation in the Licensing and/or Judicial Committee’s formal decision-making process, provided that Members go into the Committee meeting with an open mind, being prepared to listen to all of the facts, evidence and arguments presented before making a final decision.

4.7.1. In order to confirm this is the case the Chairman of the particular Committee meeting may ask a Member to confirm whether or not they still have an open mind in respect of any application to be considered.

4.7.2. If you do indicate that you are predisposed towards a particular outcome or state that based on what you have currently heard you are of a certain opinion, at any time before the Committee votes on a particular matter then you should always make it clear when doing so that you are still open to hearing all the evidence/arguments/debate before making a final decision.

4.7.3. If you are a Member of the Licensing and/or Judicial Committee it is permissible to speak on any item being heard on behalf of constituents providing you retain an open mind on the application. In such cases it may be appropriate to refer the constituents to another Member who is not on the Committee and who is willing to speak on behalf of the residents.

4.7.4. If you have formed such a strong view on an item yourself that you feel unable to take part in the Committee decision then, subject to the rules on

Interests, you may stand down from the Committee and speak as a member of the public on behalf of residents.

4.8. Members are able to take part in any debate on a matter when acting as part of a consultee body outside of their duties for this Council (where you are also a member of a Parish Council, for example, or both the Borough and County Council), provided that:

- The matter does not substantially affect the well-being or financial standing of the consultee body; and
- You make it clear to the consultee body that:
 - Your views are expressed on the limited information before you only;
 - You must reserve judgement and the independence to make up your own mind on each separate matter, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee, and you must hear all of the relevant information;
 - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee, and;
 - You disclose the Personal Interest regarding your membership or role when the Committee comes to consider the matter.

4.9. Do not speak or vote on a matter where you have openly and uncompromisingly limited your discretion for example by commenting in a newspaper or on social media that you will never support an application. You do not have to withdraw from the meeting room, but you may prefer to do so for the sake of appearances. You should explain that you do not intend to speak or vote because you have or you could reasonably be perceived as having predetermined the matter elsewhere, so that this may be recorded in the minutes.

4.10. In determining whether there is an appearance of predetermination or bias Members who are responsible for making the decision should apply the following test:

Would a fair minded and informed observer having considered all the facts, decide that there is a real possibility that the Member had determined the issue or was biased?

4.11. When applying this test it is important to remember that it is legitimate for a Member to be predisposed towards a specific outcome as long as the Member remains open minded and is prepared to consider all the arguments and points made before reaching a final decision, however you must not do or say anything that could appear to others as though you have a closed mind.

5. CONTACT WITH APPLICANTS, OBJECTORS AND OTHER INTERESTED PARTIES

5.1. If any applicant, objector or other interested party approaches you as a Member of the Licensing and/or Judicial Committee you should, as far as is practicable, discourage them from speaking to you in relation to any individual application or any other matter which may give rise to a licensing application. You should always refer them to Council officers for licensing, procedural or technical advice.

5.2. Do not agree to any request (other than from the Council's Head of Licensing) to attend a meeting with applicants, objectors or other interested parties 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 ask the Head of Licensing to organise it.

5.2.1. A Council officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Council to any particular course of action. They will also ensure that the meeting is properly recorded on the relevant file and that the record of the meeting is disclosed when the matter is considered by the Committee.

5.3. Otherwise when contacted you should:

- follow the Council's guidance on lobbying (see section 6 below);
- take notes wherever possible,
- ask relevant questions for the purposes of clarifying your understanding but remember this is not part of the formal process of debate and determination of any subsequent application,
- do not express any strong view or state how you or other Members might vote, and;
- report to the Head of Licensing any significant contact with the applicant and any other interested parties, explaining the nature and purpose of the contact and your involvement in it, and ensure that this is recorded on the file.

6. LOBBYING OF COUNCILLORS

6.1. Always explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, expressing an unequivocal intention to vote one way or another or such a firm point of view that it amounts to the same thing prejudices your impartiality and therefore your ability to participate in the Licensing or

Judicial Committee's decision making process. In such cases it may be advisable to refer those lobbying you to another Ward Member.

- 6.2. Remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 6.3. Do not accept gifts or hospitality from any person involved in or affected by a licensing matter. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and register the gift or hospitality where its value is over £100 in accordance with the Members' Code of Conduct.
- 6.4. Always copy or pass on any lobbying correspondence that you receive to the Head of Licensing at the earliest opportunity, and you should promptly refer to the Head of Licensing any offers of any kind made to you.
- 6.5. If you believe that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) you should promptly inform the Monitoring Officer.
- 6.6. Unless you have a Disclosable Pecuniary Interest, you will not have compromised your discretion or breached this Licensing Code of Good Practice through:
 - listening to 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 predetermination of the issue and you make clear that you are keeping an open mind;
 - seeking information through the appropriate channels.

7. LOBBYING BY COUNCILLORS

- 7.1. If you are a Member of the Licensing and/or Judicial Committee it is inadvisable to become a member of, or lead or represent an organisation whose primary purpose is to lobby to promote or oppose any licensing matters. If you do you will have restricted your discretion and will have a Personal Interest.
- 7.2. You may join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing matters, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but you should disclose a Personal Interest where that organisation has made representations on a particular matter 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 matter.

- 7.3. Be aware of the power of social media posts or re-posting and be careful to not to give the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.
- 7.4. Do not 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.
- 7.5. Do not decide or discuss how to vote on any matter 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.
- 7.6 It is not permissible for your political party to expect you to follow any position it may have taken on an application prior to the Licensing or Judicial Committee. It is important that each Member of the Licensing and/or Judicial Committee forms their own view on applications after considering officer advice and any representations.

8. PUBLIC SPEAKING AT MEETINGS

- 8.1. Do not allow members of the public to communicate with you during the Licensing and/or Judicial Committee's proceedings (orally or in writing including social media) other than through any official scheme for public speaking, as this may give the appearance of bias.
- 8.2 Do not participate in social media or exchanges by texting as a Member of the Committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias
- 8.3 Always ensure that you comply with the Council's procedures in respect of public speaking, and seek clarification from officers if you are unsure of these procedures.

9. OFFICERS

- 9.1. Do not put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Head of Licensing which may be incorporated into any committee report.
- 9.2. You should recognise that officers are part of a management structure and only discuss a licensing matter, outside of any arranged meeting, with a Head of

Service or those officers who are authorised by their Head of Service to deal with the matter at a Member level.

- 9.3. You should also 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, licensing officers' views and recommendations will be presented on the basis of their professional opinion, which may on occasion be at odds with the views, opinions or decisions of the Licensing and/or Judicial Committee or its Members.

10. DECISION MAKING

- 10.1 You must always come to Licensing and/or Judicial Committee meetings with an open mind and you should be able to demonstrate that you are open minded.

10.1.1 Questions should be asked only to ascertain facts to assist in the decision-making process and not to seek to enhance or reduce a point of view.

10.1.2 All parties concerned are provided with an opportunity to put their case to the Committee in accordance with Regulations and the Council's own policies and procedures. However, if a party does not attend Committee then a decision may be taken in their absence.

- 10.2 You must make decisions having regard to all of the relevant statutory criteria, policy and guidance relating to the determination of the application.
- 10.3 You should come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to digest new information or that there is simply insufficient information before you, you should request that further information be provided, or if necessary defer or refuse the application. The reason for deferring any item must be recorded.
- 10.4 Do not vote or take part in the meeting's discussion on a matter unless you have been present to hear the entire debate, any public speakers and the officers' introduction to the matter. If you come in to Licensing or Judicial Committee late and public speaking has already commenced on an item, or if you have to leave the room part way through an item being heard, you will not be able to vote on that item.
- 10.5 If any matter is adjourned when it is part heard then, save for exceptional circumstances, it must be heard by the same Members when it is next before the Committee.

- 10.6 You must make sure that if you are proposing, seconding or supporting a decision contrary to the licensing objectives, contrary to officer recommendations, contrary to any statutory guidance or contrary to any relevant policies adopted by the Council, that you clearly identify and understand the **licensing reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and they must be recorded. Be aware that you may have to justify the resulting decision by giving evidence at an appeal, in the event of any legal challenge.
- 10.7 In order to reach a decision that is contrary to the licensing objectives, statutory guidance or any relevant policies adopted by the Council you must be satisfied that there are exceptional circumstances and justifiable reasons that are relevant to licensing to do so. Again, you must clearly identify and understand the licensing reasons and be able to explain why you have given them such weight so as to reach this conclusion/decision, and you should again be aware that you may have to justify the decision by giving evidence at an appeal, in the event of any legal challenge.
- 10.8 When Members of the Licensing and/or Judicial Committee move into private session to deliberate a matter before them they will only be accompanied by the Democratic Services Officer and the Legal Advisor, neither of whom will take any part in the debate nor in the decision making process.

11 TRAINING

- 11.1 Members are required to attend any training prescribed by the Council before they participate in decision making at meetings dealing with licensing matters.
- 11.2 You should endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures etc. beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 11.3 You should participate in any review of a sample of licensing decisions to ensure that Members' judgements have been based on proper licensing considerations.

12 GENERAL

This Licensing Code of Good Practice will be kept under annual review by the Executive Director, Legal and Democratic Services. It will also be reviewed following any relevant change in the Council's Constitution and Rules of Procedure.