

SCHEDULE 1

LICENSING SUB COMMITTEE PROCEDURE RULES

1. The rules for the Licensing Act 2003 and Gambling Act 2005 Sub Committees (“Licensing Sub Committee[s]”) shall be as follows:

2. Composition

The Licensing Sub-Committees shall comprise of 3 Members of the Strategic Licensing Committee as appointed.

The Licensing Sub-Committees shall comprise three members who do not represent the division affected, who do not have a prejudicial interest in the subject matter and who are not representing one of the parties, from the membership of the Strategic Licensing Committee, appointed by the Group Manager Public Protection and Enforcement or the Environmental Health Manager to determine applications (referred to in the Council’s Scheme of Delegation) under the Licensing Act 2003 and the Gambling Act 2005.

3. Number of Meetings

The Licensing Sub-Committees will meet as and when necessary.

4. Quorum

The Quorum for the Licensing Sub-Committee shall be three.

5. Role and Function

The Licensing Sub-Committees (subject to any legislative restrictions) will be responsible for discharging all of those functions conferred on the Strategic Licensing Committee in relation to the Licensing Act 2003 and the Gambling Act 2005.

6. Speaking at Meetings of the Sub Committee

Members of the public and of Council staff will be entitled to speak at meetings of the Licensing Sub-Committee in accordance with the procedure rules for the Sub-Committee as shown in annex A.

7. Bias and Predetermination

Bias is an attitude of mind which prevents the decision maker from making an objective determination of the issues that he/she has to resolve. There is no need for proof of actual potential bias for there to be a “procedural impropriety”. It is sufficient that there is an appearance of bias. The test for bias is “whether a fair-minded informed observer, having considered the facts would conclude that there was a real possibility of bias”.

Where the decision to be made is quasi-judicial, as at the Licensing Sub-Committee, the key issue to ensure the legality of the decision is the “public perception of a probability of unconscious bias”. Members should therefore avoid participating as a member of the the Licensing Sub-Committee where previous voting or statements of belief may alter that objective impression conveyed. A Member should not reach a final conclusion before he/she comes to take a decision on an issue. A Member’s statements and activities should not create the impression that his/her views on a matter are fixed, and that he/she will not fairly consider the evidence or arguments presented to him/her, when he/she is making a decision.

'Bias' also includes the situation where it is felt that the decision maker has predetermined the case based on his/her own prejudices. An obvious example is where the impression is clearly given to e.g. members of the public or a lobbyist, beyond conveying a mere disposition, that "the member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues".

To help avoid accusations of pre-determination and ensure that division Members are free to represent their constituents as "interested parties", division Members will not sit on the Licensing Sub-Committee where that Sub-Committee is considering an application in that Member's division.

A Member must make a disclosure of his/her position regarding the possibility of political or structural bias, in advance, to the Licensing Sub-Committee which will consult with its Legal Advisor to decide if the member can participate in the decision-making.

8. Applications Submitted by the Council

The Council may apply for its own Premises Licences so as to licence areas of public space. Such applications must be seen to be dealt with fairly.

During such an application process it is therefore important to be aware of any potential appearance of bias.

9. Lobbying

The Licensing Act 2003 sets out the grounds for making representations on licence applications and limits the parties which may make such representations. Local Councillors can either sit as part of the Licensing Committees or can represent the interests of their constituents by acting as "interested parties" as long as they do not have any prejudicial interest in the matter.

To avoid an appearance of bias:

- No member sitting on the Licensing Sub-Committee can represent one of the interested parties of the applicant. If she/he wishes to do so she/he must excuse him/herself from the membership of the Sub-Committee which is considering the application and can only address the Sub-Committee if she/he is a representative of the 'interested party'. A member may be an interested party but if he or she is then that member can not sit on the Licensing Sub Committee hearing the relevant matter.
- If a member who sits on the Licensing Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that she cannot discuss the matter and refer the lobbyist to his/her division member or the Licensing Officers who can explain the process of decision making. If a member is to represent one of the parties, they will not be selected to serve on the Licensing Sub-Committee for that application.
- Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to Licensing Sub-Committee decision. To do so will indicate that the member had made up his/her mind before hearing all the evidence and that their decision may not be based upon the Licensing Objectives not the Licensing Authority's Statement of Licensing

Policy.

- Political group meetings should never be used to decide how any members on the Licensing Sub-Committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration.
- Councillors must not be Members of the Licensing Sub-Committee if they are involved in campaigning on the particular application
- Other Members (i.e. those which do not sit on the Licensing Sub-Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Sub-Committee Members as this can easily be viewed as bias/pressure and may well open that Sub-Committee Member to accusations of such. A full prohibition upon discussing such issues with Committee Members by other Members may be impractical and undemocratic.
- Members must NOT pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious).

It should be noted that a member for a division, which would be directly affected by the applications, is most at risk of being accused of bias. Members whose division includes the application, or whose division is likely to be affected by the application, should not sit on the Licensing Sub-Committee considering the application but he/she may wish to act as/or represent an "interested party".

All of the above guidance also applies where an application is to be considered by the Licensing Committees.

10. Pre-Application/Pre-Decision Discussions

Whilst discussions between the licence applicant and the Licensing Officer prior to the submission of an application, or prior to a decision being made are often helpful to both parties, the Licensing Authority must ensure it is not open to accusations or appearance of bias. It must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of "predetermination".

Members of the Licensing Sub-Committee should ensure that they DO NOT take part in any preapplication/pre-decision discussions and that applicants are referred to the Licensing Officer.

11. Who can put items on the Committee Agenda

Licensing Sub Committees will decide matters in accordance with the relevant legislation; for instance a meeting will be called following a request for a review by or an objection received from an interested party or responsible authority.

12. Role of the Licensing Officer

The Licensing Officer will not generally make recommendations to the Licensing Sub-Committee. A summary report of the application, the representations and the Officer's comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.

13. Decision Making

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. Decisions must be made according to the licensing objectives of the Licensing Act 2003 as well as the Licensing Authority's Policy Statement..

14. Site Inspection

Site inspections by Licensing Sub-Committee Members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias. If a site inspection is required then the reasons will need to be set out to justify the visit.

15. Application of Council Procedure Rules

Council Procedure Rule 32.2 (Application to Cabinet, Committees and Sub-Committees) shall take effect subject to these Procedure Rules.

16. The procedure for the holding of hearings in respect of licensing matters is attached at Annex A.

ANNEX A

Hearings Procedure for Licensing Sub-Committee

1. These rules apply to hearings before the Licensing Sub-Committees and references to the Committee shall be construed accordingly.
2. Every applicant and any other person making representations, will be given a minimum of ten calendar days notice (or the statutory minimum requirement as detailed in the Licensing Act 2003) of a meeting of the Committee, unless he/she indicated that a shorter period is acceptable.
3. At the time notice is given of a Committee meeting, the applicant will be informed of all representations received by the Council. The applicant will also be informed of the Council's case and any observations received from the police, parish councils and/or other consultees, so as to enable him/her to adequately prepare for the hearing of his/her application.
4. Any person objecting to the grant of a licence or consent shall be invited to attend and address the Committee when the application is heard. Where a number of similar representations or a petition have been received the objectors will normally be invited in advance of the hearing to appoint a spokesperson to address the Committee.
5. All Committee Members will be sent a copy of every document received from the applicant and any third party.
6. At the beginning of every hearing the Chairman will first identify all Councillors and Officers in attendance and will then explain the procedure to be followed. The Committee may change the order in which any stage of the hearing takes place but must allow the applicant an opportunity to sum up after all other parties have been heard.
7. The Chairman will invite the applicant to introduce him/herself and his/her representatives, if any, and any witnesses. If the applicant is not represented, the Chairman will ask him/her if they knew this was permissible and invited him/her to make clear whether or not he/she wishes to be represented at the hearing.
8. The Committee shall hold its hearings in public but may exclude the public

from all or part of a hearing where it considers that:

(i) In the case of a hearing under the Licensing Act 2003 the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public; or

(ii) In the case of any other hearing, confidential or exempt information within the meaning of Section 100A Local Government Act 1972 is likely to be revealed.

For the purposes of paragraph 8(i), a party and any person assisting or representing a party may be treated as a member of the public.

9. The hearing will take the form of a discussion, led by the authority and all representatives and questions shall be put through the Chairman.

10. It is essential that all Members of the Committee remain present throughout the hearing. They should confine themselves to asking questions about the application. Whilst hearsay evidence is acceptable, the Committee must not take into consideration any gossip, speculation or unsubstantiated innuendo.

11. Where all parties agree in writing then the Committee may determine an application without following stages 12 to 33 below provided it has notified all parties that a hearing has been dispensed with.

12. Where a party fails to attend a hearing then the Committee may either adjourn the hearing or hold it in the party's absence. Where it holds a hearing in the absence of a party it will consider any representations or notice given by that party.

13. Before the hearing takes place all parties must submit any written evidence upon which they wish to rely. If all parties agree the Committee may (at its discretion) consider any written evidence produced at the hearing.

14. Where a party wishes to call witnesses, question another party or witness or address the authority then the Committee may impose a maximum period of time within which any or all of these must be completed. Any such maximum time period must be the same for each party.

15. The Committee will consider whether to allow witnesses of the parties to be heard, of which notification must have been given in accordance with the regulations at the start of the hearing.

16. The applicant or advocate will state the applicant's case, and may call witnesses.

17. The representative of the local authority may ask questions of the applicant or advocate, or any witness.

18. Other interested parties may ask questions of the applicant or advocate or any witness.

19. The members of the Committee and the officer appointed as legal advisor to the Committee may then ask questions of the applicant or advocate, or any witness.

20. The representative of the local authority will state the authority's case and may call witnesses (which may include officers such as police or fire officers or other such witnesses).

21. The applicant or advocate may ask questions of the representative of the local authority or any witness.
22. Other interested parties may ask questions of the representatives of the local authority or any witness.
23. The members of the Committee and the officer appointed as legal advisor to the Committee may then ask questions of the representative of the local authority or any witness.
24. Other interested persons will be given the opportunity to speak on the application of the representative of the local authority or any witness.
25. The representative of the Council may ask questions of those listed at (19) above, or any witness.
26. Members of the Committee and the officer appointed as legal advisor to the Committee may ask questions of the other interested persons, or any witness.
27. The applicant or advocate may ask questions of the other interested persons, or any witness.
28. The representative of the local authority will then be invited to sum up; no new material may be introduced at this stage.
29. Other interested parties will then be invited to sum up; no new material may be introduced at this stage.
30. The applicant or advocate will then be invited to sum up; no new material may be introduced at this stage.
31. The Committee with the officer appointed as legal advisor to the Committee will deliberate in private on the issues.
32. Should the Committee feel that it requires some additional information before reaching a decision the Chairman may invite all parties to return while the points at issue are settled.
33. The Committee, will announce the decision to the parties at the end of the hearing where possible; the decision being confirmed in writing within seven calendar days. In the event that the Committee indicates that the decision will not be announced at the hearing, the determination will be made within five working days beginning with the day, or the last day on which the hearing was held unless a shorter time is specified by regulations.
The Committee may do anything it considers necessary during a hearing under the Licensing Act 2003 or the Gambling Act 2005 to cure any prejudice caused to a party by a failure to follow these procedure rules and/or the Licensing Hearings Regulations.