

Part 4 – Licensing Committee

Part 4 (a) – Terms of Reference of the Licensing Committee

Council has determined that the Licensing Committee shall be constituted and shall have delegated authority for the discharge of the Council's functions as set out below.

1.	Licensing Committee	
Appointed by:	Number of Elected Members:	
The Council under section 6 of the Licensing Act 2003 and section 102 of the Local Government Act 1972	Fifteen	
Chair and Vice-Chair appointed by:	Political Proportionality:	
The Council	The elected Members shall be appointed in accordance with Political Proportionality	
Quorum:	Co-opted Members to be appointed by Council:	
Three	None	
Functions determined by Council:		
1.	To undertake all matters in relation to the Council's licensing, permit and registration function, including Part VI of the Essex Act 1987, other than:	
1.1	Functions specifically delegated to the Cabinet or another Committee;	
1.2	The approval of byelaws; or	
1.3	The approval of policy guidelines for any other matter where the Committee considers they should be approved by the Council	
2.	The grant, approval, review, refusal, revocation, renewal, transfer or variation of any licence registration, certificate, consent, permit, approval or permission, except where such function falls within the terms of reference of any other Committee or Sub-Committee or where the function has been delegated to an Officer unless the Officer refers the matter to the Committee for a decision	
3.	To exercise the Council's functions under any of the "relevant statutory provisions" within the meaning of Part 1 of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as an employer	
4.	To enforce byelaws	
5.	To advise the Council on its byelaws in relation to hackney carriage and private hire vehicles, operators and drivers	
6.	To advise the Council on its powers to make an order identifying designated places for the purposes of police powers in relation to alcohol under section 13 Criminal Justice and Police Act 2001	
7.	To keep under review and make minor alterations to the Committee's procedures	

8. The function of determining relevant fees under section 212 of the Gambling Act 2005 be delegated to the Licensing Committee

In exercising its functions under the Licensing Act 2003 and the Gambling Act 2005, the Committee may regulate its own proceedings and those of its Sub-Committees, subject to any Regulations made under the Acts.

Without prejudice to the generality of the foregoing, this delegation includes the licensing and registration functions set out in the first column of Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000

Functions determined by Statute:

1. To undertake all the functions of a licensing authority under the Licensing Act 2003 except:
- 1.1 approving the Authority's Licensing Statement under section 5 of the Act; and
 - 1.2 referring licensing matters to another Committee under section 7(5) of the Act;

Note that, under section 7(9) of the Act, where the Licensing Committee is unable to discharge its functions because of the number of its Members who are unable to take part in the consideration of any matter or vote, the Committee must refer the matter to the Council which shall discharge it.

2. To undertake all the functions of a licensing authority under Part 8 of the Gambling Act 2005, except:
- 2.1 approving the Authority's licensing policy under section 349 of the Act; and
 - 2.2 deciding not to issue casino licences under section 166 of the Act;

Note that, under section 7(9) of the 2003 Act as applied by the Gambling Act 2005, where the Licensing Committee is unable to discharge its functions because of the number of its Members who are unable to take part in the consideration of any matter or vote, the Committee must refer the matter to the Council which shall discharge it.

The Licensing Committee has established a Licensing Sub-Committee, as follows.

2. Licensing Sub-Committee	
Appointed by: The Licensing Committee under section 10 of the Licensing Act 2003 and section 102 of the Local Government Act 1972	Number of Elected Members: Three Members of the Licensing Committee
Chair and Vice-Chair appointed by: The Chair of the Licensing Committee (or Vice Chair if the Chair is not available) will Chair meetings of the Sub-Committee	Political Proportionality: There is no requirement for Members to be appointed in accordance with Political Proportionality
Quorum: Three	Co-opted Members to be appointed by Council: None
Functions determined by Council: To hear and determine appeals on matters delegated to the Licensing Committee and to grant, approve, review, refuse, revoke, renew, suspend, transfer or vary any registration, certificate, consent, permit, approval or permission that the Licensing Committee may determine, except where the function has been delegated to an Officer unless the Officer refers the matter to the Committee for a decision. To discharge such functions of the Licensing Committee as may be delegated to the Sub-Committee from time to time.	
Functions determined by Statute: –	

2.1 The Licensing Committee has delegated the following function(s) to the Assistant Director Planning and Growth

- (a) Undertaking all functions of the Authority under section 10 of the Licensing Act 2003 and section 154 of the Gambling Act 2005, except where:
 - (i) There is a requirement in the Licensing Act 2003, or regulations made thereunder, or a provision in guidance issued by the Secretary of State under section 182 of the Act that a particular function may only be carried out by the Council, Licensing and Licensing and Appeals Sub-Committee or a sub-Committee of the Licensing and Licensing and Appeals Sub-Committee; or
 - (ii) There is a provision elsewhere in this Constitution which requires that a particular function is reserved for the Council or the Appropriate Committee.

- (b) The power to grant or refuse applications for minor variations to Premises Licenses under Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.

Part 4 (b) – Procedure for Licensing Hearings under the Licensing Act 2003

NB. References below to the "Sub-Committee" shall be taken to refer also to the Licensing Committee.

1. Procedure for Licensing Hearings

- 1.1 At the beginning of the hearing, the Chair will introduce all Members of the Sub-Committee and those Officers present. Members must be present throughout the hearing and must not communicate with any Officer, the applicant or other third party except in accordance with these procedure Rules.
- 1.2 Following the introduction of the Sub-Committee, the Chair shall also introduce any objectors, the presenting Officer for the licensing authority and any other interested parties.
- 1.3 The applicant or their representative will be invited to introduce themselves to the Sub-Committee.
- 1.4 The Sub-Committee will consider any requests from the parties for permission for another person to appear at the hearing.
- 1.5 The Chair will confirm that there is no reason why any of the three Members of the Sub-Committee should not participate in the matter to be considered.
- 1.6 If a party has informed the authority that he/she does not intend to attend or be represented at a hearing, the hearing may proceed in their absence.
- 1.7 If a party who has not so indicated fails to attend or be represented at a hearing the authority may:
 - (a) Where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
 - (b) Hold the hearing in the party's absence.
- 1.8 Where the authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 1.9 Where the authority adjourns the hearing to a specified date it must notify the parties of the date, time and place to which the hearing has been adjourned.
- 1.10 At the beginning of the hearing, the Chair shall explain to all parties present the procedure to be followed. The Chair will confirm that this is a discussion to be led by the authority that any questions should generally be put through the Chair, and that cross-examination shall only be permitted if the Sub-Committee considers that it is necessary.
- 1.11 The Chair will ask all parties present if they have any requests to cross-examine. Any such requests shall be considered by the Sub-Committee. If agreed, the procedure set out below will be followed.
- 1.12 If there are no requests for cross examination, or if such a request is not permitted, the hearing shall be conducted as follows:-

- The Officer from the Licensing Section will present his/her factual report on the application.
- (b) Each party making representations will address the Sub-Committee in turn and will call other persons where permission has been given.
 - (c) The applicant/licence holder will present their case and will call other persons where permission has been given.
 - (d) Members may ask questions of all parties and persons.
 - (e) Questions from the parties must be directed through the Chair unless cross-examination has been permitted.
 - (f) All parties will have the opportunity to make a closing statement, with the applicant/licence holder having the final word.
- 1.13 The Sub-Committee will retire in private to consider the application and will be accompanied by its Legal Advisor and Democratic Services Officer.
- 1.14 Once a decision has been reached, the Sub-Committee will invite all parties back to hear the decision. The Chair of the Sub-Committee should call upon the Legal Advisor to inform all parties of any legal advice that was received during the private session. The Chair of the Sub-Committee or Legal Advisor should read out the decision in full, outlining any additional conditions, for the benefit of all in attendance.
- 1.15 The Sub-Committee may adjourn the hearing to the next reasonably practical working day to continue the hearing or give its decision.
- 1.16 The Chair should advise the Applicant, relevant authorities and interested parties that they will be notified of the decision and reasons for the decision in writing within 5 working days of the hearing.
- 1.17 Such notification shall advise the applicant/licensee of his rights of appeal to the Magistrates' Court or other appropriate body.

2. Cross-Examination Procedure for Licensing Hearings

- 2.1 Should cross-examination be permitted, it will take place in the following order:
- (a) Case on behalf of any Responsible Authorities,
 - The case on behalf of any responsible authorities
 - Questioning of any responsible authorities by the applicant or licensee
 - Questioning of any responsible authorities by any interested parties
 - Questioning of any responsible authorities by Members
 - (b) Case on behalf of Interested Parties
 - The case on behalf of any interested parties.

- Questioning of any interested parties by the applicant or licensee
 - Questioning of any interested parties by any responsible authorities
 - Questioning of any interested parties by Members
- (c) Case on behalf of the applicant
- The case on behalf of the applicant or licensee including the calling of witnesses
 - Questioning of the applicant or licensee and any witnesses by interested parties
 - Questioning of the applicant or licensee and any witnesses by any responsible authorities
 - Questioning of the applicant or licensee and any witnesses by Members
- (d) Summing up (in the following order):
- Responsible authorities
 - Interested parties
 - The applicant/licensee

Part 4 (c) – Licensing Protocol

1. Introduction

- 1.1 The Licensing Protocol relates to the conduct of all Members, including Members of the Licensing Committee established under the Licensing Act 2003 and the Local Government Act 1972.
- 1.2 The Licensing Protocol supplements the Members' Code of Conduct and is intended to assist Members in taking licensing decisions openly with sound judgement and reasons.
- 1.3 For the purposes of this protocol, the term 'Licensing Committee' includes any of its Sub-Committees.

2. Guiding principles for Licensing Committee Members

- 2.1 Do not express personal opinions before a meeting or hearing. To do so would indicate that you had made up your mind before hearing all the evidence and that your decision may not be based on relevant policies and guidance.
- 2.2 Do not take or declare a firm view on the merits of an application, nor organise support or opposition in advance of any meeting or hearing.
- 2.3 Do keep an open mind until after you have considered all the evidence and arguments presented on behalf of all parties as you must demonstrate that you are open minded.
- 2.4 Do seek the advice of the Monitoring Officer or Legal Officer in attendance at the meeting as to whether it is appropriate for you to take part in any meeting when you have been personally involved in an application that is to be considered.
- 2.5 Do not make your decision based on a political party direction given at a party group meeting or otherwise.
- 2.6 Do not have pre-meeting briefings before a Licensing Committee.
- 2.7 Do not expect to represent an individual party at a meeting of the Sub-Committee and remain as a decision maker.
- 2.8 You must always comply with the general principles set out in Section 1 of the Members' Code of Conduct in Chapter 7.

3. Decision making – the Rules of natural justice

- 3.1 You must comply with the Rules of natural justice, ensuring that all parties have an opportunity to be heard whilst acting honestly and impartially. You must make an objective and impartial determination of any issues based upon any written and oral evidence and not make or give the appearance of making a biased decision. The legal test of bias is "whether a fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased" – Porter v Magill [2002] 2 AC. 357 HL.
- 3.2 Applicants have a right to a fair hearing. For a hearing to be fair a number of conditions must be satisfied including: the right for the individual to know the opposing case;

generally the right to call witnesses; the right to be represented at any meeting or hearing; and, the right to be given detailed reasons for any decision made.

4. Members' interests and licensing applications

4.1 Members must comply with Section 2 of the Members' Code of Conduct.

4.2 If you have visited licensed premises which are the subject of an application in your personal life do consider whether this might give rise to an appearance of bias. Merely visiting licensed premises (even on a regular basis) will not necessarily give rise to an interest under the Members' Code of Conduct.

4.3 Declarations of interests should be made at the beginning of a meeting or hearing.

4.4 Where an interest is also a disclosable pecuniary interest, you must not sit as part of the Licensing Sub-Committee for a particular licence application unless a dispensation has been obtained from the Council's Standards and Audit Committee or the Monitoring Officer as appropriate.

4.5 If you have a disclosable pecuniary interest in an application you must not take part in that decision. You may speak at the meeting after being granted a dispensation to allow you to speak in accordance with the Members' Code of Conduct.

4.6 If you have been involved in Council meetings which approved any licensing policy of the Council, you will not be excluded for that reason.

5. Gifts and hospitality

5.1 You should be aware of public perception when accepting any gift or hospitality from licensed premises and should act with extreme caution when accepting any gift whatsoever, regardless of monetary value.

5.2 You should register offers of gifts and hospitality as well as any actual gifts and hospitality you receive.

5.3 It is generally acceptable for Members of the Licensing Committee to accept light non-alcoholic refreshment such as tea, coffee, soft drinks and biscuits.

5.4 You should add to your register of interests any gift or hospitality where its value is over £25.

6. Applications submitted by the local authority

6.1 Where the local authority itself submits any licence application (for example a premises licence for open space or buildings in its ownership under the Licensing Act 2003), the application must be considered in exactly the same manner as any other application. You must give no regard to the interests of the Council itself, aside from receiving relevant representations on the issue.

6.2 If you have taken a role in the decision to submit the application, you must not sit on the Licensing Sub-Committee which determines the application.

6.3 You should be cautious when expressing views about an application and be aware of any potential appearance of bias and if in doubt, should seek advice.

7. Lobbying

7.1 If you are approached by persons wishing to lobby you about a licence application, then you must politely explain that whilst you can listen to what is said, you cannot discuss the matter or express a view as this would prejudice impartiality and the ability to take part in the decision making process. The lobbyist should be referred instead to the Assistant Director Planning and Growth. You should inform the Monitoring Officer if you feel that you have been exposed to undue or excessive lobbying approaches.

7.2 If you receive any written representations you should pass them to the Assistant Director of Planning, Transport and Public Protection to take whatever action is appropriate.

7.3 Any requests for procedural advice should also be passed to the Assistant Director of Planning, Transport and Public Protection.

7.4 Members of the Council who do not sit on the Licensing Committee should exercise extreme caution before deciding to lobby Members of the Licensing Committee, directly or indirectly, in writing or otherwise, in respect of applications with a view to influencing their decision.

7.5 You can listen to the views of other Members and interested parties but you should avoid making comments that might amount to you prejudging the matter.

8. Recording of reasons

8.1 You must give reasons for all licensing decisions. Such reasons must be based upon relevant considerations and should reflect findings of fact made at a meeting or hearing. These reasons must be recorded in writing and whilst Officers may assist in formulating the exact wording, the reasons must be those of the Members.

9. Site visits

9.1 Prior to any meeting of a Licensing Committee or Sub-Committee, the Licensing Officer may be of the opinion that a site visit should be arranged to premises which are the subject of licence applications to enable Sub Committee Members to become familiar with the issues to be considered. During any such visits, Members will be accompanied by a licensing officer(s), together with an officer from Democratic Services, and they should only enquire about and discuss factual matters, avoiding the temptation to put forward their own opinions. Members attending such a site visit will not, under any circumstances, accept refreshments on the premises or any other gift or offer of hospitality.

9.2 Notwithstanding Rule 9.1 above, site visits are generally unnecessary in respect of licensing applications. They should only be held where particular site factors are significant and cannot be ascertained from plans provided with the application.

9.3 Where a site visit is deemed necessary, it will be part of the formal hearing process so all Members must attend. All other parties should also be given the opportunity to attend.

9.4 No representations from the applicant or those making representations shall be heard or accepted on site.

9.5 No indication of the likely outcome of the application should be given on site.

10. Conduct at hearings

10.1 Members of the Licensing Committee should not communicate directly with the applicant or any parties to an application other than publicly through the Chair.

10.2 Questioning of speakers is to clarify arguments and to test evidence. You should not express a view at that stage, nor intimidate those speaking.

10.3 Any material considered by the Licensing Committee must originate from a relevant party to any application and all relevant procedural regulations must be complied with.

10.4 You must not vote or take part in the decision making process unless you have been present to hear the entire debate, including the presentation of the licensing Officer's report.

11. Training

11.1 You should not participate in licensing decisions if you have not participated in any mandatory licensing training provided by the Council and should endeavour to attend any other specialised training sessions designed to extend knowledge of licensing law and practice.