

# AGENDA

## LICENSING ACT 2003 COMMITTEE MEETING



Date: Monday 7 October 2013  
Time: 6.45 pm or at the conclusion of  
the meeting of the Licensing  
Committee, whichever is the later  
Venue: Town Hall, High Street,  
Maidstone

### Membership:

Councillors Barned, Mrs Gibson, Mrs Grigg,  
Mrs Hinder (Chairman), Mrs Joy,  
B Mortimer, Naghi, Newton, Parvin,  
Mrs Parvin (Vice-Chairman) and Yates

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Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers

**Continued Over/:**

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**Issued on 26 September 2013**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact JANET BARNES on 01622 602242**. To find out more about the work of the Committee, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk)

**Alison Broom, Chief Executive, Maidstone Borough Council,  
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the Meeting held on 22 May 2013 1 - 2
8. Report of the Head of Housing and Community Services - Licensing Partnership 3 - 10
9. Report of the Head of Housing and Community Services - Local Code of Good Conduct for Councillors and Officers Dealing with Licensing Matters 11 - 33
10. Report of the Head of Housing and Community Services - Delegation of Functions 34 - 37

## **MAIDSTONE BOROUGH COUNCIL**

### **LICENSING ACT 2003 COMMITTEE**

#### **MINUTES OF THE MEETING HELD ON 22 MAY 2013**

**Present:** Councillor Mrs Hinder (Chairman), and  
Councillors Mrs Gibson, Naghi, Mrs Parvin, Yates,  
B Mortimer, Mrs Joy, Parvin, Barned, Mrs Grigg and  
Newton

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

3. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

4. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

5. ELECTION OF CHAIRMAN

RESOLVED: That Councillor Mrs Hinder be elected Chairman for the  
Municipal Year 2013/14.

6. ELECTION OF VICE CHAIRMAN

RESOLVED: That Councillor Mrs Parvin be elected Vice Chairman for the  
Municipal Year 2013/14.

7. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

8. EXEMPT ITEMS

RESOLVED: That the Items on the Agenda be taken in public as proposed.

9. MINUTES

RESOLVED: That the Minutes of the Meeting held on 21 March 2013 be  
approved as a correct record and signed.

10. APPOINTMENT OF POLITICAL GROUP SPOKESPERSONS

The Political Group Spokespersons were appointed as follows:-

Conservative – Councillor Mrs Hinder  
Liberal Democrat – Councillor Mrs Joy  
Independent – Councillor Newton

11. DURATION OF MEETING

7.30 p.m. to 7.34 p.m.

## **MAIDSTONE BOROUGH COUNCIL**

### **LICENSING ACT 2003 COMMITTEE**

**MONDAY 7 OCTOBER 2013**

#### **REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICE**

**Report prepared by Claire Perry**

#### **1. LICENSING PARTNERSHIP**

##### 1.1 Issue for Decision

1.1.1 To receive an Annual Report on the performance of the Licensing Partnership for the financial year 2012/13.

##### 1.2 Recommendation

1.2.1 That Licensing Act 2003 Committee notes and approves the attached report.

##### 1.3 Reasons for Recommendation

1.3.1 In 2009 it was agreed that the administration of the Licensing process would be undertaken in partnership with Sevenoaks District Council and Tunbridge Wells Borough Council. It was agreed that the administrative hub processing the licensing applications would be based at Sevenoaks District Council.

1.3.2 In the first three years there were significant problems in the establishment of the Partnership relating to the transfer of information from the other authorities to Sevenoaks District Council. These problems relating to data transfer led to delays in the transfer of all the licensing functions to Sevenoaks and the completion of this transfer was not concluded until November 2011.

1.3.3 This situation led to a backlog in work from new and existing licence applications which required additional staff resource in order to clear. That resource was given to the Licensing Partnership Manager with the view that the backlog should be cleared by the end of the financial year. The administrative hub has worked very hard and the backlog has been cleared and all work is currently on schedule. It was cleared by November 2012.

1.3.4 Service Plan

1.3.5 The Partnership's Service Plan for 2012/13 had the following seven service objectives. The Licensing Partnership Board agreed the service plan and set the targets. The current position on each of these is set out below.

1.3.6 1. Manage and oversee the Licensing Partnership and contribute to annual efficiency savings.

It has not been possible to advance the efficiency savings set out in this objective because of the previously explained backlog. With the backlog now cleared work has begun on identifying the exact staffing levels required for the ongoing service. A saving of £17500 for 2012/13 has already been identified as a result of the reapportionment of the Hub costs according to the formula set out in the partnership legal agreement. The next stage will be to look at the operation of the service and to break down its administrative functions to see if any changes can be made to improve efficiency and reduce costs. Work is already underway on streamlining processes to reduce the time taken for administrative functions.

1.3.7 2. Continue to develop the 'Centre of Excellence' for all Council licensing functions

1.3.8 The same comments on work processes in relation to 1. are relevant to this objective.

1.3.9 3. Investigate further undertaking of licensing functions for other local authorities

1.3.10 No action has as yet been taken with regard to looking at other local authorities as set out in the service plan. It was agreed that the first step for the Partnership was to ensure its own systems were working effectively before looking to promote itself to other bodies. However, work on this should commence in late summer 2013, as set out within the Service Plan.

1.3.11 4. Improve public perception of services provided by using the feedback from customers to change processes

1.3.12 This is an ongoing process. Work with Tunbridge Wells Borough Council has just concluded and discussions with the team have identified a number of actions which will begin to be implemented across the Partnership from autumn 2013. It was an extensive

project involving their Business Development Unit. Further details can be provided but it is an ongoing project.

- 1.3.13 5. Provide innovative solution to minimise data inputting by administration staff e.g. development of on line application forms
- 1.3.14 The Licensing Partnership Manager has had discussions with the current computer software supplier IDOX for a licensing system which included the facility for online forms and they have indicated that they are unlikely to undertake any work in this area in the near future. However, the Manager has identified a company which has worked with and developed on line forms elsewhere. Discussions have been undertaken with this company and with the computer software supplier IDOX to see how such forms could be introduced within the partnership and linked to the existing computer system.
- Those forms should be introduced and functioning by the autumn. This will ensure that the impact of the improvement of the service and the reduction of costs can take place in the financial year 2014/15. The procurement process has been undertaken at SDC by the IT Department and the proper procedures have been followed. The online forms are integrated so that the information that is input by the customer will be dropped into the back office database. This will mean that instead of officers typing in information from hard copy forms or from the pdf forms that are provided by the Government's on line forms the fields will only need to be checked to ensure that we have the required information.
- 1.3.15 6. Improve existing web pages across the Partnership
- 1.3.16 This is currently being actioned in conjunction with the introduction of the new Web pages at MBC.
- 1.3.17 7. Benchmarking against other local authorities and the Post Office
- 1.3.18 No action has been taken with regard to this objective as work has concentrated on the clearing of the backlog. It is now expected that in the next year this objective will be pursued.
- 1.3.19 The new service plan objectives agreed for 2013/14 are as follows:-see 1.3.5

Service Objective Number	Service Objectives	Timescale	Responsible Officer(s)
<b>1</b>	To manage the Licensing Partnership to deliver efficiency savings and achieve performance targets.	March 2014	Claire Perry
<b>2</b>	Investigate further undertaking of licensing functions for other local authorities.	March 2014	Claire Perry
<b>3</b>	Improve public perception of services provided by using feedback from customers to change processes.	Ongoing – evaluate Nov 13	Claire Perry
<b>4</b>	Provide innovative solutions to minimize data inputting by administration staff e.g. development of on line application forms.	Autumn 2013	Claire Perry
<b>5</b>	Improve the web page information available across the Licensing Partnership.	Sept 2013	Claire Perry
<b>6</b>	Benchmarking against other local authorities and the Post Office.	March 2014	Claire Perry

### 1.3.20 Performance Data

1.3.21 The Licensing Committees and the Cabinet Member will in future receive quarterly reports updating them on the performance of the Licensing Partnership and the data produced for Members in that report will be as follows:-



## Licensing Committee

- Number of vehicle checks carried out – target – fifteen per month.  
Current Performance Level to the end of June 2013 – 39.  
This figure is slightly down for the quarter as a result of there being fewer vehicles in locations where they should not be.  
This reflects that enforcement is being effective.
- The number of Hackney Carriage Vehicle licences issued within 5 working days – target - 75%.  
Current Performance Level to the end of June 2013 – 100%.  
This equates to 8 out of 8 applications.
- The number of Private Hire Vehicle licences issued within 5 working days – target - 75%.  
Current Performance Level to the end of June 2013 – 82%.  
This equates to 46 out of 55 applications.
- The number of Hackney Carriage/Dual Driver licences issued within 30 working days – target -75%.  
Current Performance Level to the end of June 2013 – 100%.  
This equates to 4 out of 4 applications.
- The number of Private Hire Driver licences issued within 30 working days – target - 75%.  
Current Performance Level to the end of June 2013 – 91%.  
This equates to 24 out of 26 applications.
- The number of Private Hire Operator licences issued within 30 working days – target – 75%.  
Current Performance Level to the end of June 2013 – 100%.  
This equates to 11 out of 11 applications.

## Licensing Act 2003

- Number of licensed premises enforcement visits – risk assessments) undertaken in each month –target - fifteen per month and outcomes.  
Current Performance Level to the end of June 2013 – 47 visits for the first quarter.
- Percentage of valid personal licence applications to be processed within two weeks – target - 95%.  
Current Performance Level to the end of June 2013 – 88.6%.  
This equates to 26 out of 29 applications being processed

within the target of 2 weeks. The statutory requirement is to process these applications within 3 months. Processes are being reviewed to ensure this target will be achieved.

- Percentage of temporary event notices processed within 48 hours – target - 90%.  
Current Performance Level to the end of June 2013 – 99%.  
This equates to 112 notices out of 113 notices.
- The number of valid premises licence applications received and issued within two calendar months – target – 95%.  
Current Performance Level to the end of June 2013 – 89%.  
This equates to 13 out of 14 applications. The licence that wasn't issued within two calendar months was referred to a licensing hearing due to valid representations being received.

1.3.22 There is now no backlog in terms of the applications being processed through the Partnership and the Licensing Partnership Manager is reviewing the staffing structure of the section to ensure that efficiency savings can be made within the next financial year. Initial consideration of this matter seems to identify a saving of about £10,000 for Maidstone can be achieved. Additionally it is felt that income within the full service as a whole will increase over the forthcoming year and that a further increase in income of £5,000 can be agreed for licensing budgets.

1.3.23 At the last meeting of the Corporate Leadership Team it was enquired when the right to challenge could be taken up in respect of the Licensing Partnership. Following discussion with the Property and Procurement Manager on this issue he confirmed the right to challenge for Licensing would not occur until after the end of the next period of two years for the Partnership Legal Agreement. The date of the agreement was earlier this year.

1.3.24 Financial  
The overall cost of line management and administration of the licensing functions through the Partnership for the three authorities is £418,000 per year.

The Partnership agreement contains a mechanism for apportioning this cost between the three authorities based on the level of transactions for each authority. The costs are split on the basis of the mean average of the transactions of the authorities for the three financial years ending on the 31 March of the year before the start of the financial year to which the split will be applied.

For 2013/14 the split is TWBC 30.7% MBC 36.5% SDC 32.8%

1.4 Alternative Action and why not Recommended

1.4.1 The report is for information only.

1.5 Impact on Corporate Objectives

1.5.1 The information given in this report sets out the performance of the Licensing Partnership to date and the actions taken and planned to achieve Corporate and Customer Excellence including achieving an effective value for money service.

1.6 Risk Management

1.6.1 The actions taken by the council in recent times has put the Council in a stronger position.

1.7 Other Implications

1. Financial Note as set out in body of report	x
2. Staffing	x
3. Legal	
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	
9. Asset Management	

The financial and staffing implications arising from the partnership are set out in the body of this report.

1.8 Relevant Documents

1.8.1 Appendices

1.8.2 Income position.

1.8.3 Background Documents

1.8.4 None.

## **MAIDSTONE BOROUGH COUNCIL**

### **LICENSING ACT 2003 COMMITTEE**

**7 OCTOBER 2013**

#### **REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICES**

**Report prepared by Lorraine Neale**

#### **1. LOCAL CODE OF GOOD CONDUCT FOR COUNCILLORS AND OFFICERS DEALING WITH LICENSING MATTERS**

##### 1.1 Issue for Decision

- 1.1.1 The report informs Members of changes necessary to the Code of Conduct for dealing with Licensing Matters following the introduction of the new standards regime on 5 July 2012 (and amendments to the Licensing Act 2003. The draft revised code, updated to reflect the legislative changes is attached as Appendix B for members' information.

##### 1.2 Recommendation of Head of Housing and Community Services

- 1.2.1 That the draft revised Licensing Code be agreed and inserted into the Council's Constitution.

##### 1.3 Reasons for Recommendation

- 1.3.1 Chapter 5 of the Constitution contains the Code of Conduct for Councillors and Officers Dealing With Licensing Matters, which gives officers, members of this Committee, the Licensing Act 2003 Committee, (change round for the report to the other committee) and its sub-committees advice on probity issues, insofar as they relate to licensing. The Code does not form a part of the adopted Members' Code of Conduct but is a separate document, which is both supportive of the Members' Code of Conduct and the source of expanded guidance in the particular area of licensing. The Licensing Code is intended to provide advice to Members so as to minimise the prospect of legal or other challenge to decisions. A copy of the current Licensing Code is attached as Appendix A to this report.

- 1.2.2 Following the provisions in the Localism Act 2011 relating to member standards coming in to force, Maidstone Council adopted a new Member Code of Conduct on 5 July 2012. There have also been

changes to the Licensing Act 2003, which change the position on who may make representation. As a result, the existing Licensing Code requires updating.

- 1.2 .3 The Localism Act 2011 brought to an end the previous standards regime and enabled local authorities to adopt a locally determined code. Maidstone Council adopted a new Code on 5 July 2012. The Localism Act, together with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, introduced the new concept of "Disclosable Pecuniary Interests" (DPIs). Members are required to notify the Monitoring Officer of their DPIs and may not take part in a discussion or vote on any matter in which they have a DPI. Failure to do this, with reasonable excuse, is now a criminal offence. Maidstone's Code of Conduct also requires Members with DPIs to withdraw from the room during a discussion on a matter in which they have a DPI.
- 1.2.4 Guidance from the Department for Communities and Local Government states that a member may not participate in any discussion or vote at any committee or sub-committee where they have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting. The guidance goes on to state that this prohibition applies to any form of participation, including speaking as a member of the public at such a meeting. There are provisions in the Localism Act 2011 which permit a Member with a DPI to apply for a dispensation from the Council to allow the Member to take part in a discussion or vote.
- 1.2.5 DPIs include ownership of land (including the Member's home), employment or sponsorship. The full list of DPIs is set out in the Members Code of Conduct.
- 1.2.6 As a result of the above changes it will be necessary to amend the Licensing Code to replace advice on prejudicial and personal interests with advice on DPIs in relation to licensing matters.
- 1.2.7 In addition, the Licensing Act 2003 was recently amended to remove the vicinity test for interested parties. This now means that any person may make a relevant representation in respect of an application under the Licensing Act 2003. Also The Police Reform and Social Responsibility Act 2011 added licensing authorities to the list of responsible authorities under the Licensing Act 2003. The aim of this policy is to ensure that licensing authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other responsible authorities. The Licensing Code therefore requires

amendment in relation to the advice given to members of Licensing Sub Committees and Councillors wishing to make representations those.

1.4 Alternative Action and why not Recommended

1.4.1 The changes proposed arise from changes in legislation and therefore no alternative action is recommended.

1.5 Impact on Corporate Objectives

1.5.1 Revising the Code supports the Council’s objective of corporate and customer excellence.

1.6 Risk Management

1.6.1 Failure to amend the Licensing code of conduct could lead to the challenge that the Council do not conduct their business in a fair and transparent way.

1.7 Other Implications

1.7.1

1.	Financial	
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.3 The legal implications have been dealt with in the body of the report

1.8 Relevant Documents

1.8.3 Appendices

Appendix A - Existing Code of conduct  
Appendix B - Amended Code of Conduct

Background Documents

None

<b><u>IS THIS A KEY DECISION REPORT?</u></b>		<b><u>THIS BOX MUST BE COMPLETED</u></b>	
Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If yes, this is a Key Decision because: .....			
.....			
Wards/Parishes affected: .....			
.....			



**LOCAL CODE OF CONDUCT FOR**

**COUNCILLORS AND OFFICERS**

**DEALING WITH LICENSING MATTERS**

**Adopted by the Licensing Act 2003 Committee on 28 April 2005**  
**By Standards Committee on 13 June 2005**  
**And by the Council on 27 July 2005**

## **BACKGROUND TO THE CODE**

The Code is based on the Lacor's Guidance: The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, which was produced to help ensure that Councillors make licensing decisions in an open, impartial, and lawful manner, with sound judgement and for justifiable reasons. For Licensing Committee, also read as Licensing Sub-Committee.

### **1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- Councillors and Officers have different, but complementary, roles. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to Officers through a decision of the Council or its Executive or a Committee or Sub-Committee. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised.
  
  - Both Councillors and Officers are guided by codes of conduct. The statutory Local Code of Conduct supplemented by guidance from the Standards Board, provides standards and guidance for Councillors. Employees will be subject to a statutory Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.
- (a) The Model Code sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the licensing process. Of particular relevance to Councillors serving on licensing committees, sub-committees, or who become involved in making a licensing decision is the requirement that a Member:

*“must not in his official capacity, or any other circumstances, use his position as a Member **improperly** to confer on or secure for himself or any other person, an advantage or disadvantage;” (Paragraph 5(a) of Model Code).*

Councillors serving on the Licensing Committee, or Sub-Committee, or who otherwise become involved in making a licensing decision will represent their constituents as a body and vote in the interests of the whole Borough. The basis of the licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Licensing Committee should take account of those views, they should not

favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

(1) The role of an Elected Member on the Licensing Committee will involve balancing the multiple needs and interests of the community, whilst giving priority to the Four Licensing Objectives of the Licensing Act 2003, namely:

- The prevention of Crime and Disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee. Councillors should also be very cautious about accepting any gifts and hospitality. The Code requires any Members receiving any gift or hospitality **in their capacity as Members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. However, Members of the Licensing Committee should not accept any gifts of hospitality from persons involved in licensing applications.

(b) Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of the minimal level and register its receipt as soon as possible, Officers should also register any offer of gifts or hospitality which they have declined.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council.

A requirement for staff to act impartially is likely to be a requirement of the statutory Employees' Code.

Such impartiality (particularly crucial in highly contentious matters) is reinforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraphs 2(b) and (c) 3(2)(c) of the Model Code to:

- Treat others with respect; and
- Not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

(c) The Council has agreed that no member will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies and procedures of this Committee as specified by the

Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the committee for newly appointed members and substitute members of the committee. If the specified training has not been completed by the due date, the member will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community services will keep a record of the training requirements of this Committee and of member's compliance with the requirements. Existing members of this Committee should be updated regularly on changes of legislation and procedures and receive refresher training on an annual basis. All Members of Licensing Committee should receive refresher training annually.

## 2. REGISTRATION OF INTERESTS BY COUNCILLORS

The Local Government Act 2000 and the Model Code place requirements on Members on the registration and declaration of their interests and the consequences for the Member's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Guidance on the registration and declaration of interests will be issued by the Standards Board for England and advice may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

## 3. DECLARATION OF INTERESTS

The Model Code abandons the use in the old National Code of the terms 'pecuniary' and 'non-pecuniary' interests. Instead, it uses the terms '**personal**' and '**prejudicial**' interests. The code defines a personal interest in any matter under discussion as:

- (1) If the matter relates to an interest in respect of which the Member has given notice in the statutory register of Members' interests; and
- (2) If a decision upon it might reasonably be regarded as affecting **to a greater extent than other Council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or
  - Any employment or business carried on by such persons;
  - Any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are Directors;
  - Any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

- Any body which the Member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.

Where a Member considers he has such a personal interest in a matter, he must always declare it, but *it does not then necessarily follow that the personal interest debars the Member from participation in the discussion*

The Member then needs to consider whether the personal interest is a **prejudicial** one. The code provides that a personal interest becomes a prejudicial one “...if the interest is one which a Member of the public **with knowledge of the relevant facts** would **reasonably** regard as so significant that it is likely to prejudice the Member’s judgement of the public interest”. *If a Member has such an interest, he should not participate in a discussion on the matter and must withdraw from the room and must not seek improperly to influence a decision in the matter.*

The code includes some exceptions to this. For example, if the matter under discussion relates to:

- Another authority of which the Councillor is a Member;
- Another public authority in which the Councillor has a position of general management or control;
- A body to which the Councillor has been appointed or nominated as a representative of the authority.

Then, in these circumstances, the interest **may not be regarded as prejudicial**. In practice, therefore, the Member would need to declare the interest, but could participate, if appropriate, having regard to all the circumstances. The Member, in such circumstances, should seek advice of the Monitoring Office.

It can be seen that these provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Councillor and those arising from the Councillor’s wider public life. The emphasis is on a consideration of the status of the interest in each case by the Councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts. The Standards Board has provided guidance on this aspect of the Code. In the end, however, the decision will be for the Councillor alone to take.

Translated to a Councillor’s involvement in licensing issues, the two stage test of personal and prejudicial interests and taken a firm view on the licensing matter, either in meetings of the other body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account – they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place their authority in danger of judicial review.

The advent of new forms of political management in local authorities has given rise to a potentially difficult issue. Authorities operating forms of the Executive Model will typically have an Executive Member responsible for economic development. That Member may be a member of the authority's Licensing Committee or other decision-making body for licensing matters. There may be occasions when that Executive Member will wish to press for a particular development which the Member regards as beneficial to the development of the area. Should that Executive Member be able to vote on any licensing application relating to that proposal? The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a Member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the Member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the Member becomes almost the 'internal applicant'.

Any Member who is a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Licensing Committee when considering taking up an appointment on that Committee, but provided that the Member has not voted on the application when considered by that Council and provided that he does not believe himself to be under an obligation to vote in the same way as the Parish Council recommends, dual Membership should not be a bar to sitting on the Licensing Committee when considering such applications.

#### **4. APPLICATIONS SUBMITTED BY COUNCILLORS AND THE LOCAL AUTHORITY**

Proposals to their own Authority by serving and former Councillors, Officers, and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development.

Local Authorities may apply for their own Premises Licenses so as to licence areas of public space (either indoor or outdoor). Indeed the Government's guidance encourages this:

*3.5.9 "To ensure cultural diversity thrives, Local Authorities should consider establishing a policy of seeking premises licenses from the Licensing Authority for public spaces within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres, and similar public areas."*

Such applications must be and seen to be dealt with in exactly the same manner in all other applications, with no regard given to the interests of the Council itself. During such an application process, it is therefore important to be aware of any potential appearance of bias.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a licensing matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve they should take no part in its processing.
- The Monitoring Officer shall be informed of such proposals by the Councillor concerned and by Officers when they submit licensing applications on behalf of themselves or their spouses.
- Applications by Councillors, Officers and by the Council itself will be dealt with by the Licensing Sub-Committee.

## **5. LOBBYING OF AND BY COUNCILLORS**

- Local Democracy – the Licensing Act 2003 sets out the grounds for making representations on licensing applications and limits the parties that may make such representations. The scope of lobbying may be restricted whereby, for example, local Councillors are only permitted to make representations to the Licensing Authority where they live in the vicinity of the premises concerned, or have been requested by one of the “interested parties” (e.g. residents/local businesses) to act on its behalf (see Licensing Act 2003 – Section 13 “3”). However, it should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision making or “democratise” the process and members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment as well as the undesirability of crime and public nuisance.

It is important to recognise that lobbying is a normal and a perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Licensing Sub-Committee.

- However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Licensing Committee should not express an opinion which may be taken as indicating that they have already made up their mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice and refer the lobbyist to his/her Ward Member, who is not a Member of the Licensing Committee or the Licensing Officer who can explain the process of decision making.
- Councillors, and Members of the Licensing Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a licensing application will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the Officers’ advice and other relevant representations made

before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Standards Board that any Member has breached the Local Code.

- In reality, of course, Councillors will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Licensing Committee's proceedings (as set out in the paragraph above) is that Members of the Licensing Committee must not decide which way they intend to vote in advance of the Licensing Committee meeting.
- Political reality suggests that it is often important to distinguish between the role of the Licensing Committee Member who is, and who is not, a Ward Member for the area affected by a particular licensing application.

A Licensing Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Licensing Committee meeting before declaring one way or the other.

A Licensing Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Licensing Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Licensing Committee. Although not amounting to a prejudicial interest according to the Code of Conduct, the proper course of action for such a Member would be not to participate in consideration of the application.

It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement when taking decisions on licensing matters to take account of all arguments in an open-minded way.

- It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Member, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct.
- Given that the point at which a decision on a licensing application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Licensing Committee meeting must not be used to decide how Councillors should vote.



- Members of the Licensing Committee should avoid organising support for or opposition to a licensing application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- Councillors should not put improper pressure on Officers for a particular application and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Where a Councillor receives written representations directly in relation to a licensing application he/she shall pass the correspondence to the Licensing Officer in order that those representations may be referred to in any Committee report.
- Members of the Licensing Committee will remain in the meeting for the whole time that an item is being debated and will not be able to vote on the matter unless they have done so.

## 6. PRE-APPLICATION DISCUSSIONS

Councillor(s) will not be involved in discussions with an applicant or agent concerning a licensing proposal when a licensing application is imminent or has been submitted and remains to be determined. This is because the Councillor could all too easily compromise his/her own position or the position of the Council.

## 7. SITE VISITS

The Protocol for site visits, which take place during a hearing, is as follows:-

### Purpose of Visits

- The purpose of the site visits is to enable Members to inspect proposed application sites to enable Members to better understand the impact of that proposal;
- It is not the function of the visit to receive representations or debate issues;

### Selecting Site Visits

- visits will take place if voted for by a majority of the Licensing Sub-Committee;
- site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned;

### Procedures on Site Visits

- (i) the site will be inspected from the viewpoint of both applicant(s) and other persons making representations;
- (ii) where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

### Decision Making

- (i) No decision will be taken on site.

## **8. REGULAR REVIEW OF DECISIONS**

- Councillors should visit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of licensing policy.
- Such a review will be undertaken at least annually. It should include examples from a broad range of categories. The Licensing Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

## **9. COMPLAINTS AND RECORD KEEPING**

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.
- So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Licensing Committee. These principles apply equally to enforcement. Monitoring should be undertaken regularly.

**LOCAL CODE OF CONDUCT FOR  
COUNCILLORS AND OFFICERS  
DEALING WITH LICENSING MATTERS**

**Adopted by the Licensing Act 2003 Committee on 28 April 2005  
By Standards Committee on 13 June 2005  
And by the Council on 27 July 2005**

**Further Amended by Licensing Committees 7 October 2013  
to take into account the new Code of Conduct, Localism Act 2011, amendments to  
Licensing Act 2003 and the officer restructure.**

## BACKGROUND TO THE CODE

The Code is based on the Lacor's Guidance (Updated January 2010): The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, which was produced to help ensure that Councillors make licensing decisions in an open, impartial, and lawful manner, with sound judgement and for justifiable reasons. For Licensing Committee, also read as Licensing Sub-Committee. It also takes account of the general local code of conduct and Licensing Act 2003 changes.

### 1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- Councillors and Officers have different, but complementary, roles. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to Officers through a decision of the Council or its Executive or a Committee or Sub-Committee. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised.
  - Both Councillors and Officers are guided by codes of conduct. The Code of Conduct adopted by Maidstone Borough Council, provides standards and guidance for Councillors. In addition, Councillors are obliged to register and declare certain pecuniary interests by the Localism Act. Employees will, in due course, be subject to a statutory Employees' Code of Conduct but in the meantime Maidstone Borough Council has adopted its own Code of Conduct for employees. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.
- (a) The Code of Conduct for Councillors was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but it also deals with a Members relationship with other Members, staff and the public, which will impact on the way in which Councillors participate in the licensing process. Of particular relevance to Councillors serving on licensing committees, sub-committees, or who become involved in making a licensing decision, (relating to an application, enforcement or policy) is the requirement that a Member:

*"must not when acting in his/her capacity as a member, use or attempt to use his/her position as a Member improperly to confer on or secure for himself or any other person, an advantage or disadvantage;" (Paragraph 3 (2)(g) of Code).*

Councillors serving on the Licensing Committee, or Sub-Committee, or who otherwise become involved in making a licensing decision will represent their constituents as a body and vote in the interests of the whole Borough. The basis of the licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Licensing Committee should take account of those views, they should not

favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

(1) The role of an Elected Member on the Licensing Committee will involve balancing the multiple needs and interests of the community, whilst giving priority to the Four Licensing Objectives of the Licensing Act 2003, namely:

- The prevention of Crime and Disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee. Councillors should also be very cautious about accepting any gifts and hospitality. The Code requires any Members receiving any gift, benefit or hospitality or a series thereof in their official capacity as Members, over the value of £100, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years). However, Members of the Licensing Committee should not accept any gifts, benefit or hospitality from persons involved in licensing applications.

(b) Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of the minimal level and register its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by Directors of the Council.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council.

A requirement for staff to act impartially is likely to be a requirement of the statutory Employees' Code.

Such impartiality (particularly crucial in highly contentious matters) is reinforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraphs 3(2)(c) of the Code:

- Not to do anything which compromises or which is likely to compromise the impartially or integrity of those who work for, or on behalf of, the authority.

(c) The Council has agreed that no member will be able to serve on Licensing Committees without having agreed to undertake a minimum period of training on the policies and procedures of this Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the committee for newly appointed members and substitute members of the committee. If the

specified training has not been completed by the due date, the member will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community services will keep a record of the training requirements of this Committee and of member's compliance with the requirements. Existing members of this Committee should be updated regularly on changes of legislation and procedures and receive refresher training on an annual basis. All Members of Licensing Committee should receive refresher training annually.

## 2. **REGISTRATION OF INTERESTS BY COUNCILLORS**

The **Localism Act 2011** and the Code place requirements on Members **relating to** the registration and declaration of their interests and **sets out** the consequences for the Member's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Advice may be sought from the Council's Monitoring Officer **on these issues**. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection **and be published on the Council's website**. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of **adoption of the local code, or within 28 days of** his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

## 3. **DECLARATION OF INTERESTS**

The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's code. Where a Member considers he has a DPI or OSI in a matter, he must always declare it, *not participate or vote on the matter and must withdraw from the room when the matter is discussed.*

If the Council allows members of the public to address meetings, then a Member with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Member wishes to take advantage of this, they should seek guidance from the Monitoring Officer.

Translated to a Councillor's involvement in licensing issues, **the interests test will** require a Councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Councillor, his family, friends or employer (other than the limited right to attend meetings to make representations and then leave).

**In certain circumstances a Councillor with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest.**

The advent of new forms of political management in local authorities has given rise to a potentially difficult issue. Authorities operating forms of the Executive Model will typically have an Executive Member responsible for economic development. That Member may be a member of the authority's Licensing Committee or other decision-making body for licensing matters. There may be occasions when that Executive Member will wish to press for a particular development which the Member regards as beneficial to the development of the area. Should that Executive Member be able to vote on any licensing application relating to that proposal? The appropriate action is

not clear cut, and may depend on the particulars of the case. However, the general advice would be that a Member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the Member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the Member becomes almost the ‘internal applicant’. In such circumstances, the appropriate approach is likely to be that the Member is able to speak in favour of the development but should not vote on the relevant applications, (unless the Member has conducted high-profile, active lobbying for a particular outcome, in which case he should not participate in the debate or vote on the application.)

Any Member who is a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Licensing Committee when considering taking up an appointment on that Committee, but provided that the Member does not believe himself to be under an obligation to vote in the same way as the Parish Council **view**, dual Membership should not be a bar to sitting on the Licensing Committee when considering such applications. However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the Councillor is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

#### 4. APPLICATIONS SUBMITTED BY COUNCILLORS AND THE LOCAL AUTHORITY

**Applications** to their own Authority by serving and former Councillors, Officers, and their close **associates** and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council’s own **application**.

Local Authorities may apply for their own Premises Licences **including licensing** areas of public space (either indoor or outdoor). Indeed the Government’s guidance encourages this:

3.5.9 “To ensure cultural diversity thrives, Local Authorities should consider establishing a policy of seeking premises licenses from the Licensing Authority for public spaces within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres, and similar public areas.”

Such applications must be and seen to be dealt with in exactly the same manner in all other applications, with no regard given to the interests of the Council itself. During such an application process, it is therefore important to be aware of any potential appearance of bias.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a licensing matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve they should take no part in its processing.
-

- The Monitoring Officer shall be informed of such proposals by the Councillor concerned and by Officers when they submit licensing applications on behalf of themselves or their spouses.

## 5. LOBBYING OF AND BY COUNCILLORS

- Local Democracy – the Licensing Act 2003 sets out the grounds for making representations on licensing applications and sets out the parties that may make such representations.
- Councillors are now regarded as other parties in their own right. They are entitled to make representations or call for reviews in respect of any licensed premises in any ward within the council's area. They do not have to await instructions from residents or other organisations, but can act on their own initiative.
- **More generally** it is important to recognise that lobbying is a normal and a perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Licensing Sub-Committee.
- However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Licensing Committee should not express an opinion which may be taken as indicating that they have already made up their mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice and refer the lobbyist to his/her Ward Member, who is not a Member of the Licensing Committee or the Licensing Officer who can explain the process of decision making **and making representations**.
- Councillors, and Members of the Licensing Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a licensing application will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the Officers' advice and other relevant representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the **Council** that any Member has breached the Local Code.
- In reality, of course, Councillors will often form a **view** about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Licensing Committee's proceedings (as set out in the paragraph above) is that Members of the Licensing Committee must not **finally make up their mind or openly declare the** way they intend to vote in advance of the Licensing Committee meeting.
- Political reality suggests that it is often important to distinguish between the role of the Licensing Committee Member who is, and who is not, a Ward Member for the area affected by a particular licensing application.



A Licensing Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Licensing Committee meeting before declaring one way or the other.

A Licensing Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Licensing Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Licensing Committee. Although not amounting to an interest according to the Code of Conduct, the proper course of action for such a Member would be to **make an open declaration** not to participate in consideration of the application **and not vote but they may wish to act as / or represent an 'other party', or may wish to act in their capacity as an interested party in their own right.**

It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement when taking decisions on licensing matters to take account of all arguments in an open-minded way.

- It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Member, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct **and the law relating to bias and predetermination.**
- Given that the point at which a decision on a licensing application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Licensing Committee meeting must not be used to decide how Councillors should vote.
- Members of the Licensing Committee should avoid organising support for or opposition to a licensing application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- Councillors should not put improper pressure **on** Officers on a particular application and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Where a Councillor receives written representations directly in relation to a licensing application he/she shall pass the correspondence to the Licensing Officer in order that those representations may be **taken in to account or** referred to in any Committee report.
- Members of the Licensing Committee will remain in the meeting for the whole time that an item is being debated and will not be able to vote on the matter unless they have done so.

## **6. PRE-APPLICATION DISCUSSIONS**

Councillor(s) will not be involved in discussions with an applicant or agent concerning a licensing proposal when a licensing application is imminent or has been submitted and remains to be determined. This is because the Councillor could all too easily compromise his/her own position or the position of the Council.

## **7. SITE VISITS**

The Protocol for site visits, which take place during a hearing, is as follows:-

### Purpose of Visits

- (i) The purpose of the site visits is to enable Members to inspect proposed application sites to enable Members to better understand the impact of that proposal;
- (ii) It is not the function of the visit to receive representations or debate issues;

### Selecting Site Visits

- (i) visits will take place if voted for by a majority of the Licensing Sub-Committee;
- (ii) site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned;

### Procedures on Site Visits

- (i) the site will be inspected from the viewpoint of both applicant(s) and other persons making representations;
- (ii) Where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

### Decision Making

- (i) No decision will be taken on site.

## **8. REGULAR REVIEW OF DECISIONS**

- Councillors should visit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of licensing policy.
- Such a review will be undertaken at least annually. It should include examples from a broad range of categories. The Licensing Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

## **9. COMPLAINTS AND RECORD KEEPING**

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.

So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Licensing Committee. These principles apply equally to enforcement. Monitoring should be undertaken regularly.

# Agenda Item 10

## **MAIDSTONE BOROUGH COUNCIL**

### **LICENSING ACT 2003 COMMITTEE**

**7 OCTOBER 2013**

#### **REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICES**

**Report prepared by Lorraine Neale**

#### **1. DELEGATION OF FUNCTIONS**

##### 1.1 Issue for Decision

1.1.2 To consider the amendments required to the delegations of the Licensing Act 2003 Committee to bring about parity in terms of representations related to the delegation for both Licensing and Gambling and also determining the method of operation by which the Licensing Authority would act as a responsible authority in respect of applications made for licences under the Licensing Act 2003.

##### 1.2 Recommendation of Head of Housing and Community Services

1.2.2 That the Delegation of Functions within the Constitution for the Licensing Act 2003 Committee be amended as shown in Appendix A to this report.

##### 1.3 Reasons for Recommendation

1.3.1 Currently the Delegation Functions for the Licensing Act 2003 Committee is as follows:-

All applications where a "Relevant Representation" (Licensing) or a "Representation" (Gambling) has been made will be dealt with by the Licensing Act 2003 Sub Committee. Cancellation of club gaming / club machine permits. Counter notice to temporary use notice will be dealt with by the Licensing Act 2003 Sub Committee. All other licensing applications will be dealt with by the Director of Regeneration and Communities / Head of Housing and Community Services. All other gambling applications will be dealt with by the Head of Housing and Community Services".

1.3.2 In respect of the delegation on representations there are differences with regard to licensing and gambling. This would

mean that if a representation of any sort is made in respect of a gambling application it would have to be submitted to the Licensing Act 2003 Sub Committee unlike licensing applications where only relevant representations would require this. For example, when a representation was made in respect of an application for a betting premises, the representation had to go before the Sub Committee, even though the representation did not cover any of the statutory grounds of refusal and therefore was not relevant. In order to prevent this situation occurring again it is proposed the delegation should be changed to add the word "relevant" in front of "representation" in respect of gambling applications in the same way it is for licensing applications to ensure that future representations that come before the Sub Committee can actually be dealt with by the Sub Committee and are not issues on which no action can be taken.

- 1.3.3 The other recommended change is to make the new Responsible Authority function for Licensing Act 2003 a delegation to the Director of Regeneration and Communities to ensure separation from the other functions delegated to the Head of Housing and Community Services. This creates the same position as that for the Gambling Act 2005, where the Licensing Authority has always been a Responsible Authority.

#### 1.4 Alternative Action and why not Recommended

- 1.4.1 If the delegation were not changed it would mean unnecessary Sub Committee meetings being held and a lack of clear separation of Responsible Authority function for the Licensing Act 2003.

#### 1.5 Impact on Corporate Objectives

- 1.5.1 The amendments to existing delegations will assist in improving the efficiency and effectiveness of our licensing decision-making.

#### 1.6 Risk Management

- 1.6.1 There are no risks

#### 1.7 Other Implications

##### 1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal


- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management


1.8 Relevant Documents

1.8.1 Appendices

Appendix A: Licensing Act 2003 Revised list of delegations.

<b><u>IS THIS A KEY DECISION REPORT?</u></b>	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
If yes, when did it first appear in the Forward Plan?	
.....	
This is a Key Decision because: .....	
.....	
Wards/Parishes affected: .....	
.....	

**COMMITTEE AND MEMBERSHIP**

Licensing Committee (NB members and substitute members of planning committee cannot be members of licensing committee)

Licensing Act 2003 Committee (NB members and substitute members of planning committee cannot be members of Licensing Act 2003 Committee) (must comprise 10-15 members of the Authority)

**FUNCTIONS**

Licensing – Functions relating to licensing as set out in Schedule 1 to the Functions Regulations.  
As detailed in the Appendix to Part 3 of the Constitution. (Except those functions which are the responsibility of the Licensing Act 2003 committee)

To deal with Licensing functions in accordance with the Licensing Act 2003 and the Licensing Policy agreed by the Council.  
To deal with Gambling functions in accordance with the Gambling Act 2005 and the Statement of Principles agreed by the Council.

**DELEGATION OF FUNCTIONS**

All functions delegated to the Director of Regeneration and Communities/Head of Housing and Community Services except the determination of policy, setting the level of fees and charges, consideration of appeals against any licence and the making of an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption which are the responsibility of the Licensing Committee

All matters where a “Relevant Representation”, (including and objection or objection notice) (Licensing) or a “Relevant Representation” (Gambling) has been made will be dealt with by the Licensing Act 2003 Sub Committee. Cancellation of club gaming / club machine permits. Counter notice to temporary use notice will be dealt with by the Licensing Act 2003 Sub Committee. All other licensing and gambling matters will be dealt with by the Head of Housing and Community Services. Except for Responsible Authority functions which will be dealt with by the Director of Regeneration and Communities.