

LICENSING ACT 2003

LICENSING CODE OF CONDUCT FOR MEMBERS

Introduction

1. The Licensing Code of Conduct relates to the conduct of all Members, including Members of the Licensing Committee and the Licensing Sub-Committee.
2. The Licensing Code of Conduct is supplemental to the Code of Conduct for Members, published by Runnymede Borough Council (the Council), found in Part 5 of the Constitution to the Council: Codes of Conduct and Protocols.

Guiding principles for Licensing Committee Members

3. Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to a Licensing Sub-Committee hearing. To do so would indicate that the Member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the Licensing Authority's Statement of Licensing Policy.
4. Members of the Licensing Sub-Committee must neither declare a view on the merits of an application or organise support or opposition in advance of the hearing, and must keep an open mind until after they have considered all the evidence and arguments presented.
5. Members of the Licensing Sub-Committee should not form or show bias against or in favour of any particular person, company or group or any particular site or locality nor give the impression that they have done so.
6. Applications may be considered in other bodies on which an elected Member serves. In such cases it is very important not only to keep an open mind as to the actual licensing considerations, but to demonstrate that this is being done. Members should make it clear that any opinion they formed at the other body was for the limited purposes of that discussion or matter only, and that they preserve an open mind on the licensing considerations.
7. Ward Members need not stand down from a Sub-Committee hearing an application from persons and/or relating to premises within their Ward but must be careful to avoid any suggestion of bias and should at the outset disclose that the application is one which refers to persons and/or premises in their Ward but that they have not taken any interest in the formulation of the application, have not been lobbied by any person in respect of it and have kept an open mind until after they have considered all the evidence and arguments presented.
8. A Member may sometimes feel that all the task of preserving freedom from appearance of bias is becoming too complicated, or that he or she runs too great a risk of becoming identified with one side of the argument no matter what safeguards they take. In these circumstances the only wise course is to withdraw from the discussion at the other body or from sitting on the Licensing Sub-Committee.
9. Decisions of the Licensing Sub-Committee should be based on the Licensing Objectives and must not be taken in accordance with a political party directive given at a previous party group meeting or otherwise.
10. No Member of the Council can represent one of the interested parties or applicant. This would give rise to a personal and prejudicial interest under the Council's Code of Conduct for Members.

Natural Justice

11. Members of the Licensing Sub-Committee must comply with the rules of natural justice, ensuring that parties have an opportunity to be heard, whilst acting honestly and impartially. When making its determinations, the following principles must be considered:
 - (1) Free from the appearance of bias – Members must make an objective and impartial determination of the issues based on the evidence, and should not make, or give the appearance of making, a biased decision. Bias may include pre-judged ideas based on his/her own prejudices or political affiliations.
 - (2) Fair hearing – For a hearing to be 'fair' a number of conditions must be satisfied including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally, the right to be given reasons for any decision made.

Members' Interests and licensing applications

12. Members must comply with Part 2 of the Members' Code of Conduct addressing interests.
13. Members must always declare any Personal interest, or Personal and Prejudicial interest.
14. It is accepted that Members of the Licensing Sub-Committee may have visited the licensed premises in their personal lives. However, Members should declare where this amounts to a Personal interest, or a Personal and Prejudicial interest.
15. The declaration of an interest should be made in advance of the hearing (to the Senior Licensing Officer), at the beginning of the hearing, or at the first possible opportunity.
16. A Member who has a Personal interest will normally have a Prejudicial interest if the interest is one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.
17. Where a Personal interest is also Prejudicial, then the Member must not sit as part of the Licensing Sub-Committee.
18. Any Member with a Personal and Prejudicial interest must also withdraw from the room when the application is being heard. If in doubt of his/her position, the Member must consult the Council's Monitoring Officer or a member of the Council's legal staff.

Gifts and hospitality

19. In addition to this Code of Conduct Members must comply with Part 3 of the Members' Code of Conduct addressing gifts and hospitality.
20. Members should have particular regard to public perception when accepting any gift or hospitality from a licensed premises and should act with extreme caution when accepting any gift whatsoever, regardless of the monetary value.
21. It is generally acceptable for Members of the Licensing Committee to accept light non-alcoholic refreshments (such as tea, coffee, soft drink, juice, biscuits, light snacks) whilst attending a meeting in an official capacity.

Applications submitted by the Local Authority

22. Where the Local Authority applies for a premises licence for open spaces or for buildings that it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Licensing Sub-Committee must hear and determine this application/review in exactly the same manner as other applications/reviews. The Licensing Sub-Committee must give no regard to the interests of the Council itself, aside from receiving relevant representations on this issue.
23. Members who have participated in the authority's decision to apply for a licence, or who express a view in respect of such an application, should not also participate in the Licensing Sub-Committee which is hearing the application.

24. Members of the Licensing Sub-Committee must be aware of any potential appearance of bias.

Lobbying

Of Licensing Committee Members

25. If a Member who sits on the Licensing Sub-Committee is approached by persons wishing to lobby him/her in respect of the licence application then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to the Senior Licensing Officer or his/her Ward Member who can explain the process of decision making.
26. Any written representations received by a Member of the Licensing Sub-Committee should be passed to the Senior Licensing Officer. Any such approach received in time should also be reported at the hearing at which the application is being determined.
27. Requests for procedural advice in respect of licensing applications should be referred to Council Officers for advice and information.

Of or by all other Members

28. Other Members must not lobby Members who sit on the Licensing Sub-Committee, directly or indirectly, in writing or otherwise, in respect of items to be decided by the Licensing Sub-Committee with a view to influencing their decision. Any representation by other Members, on behalf of an interested party, should be sent to the Senior Licensing Officer for inclusion in his report.
29. Other Members should remember that to be effective in representing the views of interested parties, and not mislead them about the licensing decision process, they should be fair in their representations and not just act as an advocate for one point of view without considering the broader licensing context or the licensing objectives. They should advise that local opposition to, or support for, a licence application is not in itself grounds for refusing or granting the licence and that consideration must be given to the licensing objectives. Where opposition to/support for a licensing application is not founded upon the licensing objectives they should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition/support both before and at the licensing hearing. To do so may raise false expectations of a decision which cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Member.

Recording of reasons

30. The Licensing Sub-Committee must give reasons for its decisions.

Site visits

31. Site visits are generally unnecessary and can risk putting the Members and the Licensing Authority at risk of accusations of bias.
32. In special circumstances, the Senior Licensing Officer may make a recommendation that the Licensing Sub-Committee visits the premises prior to the hearing. In such cases, the Senior Licensing Officer must provide full written reasons justifying the visit and this must be provided to the applicant and any other parties making representations.
33. Members of the Licensing Sub-Committee may adjourn the hearing in special circumstances, part way through hearing any application, to undertake a site visit. The Chairman of the Licensing Sub-Committee must give oral reasons justifying the need for the site visit. The judgement, whether special justification exists for an adjournment, should take into account in general terms the delay, inconvenience and expense of carrying out a visit to all involved including the applicant.
34. The following procedures should be observed where a site visit by the Licensing Sub-Committee is deemed necessary:

- (1) The visit should be undertaken as a group visit attended by all the Licensing Sub-Committee and its purpose should be confined to that indicated by the Senior Licensing Officer or the Chairman;
- (2) The visit should be attended by an Officer who may be asked factual questions by the Member;
- (3) No indication of the likely outcome of the application should be given at any time before, during or immediately after the visit;
- (4) No representation from the applicant or from those making representations shall be heard or accepted in the course of the visit;
- (5) The Licensing Sub-Committee should keep together as a group and not engage individually with any parties;
- (6) Details of those attending the visit, questions asked, and answers given should be recorded by the Senior Licensing Officer.

Conduct at Hearings

35. Members of the Licensing Sub-Committee should not discuss the application directly with the applicant, interested party or responsible authority either immediately prior to the hearing, during the hearing, or after the hearing, other than publicly through the Chairman.
36. Licensing Sub-Committee Members' questioning of speakers is to clarify arguments and views and care should be taken not to express a view at that stage, nor to intimidate speakers.
37. Any material considered by the Licensing Sub-Committee that does not comprise part of any material supplied by the Licensing Authority must originate only from the applicant, an interested party or responsible authority, and must be tabled through the Chairman. The nature of any such material must be clear to all present at the hearing and available for inspection.
38. Members must comply with the Licensing Code of Conduct for Members and Rules of Procedure as amended from time to time.



RUNNYMEDE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEES

RULES OF PROCEDURE

1. General
 - 1.1 These rules of procedure are subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 ("the regulations"). Where appropriate the provisions of the regulations have been incorporated into these rules.
2. Composition of the Sub-Committee
 - 2.1 The Sub-Committee (Hearing) shall comprise of 3 Members of the Licensing Committee, in accordance with section 9 of the Licensing Act 2003 ("the Act"). The quorum shall be three. One Member shall act as Chairman. For each hearing a fourth Member of the Licensing Committee will act as a reserve member in the event that one of the other three Members is unable to attend the hearing.
3. Notice of Hearing
 - 3.1 The licensing authority shall give to the parties a notice stating the date and time and place at which the hearing is to be held (the 'notice of hearing') in accordance with the provisions of the regulations.
 - 3.2 The notice of hearing shall be accompanied by information regarding the following:-
 - (a) the rights of a party provided for in paragraphs 4.1 and 8.5;
 - (b) the consequences if a party does not attend or is not represented at the hearing;
 - (c) the procedure to be followed at the hearing;
 - (d) any particular points on which the licensing authority considers that it will want clarification at the hearing from a party.

4. Right of attendance, assistance and representation

4.1 Subject to paragraphs 6.2 and 6.4, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. For the avoidance of doubt, a party may not be assisted or represented by any Member. However, a Ward Member may attend the meeting in order to represent the general interests of their ward, maintaining their neutrality and being free from bias.

4.2 Upon receipt of the notice of hearing and within the period of time prescribed by the regulations*, each party shall give to the licensing authority a notice stating:-

- (a) whether she/he intends to attend or be represented at the hearing;
- (b) whether he/she considers a hearing unnecessary.

* the notice of hearing given by the licensing authority to the parties shall specify the relevant period of time within which each party must give the notice described in this paragraph.

4.3 In a case where a party wishes any other person (other than the person she/he intends to represent them at the hearing) to appear at the hearing, the notice referred to in paragraph 4.2 above shall contain a request for permission for such other person to attend the hearing accompanied by the details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.

4.4 A party who wishes to withdraw any representations they have made may do so-

- by giving notice to the Council's Licensing Section no later than 24 hours before the day or the first day on which the hearing is to be held; or
- orally at the hearing.

5. Right to dispense with hearing if all parties agree

5.1 The licensing authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the licensing authority itself, have done so by giving notice to the authority that they consider a hearing to be unnecessary.

5.2 Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph 5.1, the licensing authority, if it agrees that a hearing is unnecessary, shall forthwith give notice to the parties that the hearing has been dispensed with.

6. Hearing to be in public

6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.

6.2 The Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

6.3 For the purposes of paragraph 6.2, a party and any person assisting or representing a party may be treated as a member of the public.

6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may -

(a) refuse to permit that person to return, or

(b) permit him/her to return only on such conditions as the Sub-Committee may specify.

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

7. Report

7.1 A report will be put before the Sub-Committee, prepared by the Licensing Section.

7.2 The Licensing Section shall send a copy of the report to the parties in advance of the hearing.

8. Procedure at Hearing

8.1 The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs.

8.2 The Chairman shall at the beginning of the hearing introduce the Members of the Sub-Committee, invite the parties to identify

themselves and then explain to the parties the procedure that the Sub-Committee intends to follow.

- 8.3 The Sub-Committee shall then proceed to consider any request made by a party under paragraph 4.3 (request for permission for another person to appear at the hearing). Permission shall not be unreasonably withheld.
- 8.4 The Chairman may ask a representative of the licensing authority to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.
- 8.5 All parties shall be entitled to: -
- in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph 3.2(d), give further information in support of their application, representations or notice (as applicable)
 - if given permission by the Sub-Committee, question any other party
 - address the Sub-Committee
- * cross examination shall not be permitted unless the Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require.
- 8.6 The parties will normally be invited to address the Sub-Committee in the following order: -
- Applicant
 - Responsible Authorities
 - Interested Parties
- 8.7 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 8.8 Where there is more than one representation raising the same or similar grounds, the Sub-Committee will request that only one party address them on behalf of the parties who have made the representations in question.
- 8.9 In considering any representations or notice made by a party the Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or

notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

8.10 The Sub-Committee shall disregard any information given or evidence produced by a party or any person to whom permission is given to appear at the hearing by the licensing authority which is not relevant to

- (a) their application, representations or notice (as applicable) or in the case of another person, the application, representations or notice of the party requesting their appearance, and
- (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

8.11 Hearsay evidence may be admitted before the Sub-Committee, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.

8.12 The parties shall be entitled to make closing submissions. The closing submissions of any applicant shall follow the closing submissions of any interested part or responsible authority.

8.13 The Sub-Committee may place a time limit on the exercise of the rights set out in paragraphs 8.5 & 8.12 above. All parties shall be allowed an equal maximum period of time.

8.14 The Sub-Committee may, after hearing the representations of the parties, withdraw from the room to make their deliberations. Alternatively, the Sub-Committee may ask all parties and the public to leave the room.

9. Role of Legal Advisor

9.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal advisor at any time during the course of the hearing.

9.2 The legal advisor will accompany Members of the Sub-Committee when they retire to make their deliberations.

9.3 Any advice given by the legal advisor to members of the Sub-Committee shall be provisional until the substance of that advice has been repeated in open session and the parties have had an opportunity to comment on it. The legal advisor will then state in open

session whether the advise is confirmed or varied (and if it is varied, in what way) before members act upon it.

10. Determination of applications

10.1 The Sub-Committee shall make its determination at the conclusion of the hearing or otherwise as prescribed by the regulations.

11. Failure of parties to attend the Hearing

11.1 If a party has informed the licensing authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

11.2 If a party who has not so indicated fails to attend or be represented at a hearing the Sub-Committee may: -

- where it considers it to be necessary in the public interest, adjourn the hearing to a specified day, or
- hold the hearing in the party's absence.

11.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee shall consider at the hearing the application, representations or notice made by that party.

12. Adjournments

12.1 Subject to the provisions of the regulations, the Sub-Committee may

- (a) adjourn the hearing to a specified date
- (b) arrange for a hearing to be held on specified additional dates

where it considers it necessary for its consideration of any representations or notice made by a party.

12.2 Where the Sub-Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

12.3 Similarly, when the Sub-Committee arranges for the hearing to be held on a specified additional date it shall forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.

13. Record of proceedings

- 13.1 A record of the hearing shall be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.
14. Waiver of rules
- 14.1 Except where proscribed by the regulations, the Sub-Committee may in any particular case dispense with or modify these rules.
- 14.2 In particular, the licensing authority may extend a time limit provided for in the regulations for a specified period where it considers this to be necessary in the public interest.
- 14.3 Where the licensing authority has extended a time limit it shall forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

NOTES

Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Sub-Committee will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following provisions: -

- Article 6 - in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law
- Article 8 - everyone has the right to respect for his/her home and private and family life
- Article 1 of the first protocol - every person is entitled to the peaceful enjoyment of his/her possessions

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