

West Suffolk Council

West Suffolk Licensing Code of Practice

Objective

This Code has been prepared to demonstrate the Council's commitment to transparency and openness in the determination of licensing applications, to ensure that decisions are made in a way that is fair, impartial and well founded, with justifiable reasons.

Application

This Code of Good Practice applies to Members at all times when involving themselves in the licensing process (including, where applicable, decision making meetings of the Council when exercising licensing functions, or when they are making representations as local members). It applies as equally to licensing enforcement matters as it does to licensing applications. If you have any doubts about the application of this Code to your own circumstances you should seek advice from the Monitoring Officer as soon as possible.

Relationship to Members' Code of Conduct

The members Code of Conduct takes precedence over this licensing Code of Practice. Where this Code may conflict with the Code of Conduct, it is the Code of Conduct requirements that should be adhered to.

Councillors should always seek to be open about interests they hold. If Councillors do have an interest in an application, they should make this clear at the relevant Committee or to Officers at the appropriate time and act accordingly.

Licensing and Members' Interests

Where Members have a pecuniary interest, by law, they should not take part in any Committee discussions or decision making processes in relation to the application. This would usually apply where a Member applies for a license personally, or the Council is the licensing authority in relation to a premises they have a financial interest in. Members may find it helpful to appoint a third party or agent to act on their behalf in any of their own applications to avoid any impression that they are seeking to place undue pressure on decision makers. Further, if the decision making is delegated to Officers, the Councillor should take no part in how the licence is considered.

The Member should ensure they notify the Monitoring Officer and the Licensing Team as soon as they know when a pecuniary interest of theirs is likely to be applying for a licence or is having enforcement action taken against it.

There are situations where Members may not have a pecuniary interest in the application itself, but they do have an interest that otherwise is so significant

that a well-informed member of the public may believe that they are likely to be biased for or against the application. In these situations, the Councillor should consider whether they can be objective in acting with relation to the application, and if they consider that is not possible, ensure that relevant Officers and Members are aware of their situation and not to involve the Member unnecessarily within it.

In such situations, Members may still submit representations and attend Committee to support or oppose, but they should ensure that whenever they do so, they make clear it is in a personal capacity and not refer to themselves as Councillors.

If any Member has concerns about their own personal situation and extent to which they should be involved in an application, then they must consult with the Monitoring Officer, preferably before any Committee or hearing to consider the application.

Where a Member has decided not to engage with a licence application due to their personal situation, Members may appoint another local Member to act in this case. Members should inform the relevant Officers as soon as feasible where this is the case. This might apply where, for example, residents are concerned about a licenced premises which the Councillor regularly frequents.

Predetermination

Members taking part in licensing decision making must have an open mind. Members are entitled to have an opinion (be predisposed) or change their minds, but if a reasonable member of the public may think you are biased, or have a closed mind on the application because of anything you have said or done you should not take part in the decision. If you do take part, you could put the Council's decision at risk.

Members are not predetermined simply by virtue of having previously considered the application before, or by having made a decision on very similar applications. Members do have a duty to consider each application at hand independently, and take into account the relevant factors and licensing considerations at the time they make their decision.

Where the Council (or another Council the Member is elected to) is the applicant Members should be mindful of the position they have taken on previous decisions but again are not necessarily predetermined. It is well established in law that the Council can determine its own applications, but again Members should demonstrate that they have an open mind on the application and are considering the application based on licensing considerations

Where you consider you may be predetermined, make clear that is the case and do not offer to be part of any sub-committees hearing the application. You do have the right to speak as Ward Member, but again bear in mind that as a Ward Member you have a duty to represent your ward and you may not be able to do so objectively if you are predetermined.

Lobbying

Lobbying may be undertaken by those for, and against a particular licensing issue.

Councillors need to make clear to lobbyists that whilst they can hear their arguments, you cannot express a firm view on the application as otherwise it may prejudice your ability to take part in a hearing. Members should report any persistent or unreasonable lobbying to the Licensing Officer and the Monitoring Officer.

Local Members can play an important role in helping lobbyists understand those factors the Council can, and cannot take into account when making a decision, and how they may be able to more effectively express their views. This does not mean that the local Member supports or opposes the views of lobbyists.

The Code of Conduct requires Councillors to make declarations where they are in receipt of gifts or hospitality where its value is over £25 (or equivalent value). However, in general Councillors should try to avoid receiving gifts and hospitality, especially from licensees or objectors, due to the impression that this can give.

Councillors sitting on the Licensing and Regulatory Committee should avoid memberships of organisations whose purpose includes lobbying in relation to licensing regulation and objectives. Licensing is a regulatory process; it is not political, not subject to "whipping" arrangements and members should not encourage a political steer to be given or taken on an application.

Contact with Applicants/Licensees/Businesses

It is recognised that local Members can play an important part in the licensing process, understanding local concerns, helping individuals understand the licensing objectives, and engaging with licensed premises to encourage good practice. It is also accepted that local Councillors have a private life, which may result in them using licensed facilities, or interaction with licensees (e.g. using local taxi firms or visiting pubs)

However, close relationships between Councillors and applicants / licensees/ businesses can give a wrongful impression. Any applicants who approach Councillors directly to discuss an application or enforcement issue should be referred to the licensing department to initiate discussions and Councillors should make clear that their role is to gather information.

Councillors can, where invited, attend meetings organised by Officers, or attend where Officers are present with the licensee when it is appropriate. Notes of such meetings should be retained to ensure there is a clear record of matters discussed, and no party should over-commit the Council to supporting a position.

Councillors have a duty to act with appropriate confidentiality. Where Councillors are informed regarding potential issues regarding a licensee, they should seek to respect the confidentiality of such discussions and any information they are provided with. Officers may be in a position where they

cannot engage with local Members regarding a licensing matter, particularly where it may result in a prosecution, although will endeavour to inform local Members in relation to issues which may have local controversy or have a significant impact on the local area.

Local Councillors may take soundings from the public but should avoid predetermining themselves. Members who may sit on a licensing hearing should avoid meeting applicants or visiting premises unless it relates to their local Ward as it could lead to inappropriate lobbying or an impression of unfairness being given.

If a Councillor receives unwarranted and unreasonable contact from a licensee, they should immediately inform the Director (HR, Governance and Regulatory) or the Service Manager (Environmental Health).

Member/Officer Relations

Members should not put undue pressure on Officers to put forward a particular recommendation. Councillors can put forward alternative views as part of a submission but again need to be mindful of predetermination if they are ultimately part of a decision-making process.

Officers are part of a management structure. If Members have a concern about how an Officer is handling a licensing matter, they should seek to raise those concerns with their line manager. Councillors should respect that as Officers, they are duty bound to put forward their professional opinion, in line with the relevant Officer and professional Codes of Conduct even if it is at odds with the views of the Committee or its Members.

There are legal and constitutional restrictions on who may make licensing decisions, and how they should be determined. Councillors and Officers should seek to respect these established practices to ensure that Council decisions are not compromised.

Consultations

Licensing and associated policies are subject to regular review, which will include periodic consultation. The Licensing and Regulatory Committee acts as a consultee in the development of policies in assessing the potential merits, and dis-merits of changes in policies across the Council as a whole.

Members will also play an important role during any consultation in ensuring that local communities are aware of proposed changes and how they can input to the consultation. Members will help to articulate community views and may also respond to such consultations from their perspective. It is helpful, in doing so, for Members to ensure they are familiar with the relevant licensing law and requirements, and to raise any queries with Officers to ensure they are clear about what is feasible within the law.

Committee Hearings

Members are required to familiarise themselves with the application and its relation to the licensing objectives ahead of any decision making meeting. If Members have questions, they should take the opportunity to seek clarification with officers. It is helpful that if Members have concerns that have not been addressed within Committee reports they seek to raise this with Officers in advance of the Committee in order that responses can be provided to inform the decision.

If Members feel there is insufficient time to digest new information or they do not have the information at hand to make a decision, they may propose to defer the application but the expectation should be that otherwise, Members would seek to support or refuse an application at Committee. It is important that all questioning at Committee relates to the relevant matters and licensing objectives, and does not drift into immaterial points. By convention, local Members are not asked to sit on hearings to ensure impartiality in consideration.

The Committee would usually seek to adjourn and confer before reaching a decision. Only the Committee, its Legal Advisor and Clerk may be present at this time, to ensure there is no perception of inappropriate influencing at the time the decision is made.

Knowledge and Training

Members of the Committee should be proactive in keeping up-to-date with licensing developments, including government guidance, changes in council policy and changes in legislation. Licensing is a regulatory function and poor decision making can be of detriment to the Council, local businesses and local residents.

To demonstrate their commitment to ensuring sound decision making, Members will be unable to sit on the Committee unless they have received the mandatory training requirements set out below.

Committee Members and named substitutes will undertake at least one training event in each six month period. Any Members sitting on a hearing must have attended a specific training session on hearings within the past 12 months. Training must meet one of the following criteria:

- A training or briefing session organised by Council Officers, which officers indicate is accredited training.
- A training session organised by a relevant organisation, attendance having been approved by Officers.
- Online learning approved by Officers.

Above, Officers shall mean the Chief Executive or a Strategic Director; the Monitoring Officer; the Director (HR, Governance and Regulatory), the Service Manager (Environmental Health) or the Licensing Team Leader.

If a Councillor has not received requisite training in the previous 12 months in relation to the application in question, they cannot be selected to sit on a

licensing hearing. For example, a Councillor must have received training in premises licensing in the previous 12 months to sit on a premises hearing. In exceptional cases where the Committee would not otherwise be quorate, the Monitoring Officer or Legal Officer present at the hearing may waive the compulsory training requirement for any individual Member.

In addition to Committee Members, all Members will be called upon to act as local Members on applications, and to be at their most effective should ensure they take steps to keep themselves informed and up-to-date. It is therefore expected that all Councillors should endeavour to undertake at least one licensing training event a year.

Site Visits

Site visits for licensing are exceptional and should not be considered normal practice.

If a site visit is organised, then Members of the Hearing should make every effort to attend. The site inspection should be treated simply as an inspection; Councillors may seek further information from Officers and observe the site but should not engage with, or seek information about the application from the licensee, objectors or any other third parties.

Councillors should avoid expressing clear opinions or views at site inspections and reserve judgement until the hearing.

Councillors who are notified they may be part of a hearing in relation to an application should avoid attending premises or using services of licensees, especially once the hearing has been formally called.