

Agenda

Meeting: **LICENSING COMMITTEE**
Date: **MONDAY 8 SEPTEMBER 2014**
Time: **11.00AM (TRAINING FOR THE COMMITTEE AT 9.30AM)**
Venue: **COMMITTEE ROOM**
To: **Councillors R Sayner (Chair), K Ellis (Vice Chair), Mrs S Duckett, Mrs P Mackay, Mrs C Mackman, B Marshall, Mrs K McSherry, Mrs S Ryder, R Sweeting and J Thurlow**

1. Apologies for absence

2. Minutes

To confirm as a correct record the minutes of the Licensing Committee held on 7 July 2014 (pages 1 to 3 attached).

3. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests.

Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

4. Procedure

To outline the procedure to be followed at the meeting (Pages 4 to 5)

5. Chair's Address to the Licensing Committee

6. Hackney Carriage and Private Hire Vehicle Licensing Policy.

To receive the report of the Policy Officer L/14/10 (pages 6 to 8 attached).

7. Licensing Hearing Procedure and Code of Practice

To receive the report of the Policy Officer L/14/11 (pages 9 to 21 attached).

8. Private Session

That in accordance with Section 100(A)(4) of the Local Government Act 1972, in view of the nature of the business to be transacted, the meeting be not open to the Press and public during discussion of the following item as there will be disclosure of exempt information as defined in Section 100(1) of the Act as described in paragraph 7 of Part 1 of Schedule 12(A) of the Act.

9. Application for a Private Hire Driver's Licence

To receive the report of the Senior Enforcement Officer L/14/12 (pages 22 to 32 attached).

10. Application for a Private Hire Driver's Licence

To receive the report of the Senior Enforcement Officer L/14/13 (pages 33 to 41 attached).

11. Issue concerning the behaviour of a Private Hire Vehicle Driver

To receive the report of the Senior Enforcement Officer L/14/14 (pages 42 to 49 attached).

12. Application for Non-Domestic Rates Hardship Relief

To receive the report of the Lead Officer, Benefits and Taxation L/14/15 (pages 50 to 57 attached).

13. Application for Non-Domestic Rates Hardship Relief

To receive the report of the Lead Officer, Benefits and Taxation L/14/16 (pages 58 to 65 attached).

**Mary Weastell
Chief Executive**

Dates of next meetings
6 October 2014
3 November 2014
1 December 2014

Enquiries relating to this agenda, please contact Palbinder Mann on:
Tel: 01757 292207 Email: pmann@selby.gov.uk

Minutes

Licensing Committee

Venue:	Committee Room
Date:	7 July 2014
Present:	Councillors R Sayner (Chair), Mrs S Duckett, Mrs P Mackay, Mrs C Mackman, Mrs K McSherry, D Peart (for K Ellis), Mrs S Ryder, R Sweeting and J Thurlow
Apologies for Absence:	K Ellis (sub D Peart) and B Marshall.
Officers Present:	Caroline Fleming - Senior Solicitor, Tim Grogan – Senior Enforcement Officer and Palbinder Mann – Democratic Services Officer

12. MINUTES

The Committee considered the minutes of the Licensing Committee held on 2 June 2014 and the Licensing Hearing held on 30 April 2014.

It was noted that there was an error on page two of the minutes of the Licensing Hearing as there was a reference to a different premises.

RESOLVED:

To APPROVE the minutes of the Licensing Committee meeting held on 2 June 2014 and the Licensing Hearing held on the 30 April 2014 with the above amendment and they be signed by the Chair.

13. DISCLOSURES OF INTEREST

There were no declarations of interest.

14. PROCEDURE

The procedure was noted.

15. CHAIR'S ADDRESS TO THE LICENSING COMMITTEE

The Chair explained that at the next Committee, two applications for National Non Domestic Rates (NNDR) Hardship Relief would be considered. Due to these being the first applications of its kind to be heard by the Committee, it was agreed that training would be provided at 9.30am.

The Chair also stated that the date of the next meeting would be moved from 1 September to 8 September.

RESOLVED:

- i) To move the next date of the Licensing Committee to 8 September from 1 September.**
- ii) To provide training on considering NNDR Hardship Relief applications at the next meeting with a commencement time of 9.30am for the training.**

16. A REVIEW OF THE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING POLICY

The Committee considered a report which informed them of a review of the Hackney Carriage and Private Hire Vehicle Licensing Policy. The report set out the timeline for the review, including the dates for the public consultation process.

The Senior Enforcement Officer presented the report and informed the Committee that the review would encompass all issues and other authorities were currently being liaised with concerning good practice.

The Committee requested a further update at their next meeting with a framework outline of the areas to be covered in the policy.

RESOLVED:

- i) To note the report and to request a further update be brought to the next Committee containing a framework outline of the areas to be covered in the policy.**

17. PRIVATE SESSION

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, as there will be disclosure of exempt information as defined in paragraph 3 of Part 1 of Section 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006.

18. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Senior Enforcement Officer presented the Report L/14/7 which outlined an application for a Private Hire Driver's Licence. The applicant was in attendance.

Councillors were given the opportunity to question the applicant in connection with the application. The Committee then discussed the matter and considered whether the application should be granted.

RESOLVED:

To APPROVE the application for a Private Hire Driver's Licence.

19. ISSUE CONCERNING THE BEHAVIOUR OF A LICENSED PRIVATE HIRE VEHICLE DRIVER

The Senior Enforcement Officer presented the Report L/14/8 which outlined a recent incident that had taken place concerning a licenced Private Hire Vehicle Driver. The Committee considered whether the respective driver was a fit and proper person to drive a Private Hire Vehicle. The driver was in attendance with a representative.

Councillors were given the opportunity to question the driver in connection with the incident. The Committee discussed the matter and considered all the relevant issues.

RESOLVED:

To agree that no further action be taken against the driver.

20. ISSUE CONCERNING THE BEHAVIOUR OF A LICENSED PRIVATE HIRE VEHICLE DRIVER

The Senior Enforcement Officer presented the Report L/14/9 which outlined a complaint that had been received against a licenced Private Hire Vehicle Driver. The Committee considered whether the respective driver was a fit and proper person to drive a Private Hire Vehicle. The driver was in attendance.

Councillors were given the opportunity to question the driver in connection with the incident. The Committee discussed the matter and considered all the relevant issues.

RESOLVED:

To agree that the driver be given a warning about his future conduct.

The meeting closed at 10:55am.

LICENSING COMMITTEE

PROCEDURES TO BE FOLLOWED

The Licensing Committee acts in a quasi judicial capacity to give a fair hearing to an applicant where a hearing is required by law or equity. When considering the case the only evidence the Members of the Committee can take into account is evidence previously submitted to form the agenda and any verbal evidence given at the actual meeting by Officers representing the Council and by the applicant or his/her representative, and their witnesses. The following procedures must be followed.

1. Procedures to be followed when submitting an application to the Licensing Committee for consideration;
 - i) The Council's Officers will liaise with the Committee Section to arrange a suitable date for the meeting. The applicant and Members of the Committee will be informed of this date in writing and a copy of the procedure note will be included for the applicant.
 - ii) The applicant and Council's Officers will submit any written evidence to the Committee Section for inclusion in the agenda by a given date. If the evidence is to be verbal, this should be stated.
 - iii) If witnesses are to be called the Committee Section must be notified prior to the hearing.
 - iv) Any application for adjournment because of late submission of papers, will in principle be considered sympathetically by the Committee.
2. The procedure to be followed by the Licensing Committee:
 - i) For each individual case the applicant and any representatives will be shown into the Committee Room at the same time as the appropriate Council's Officers. Witnesses will enter the room at the same time unless there are any objections.
 - ii) The District Solicitor will introduce the applicant, any representatives, witnesses and the Council's Officers to the Members of the Committee.
 - iii) The Chair will introduce Members of the Committee.
 - iv) The Chair will then go through the procedure as follows:

- a) Officers representing the Council will present the case for the Council. They may present such witnesses as they believe are appropriate.
- b) Officers representing the Council, and any witnesses, will then answer questions from the applicant or his/her representative, and from Members of the Committee.
- c) The applicant or his/her representative will then present the applicant's case. They may present such witnesses as they believe are appropriate.
- d) The applicant or his/her representative, and any witnesses, will then answer questions from the Committee and the Council's Officers.
- e) The Council's Officers will then sum up on behalf of the Council.
- f) The applicant or his/her representative will then sum up.
- g) The applicant and his/her representative will then be asked whether they consider they have had a fair hearing and the Committee will take into account any comments, which are then made. The Chair of the Committee will then ask the Council's Officers presenting the case the same question and will again take account of any comments made.
- h) The Council's Officers, the applicant and his/her representative, all witnesses, press and public, will then be asked to withdraw from the meeting whilst the Committee makes their decision on the evidence presented.
- i) The applicant and his/her representative, the Council's Officers, all witnesses, press and public, will be invited back into the meeting to be informed of the Committee's decision.

Following the Committee meeting the Solicitor will inform in writing to the applicant the decision of the Licensing Committee.



Public Session

Report Reference Number: L/14/10

Agenda Item No: 6

To: Licensing Committee
Date: 8 September 2014
Author: Michelle Dinsdale, Policy Officer
Lead Officer: Michelle Dinsdale, Policy Officer

Title: Hackney Carriage and Private Hire Vehicle Licensing Policy.

Summary:

Policy and Strategy officers are currently in the process of consolidating existing Council documents in relation to hackney carriage and private hire vehicles into one comprehensive policy. The policy will set out the approach the Council will undertake in exercising its discretion in carrying out this regulatory function. It will provide guidance on the Council's particular requirements in relation to the issue and renewal of driver, vehicle and operator licences. The standards set out in the policy will be used by the council to inform decisions.

It is proposed that the draft policy will be subject to a six week consultation process. As part of the consultation comments will be sought in relation to the duration for which licences are currently issued and the current requirement for all new applications in respect of hackney carriages vehicles to be wheelchair accessible.

Recommendations:

Licensing Committee to note the content of this report.

1. Introduction and background

All Council policies should be subject to regular review, to ensure they remain appropriate in response to changes in legislation, best practice, Council priorities or circumstances and remain fit for purpose.

A report was presented to Licensing Committee on 7 July, informing Members that existing hackney carriage and private hire vehicle documents would be consolidated into one comprehensive policy. At the meeting Members requested that a further update be brought to the next Committee containing a framework outline of the areas to be covered by the policy.

2. The Report

The proposed policy will provide guidance on the Council's particular requirements in relation to the issue and renewal of driver, vehicle and operator licences. The policy will set out the standards that will be used by the Council to inform decisions, and should also be useful for the taxi and private hire trade and the public. It will also provide guidance on the application process for licence holders and applicants.

The policy framework, currently proposed, is as follows:

- Application process
- Checks on drivers
- Changes to licensee circumstances
- Vehicles
- Accessibility and taxi vehicle requirements
- Operators and private hire trade
- Fares
- Complying with the law
- Code of conduct for drivers
- Complaints about drivers
- Enforcement

Currently no significant changes are proposed to existing policy.

However, as part of the consultation on the draft policy, Officers are proposing that comments be sought in relation to two specific areas.

Firstly, the duration of driver and operator licences, which the Council may be forced to change as a result of emerging legislation (the Deregulation Bill 2013). Best practice guidance suggests that councils issue licences for three years (for drivers) and five years (for private hire operators). Selby District Council currently issues driver and operators licences for one year.

Secondly, the conditions attached to the issuing of vehicle licenses in relation to accessibility, where the Council is keen to ensure that a mixed fleet of vehicles are available to meet the needs of different passengers. Under current policy all new vehicles which join the taxi fleet must be wheelchair accessible (an existing vehicle may be replaced by a similar vehicle). The Council has the option to remove this requirement.

The draft policy will be subject to a six week consultation process between 06 October and 14 November 2014. As part of the process Licensing Committee will be able to submit comments on the draft policy through the consultation email address (policyconsultation@selby.gov.uk).

The timeline for the review is detailed below.

Date	Milestone
02 October 2014	Executive – to consider the report, including the draft policy, which seeks approval to carry out public consultation on the draft policy
06 October - 14 November 2014	Six week public consultation period
01 December 2014	Licensing Committee – to receive a report informing of the outcome of the consultation exercise
08 January 2015	Executive – to consider the consultation responses and approve the policy (including any amendments where appropriate to reflect consultation responses)

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

The policy does not replace the legislation governing hackney and private hire operations. It provides guidance on the Council’s particular requirements in complying with that legislation.

Licensing and enforcement decisions will be made with regard to the policy; however, the council reserves the right to depart from the policy in exceptional cases.

3.2 Financial Issues

None at this time.

4. Conclusion

A comprehensive draft Hackney Carriage and Private Hire Vehicle Licensing Policy is in the process of being developed; no significant changes are proposed.

The draft policy will be subject to a six week public consultation process, to include licence duration and vehicle accessibility. Following the consultation process the Licensing Committee will receive a report informing them of the outcome, prior to a report going to the Executive to consider the consultation responses and approval of the policy.

Public Session

Report Reference Number: L/14/11

Agenda Item No: 7

To: Licensing Committee
Date: 8 September 2014
Author: Gillian Marshall, Solicitor to the Council
Lead Officer: Helen McNeil, Lead Officer, Debt Control and Enforcement

Title: Licensing Hearing Procedure and Code of Practice

Summary:

This Report puts forward a revised set of procedural guidelines for hearings before the Licensing Sub Committee for approval. It also puts forward for comment a draft Licensing Code of Conduct as recommended by the Audit Committee during their review of the Councils Constitution.

Recommendations:

- (i) To consider the revised hearings procedural guidance and propose any amendments.**
- (ii) Subject to (i) above, approve the revised procedural guidelines**
- (iii) Provide comments on the draft Code of Practice**

Reasons for recommendations

- (i) To ensure the law and best practice are followed in relation to hearings.**

1. Introduction and background

- 1.1 A sub Committee of the Licensing and Appeals Committee deals with the Hearings required under the Licensing Act 2003 which largely concern personal and premises licences and club premises certificates.**

- 1.2 Section 9 (2) of the 2003 Act provides that the Secretary of State may issue regulations governing
- The proceedings of licensing committees and their subcommittees (including provision about the validity of proceedings and the quorum for meetings)
 - Public access to the meetings of those committees and subcommittees
 - The publicity to be given to those meetings
 - The agendas and records to be produced in respect of those meetings
 - Public access to such agendas and records and other information about those Meetings
- 1.3 On 12 January 2005 the Secretary of State issued regulations under Section 9(2) of the 2003 Act in respect of licensing matters. However these only apply in relation to the Hearings listed in Column 1 of Schedule 1 to the Regulations. Where the Regulations apply the Committee and Sub Committee must follow them. Otherwise the Committee and Sub Committee are free to regulate their own procedure. The Hearings listed comprise the work of the Sub Committee carried out under the 2003 Act. The Regulations require the Council to give information about the procedures that are to be followed to participants. This is currently attached to the Agenda. Experience of recent Hearings has shown that the current procedure would benefit from review to align it more closely to the regulations and to follow best practice.
- 1.4 In addition, the Audit Committee is currently carrying out a review of the Councils Constitution. It recently considered a revised draft Planning Code of Conduct. Such a document is recommended as part of the Probity in Planning Guidance issued by the LGA as it assists in ensuring high standards of decision making are maintained and in the event of legal challenge to decisions. Both planning and licensing are regulatory functions which balance the rights and freedoms of the parties and regulate the use of land and premises. LACORS (the former Local Authority Co-ordinators of Regulatory Services which was part of the LGA) recommended that a similar code be in place for licensing. Audit Committee consider that such a Code would be useful in the Councils Constitution subject to the view of this Committee.

2. The Report

- 2.1 A revised Procedure is attached at Appendix A for consideration and discussion.
- 2.2 A draft Licensing Code of Conduct is attached at Appendix B for consideration and discussion.

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

The Council must follow the correct legal processes in holding Hearings under the Licensing Act 2003 or its decisions are likely to be quashed on appeal and costs awarded against it.

3.2 Financial Issues

There are no financial issues arising from this report.

3.3 Impact Assessment

There are no impacts on equality, diversity or the community

4. Conclusion

4.1 That Licensing Committee should consider the draft Hearings Procedure attached at Appendix A and approve it subject to any amendments it wishes to make.

4.3 That Audit Committee should consider the draft Licensing Code of Conduct at Appendix B and provide comments to the Audit Committee to inform their recommendations on the Constitution.

5. Background Documents

None

Contact Officer:

Gill Marshall Solicitor to the Council x42095

Appendices:

Appendix A – Draft Hearings Procedure

Appendix B – Draft Licensing Code of Conduct



Licensing and Appeals Sub Committee Hearing Procedure

Subject to the right of the Sub-Committee to amend its procedures at any given hearing, the following procedures will be followed at all hearings under the Licensing Act 2003.

There are three Members of the Licensing Sub-Committee. These Councillors will each have received the papers relating to the hearing prior to the hearing.

Other people at the hearing will include a Democratic Services Officer who will take minutes of the meeting and a Legal Advisor who will advise the Sub-Committee where necessary.

Hearings will generally be in public except for that part where the Councillors discuss the decision (as noted below). Parties and the public can be excluded from the Hearing where in the opinion of the Chair they are disruptive or where the Sub-Committee considers it is in the public interest to do so.

Evidence, Documents, Witnesses and Cross Examination

Strict Rules of Evidence do not apply.

Parties may make requests to call witnesses. Such requests should be accompanied by a brief explanation of why the witness is being called and why that will assist the Sub-Committee to make a decision.

Documents tabled on the day will only be accepted if all other parties consent. Late documents to which there is no consent will either be excluded or, if the Hearing cannot be conducted fairly will result in an adjournment. This inconveniences all parties and should be avoided.

The Hearing will take the form of a discussion led by the sub-committee. It is not adversarial and cross examination of witnesses is not normally permitted. Instead parties are encouraged to include within their submissions any observations they wish to make on whether the evidence before the Sub-Committee is probative and reliable. Parties may also, during their submissions, request that the Sub-committee consider and/or ask certain questions. Requests to permit cross examination will be considered and should be accompanied by an explanation of why that will assist the Sub-Committee to make a decision.

Time Limits

The Sub-Committee may impose a time limit on presentations to the Committee. Where a time limit is imposed it must be the same for all parties. The effect of this is that the applicant (who gets the opportunity to introduce the application and to respond to representations made) must split his/her time between the two parts of the hearing where he/she is able to make submissions.

The normal time limit imposed (excluding any time for the questions by the Sub-Committee) is 20 minutes for an application and 30 minutes in a review hearing. Requests to extend the normal time limits should be made at the start of the hearing.

These are maximum time limits and Parties are not obliged to use the entire time allowed.

Introduction

The Chair will open the meeting, introduce Members of the Sub-Committee and officers present, and the Legal Advisor will explain the procedure to be followed.

The Chair will ask the parties to the hearing and their representatives to introduce themselves.

The Chair will ask the parties to confirm they understand the procedure to be followed and to make any requests to vary the procedure or time limits, call witnesses, cross examine witnesses or sum up.

If the Applicant is not present the Sub-Committee may either:

- o Where it considers it necessary in the public interest, adjourn the hearing to another date; or
- o Proceed with the hearing in the absence of the Applicant

The Hearing

1. The Chair will ask the Senior Enforcement Officer to present his/her report on the application.
2. The Chair will invite the Applicant or his/her representative to present the application and submit any relevant evidence. The Sub-Committee may ask questions.
3. The Chair will invite the representatives of the Responsible Authorities that have made relevant representations or objections to address the Sub-Committee and submit relevant evidence. The Sub-Committee may ask questions.

4. The Chair will invite any other Parties who have made a relevant representation to address the Sub-Committee and submit relevant evidence. The Sub-Committee may ask questions.
5. The Chair will invite the Applicant or his / her representative to address the Sub-Committee and respond to the representations. The Sub-Committee may ask questions.

Summing up

Summing up is not normally necessary as all Parties will have been heard and the Councillors will have access to all relevant documents. However in some cases for example in lengthy review hearings the Parties may be given the opportunity to sum up.

If the Parties wish to sum up they should draw this to the attention of the Chair at the start of the Hearing.

In the event of a summing up the Chair will invite:

- o the Responsible Authorities present who have made representations or objections;
- o the Applicant
- o those Interested Parties present who have made representations;

to sum up their case.

Consideration of Decision – Confidential Session

Members of the Sub-Committee will retire to consider the submissions and make its decision, or all parties and the public will be asked to leave the room. This is in the interests of a free and frank discussion before a decision is made and that is considered to outweigh the public interest in holding the Hearing in public.

The Legal Advisor and the Democratic Services Officer will retire with them, but take no part in the discussion of the merits of the case or what the decision should be.

Announcement of Decision

Sub-Committee Members will return and the Chair or Legal Advisor will relay the decision and the reasons for it in public session, detailing any conditions placed upon the licence (if granted) and the licensing objective to which they relate.

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS DEALING WITH LICENSING MATTERS

This Code of Practice supplements the Council's Code of Conduct for Councillors and where appropriate Councillors should refer to the Code of Conduct which is set out in the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

1. INTRODUCTION

- 1.1 Premises Licensing affects land and property interests, including the financial value of land and the quality of their settings. It is often highly contentious because decisions affect the daily lives of everyone. Opposing views are often strongly held by those involved.
- 1.2 The licensing system can only function effectively if there is trust among those involved. There must be trust between Councillors and Officers and between the public and the Council.
- 1.3 The general principles that underlie the Council's Code of Conduct for Councillors and apply to this Code of Practice are:
 - 1.3.1 Councillors should serve the public interest and should never improperly confer an advantage or disadvantage on any person.
 - 1.3.2 Councillors should not place themselves in situations where their honesty or integrity may be questioned.
 - 1.3.3 Councillors should make decisions on merit.
 - 1.3.4 Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
 - 1.3.5 Councillors may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
 - 1.3.6 Councillors should respect the impartiality and integrity of Officers.
- 1.4 The Council is committed to open, fair and transparent decision-making. Licensing decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.5 This Code of Practice sets out practices and procedures that Councillors and Officers of the Council shall follow when involved in licensing. Licensing matters include the consideration of applications, the preparation of policy and the enforcement of licensing law.
- 1.6 Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Councillors. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.
- 1.7 This Code of Practice sets out principles to guide Councillors and officers in determining applications and making other decisions within the terms of reference of Licensing and

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

2. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and Officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole.
- 2.2 The role of a member of the Licensing and Appeals Committee is to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3 Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community.
- 2.4 Councillors' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, consider all of the relevant issues in the light of Council policies, Government advice and their own individual judgement.
- 2.5 Whilst Councillors should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6 Officers in their role of advising Councillors shall provide:
 - 2.6.1 Impartial and professional advice;
 - 2.6.2 Complete written reports covering all necessary information for a decision to be made..
- 2.7 Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 2.8 Councillors shall follow the advice in the Councillor's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible.

3. COUNCILLORS INTERESTS AND ALLEGATION OF BIAS

- 3.1 Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.
- 3.2 Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its merits, Councillors should consider withdrawing from the Committee.
- 3.3 These principles apply equally to Councillors who are not members of Licensing and Appeals Committee. Councillors who have such interests should consider whether it is

appropriate for them to participate in the licensing process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.

3.4 The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process. However, Councillors may have other interests which may influence their decision which will not amount to disclosable interests for the purposes of the Code. In order to maintain the integrity of the licensing system, Councillors should be careful to ensure that such interests do not unduly influence their decisions or give rise to a perception of bias in decision making. Examples of such interests are:-

3.4.1 from being closely aligned with ward campaigns or issues;

3.4.2 from membership of other Committees of the Council;

3.4.3 from membership of other public or community bodies;

3.4.4 from membership of voluntary associations and trusts (including where appointed by the Council);

3.4.5 from a connection with a particular policy initiative of the Council;

3.4.6 from membership of clubs, societies and groups; and

3.4.7 from hobbies and other leisure interests.

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

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

4. APPLICATIONS BY THE COUNCIL OR A COUNCIL OWNED COMPANY

4.1 Licensing legislation allows the Council to submit and determine proposals for licences. Council owned companies also submit proposals that are decided by the Council.

4.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.

4.3 Members of the Licensing and Appeals Committee who sit on the board of a Council owned company which has submitted an application shall declare an interest and take no part in the discussion and determination of that proposal.

4.4 Officers who are involved in the preparation of licensing proposals shall not advise on, or take any part in the consideration of, applications in respect of such proposals.

5. **STATUTORY DUTIES**

The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the licensing function except when such matters are clearly immaterial because they are not capable of relating to the proposal under consideration. Examples of these duties include:

5.1 **Equality Act 2010**

Section 149 provides that:

- 5.1.1 A council must, in the exercise of its functions, have due regard to the need to:-
- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a protected characteristic and persons who do not share it.
- 5.1.2 The above powers relate to the following protected characteristics:-
- (a) Ages;
 - (b) Disability;
 - (c) Gender reassignment;
 - (d) Marriage and civil partnership;
 - (e) Pregnancy and maternity;
 - (f) Race (including colour, nationality and ethnic or national origins);
 - (g) Religion or belief;
 - (h) Sex; or
 - (i) Sexual orientation.

5.2 **Human Rights**

Section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

5.3 **Best Value**

Section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

5.4 **Crime and Disorder**

Section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

6. **LOBBYING OF AND BY COUNCILLORS**

- 6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal may seek to influence the decision by an approach to their local Councillor or members of the Licensing and Appeals Committee. However, reacting to lobbying can lead to the impartiality of a Councillor being called into question and require that Councillor to declare an interest.
- 6.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations. The views of consultees and the assessment of the case by the licensing officer all need to be considered before a Councillor is in a position to make a balanced judgement on the merits of the case. Councillors should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.
- 6.3 The time for individual members of the Licensing and Appeals Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.
- 6.4 A Licensing and Appeals Committee member shall be free to listen to a point of view about a licensing proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Councillors should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if Councillors do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Councillors who are lobbied should:
 - 6.4.1 make clear that they reserve their final decision on a proposal until the committee meeting;
 - 6.4.2 only give procedural advice;
 - 6.4.3 consider referring those lobbying to the relevant Officer who can provide further advice; and
 - 6.4.4 not seek to meet an applicant or potential applicant alone.
- 6.5 Members of the Licensing and Appeals Committee shall not, in general, organise support or opposition for a proposal, or lobby other Councillors. Councillors shall not put improper pressure on officers for a particular recommendation.
- 6.6 If a member of the Licensing and Appeals Committee identifies himself or herself with group or individual campaigning for or against an application, he or she shall declare an interest and not vote or decide on the matter.

- 6.7 Councillors at a meeting of the Committee must be free to vote as they consider appropriate on licensing matters. A Councillor cannot be instructed how to exercise their vote on a licensing matter.
- 6.8 Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

7. PRE- AND POST- APPLICATION DISCUSSIONS AND NEGOTIATIONS

- 7.1 Discussions between an applicant and the licensing authority, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the licensing process. However, they should take place within clear guidelines, as follows.
- 7.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.
- 7.3 Advice should be consistent and based upon relevant licensing policies and considerations.
- 7.4 A written note should be made of all potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.
- 7.5 Councillors need to preserve their role as impartial decision makers and members of Licensing and Appeals Committee should not take part in pre- or post- submission discussions and negotiations with applicants.
- 7.6 Councillors may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Councillors should be provided to the officers dealing with the application. Councillors who are approached for procedural or technical advice should refer the applicant to the relevant officer.

8. OFFICER REPORTS TO COMMITTEE

- 8.1 A Senior Enforcement Officer will submit written reports to the Licensing and Appeals Committee or Sub-Committee on licensing applications to be determined by the Council. The reports will give the background to the application including any relevant licensing history of the site, a description of the proposals, and the relevant law and Council or Government policy considerations. The reports will include a summary of representations made about the application.
- 8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.
- 8.3 The Senior Enforcement Officer will have available for inspection by Councillors the full application and representations from bodies consulted and members of the public.

9. RELEVANT CONSIDERATIONS

- 9.1 Local opposition or support for a proposal is not in itself a ground for refusing or granting application, unless that opposition or support is founded upon valid licensing reasons which can be substantiated.
- 9.2 It will be inevitable that all the considerations will not point solely to either grant or refusal. Having identified all the relevant matters and put to one side all the immaterial considerations, Councillors must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

10. THE DECISION MAKING PROCESS

- 10.1 The Licensing and Appeals Committee will give reasons for all decisions.

11. SITE VISITS BY THE COMMITTEE

- 11.1 Site visits in licensing are rare but where they occur they should be conducted in a formal manner in compliance with the Human Rights Act 1998 and any subsequent legislative criteria.

12. PUBLIC SPEAKING AT LICENSING AND APPEALS COMMITTEE

- 12.1 Wherever possible, objections or representations to licensing applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Licensing and Appeals Committee. Councillors have the opportunity to inspect all letters received before the decision on the application is made.
- 12.2 In relation to Licensing Act 2003 and Gambling Act 2005 applications those who may speak at a meeting are defined in regulations issued under the respective acts.
- 12.3 In all other cases public speaking will be permitted where it is the interests of natural justice and a fair hearing to do so.

14. TRAINING

- 14.1 Councillors should not participate in decision-making at meetings dealing with licensing matters if they have not attended mandatory training on an Introduction to Licensing Law and Practice.
- 14.2 Councillors should endeavour to attend any other specialised training sessions provided since these will be designed to extend Councillors' knowledge of licensing law, regulations, procedures, Codes of Practice and policies beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.