



Licensing Committee - 18 April 2018

Licensing Protocol and Reporting of Licensing Panel Decisions

Purpose of report

To consider the draft Licensing Protocol proposed by the Licensing Protocol Working Party.

Attachment(s)

Appendix A – Draft Licensing Protocol.

1.0 Background

- 1.1 At its meeting held on 25 October 2017, the Committee approved the Terms of Reference for the Working Group to review the existing Licensing Protocol and propose a draft Protocol which will replace Part 5.7 of the Constitution. The Working Group met on three occasions and the draft Protocol is attached at Appendix A.
- 1.2 In addition to revising the format of the Protocol to align with the Planning Code, the main revisions relate to:
- Consistency in wording throughout the document.
 - Strengthening the requirements regarding Councillors being suitably trained and required to attend Hearing pre-meetings before being able to participate in Licensing decisions.
 - Ward Members to be notified of Hearings relating to premises within their Ward.
 - A reserve member to be appointed to licensing Hearing Panels and serve on the Panel if required to do so.
- 1.3 In accordance with the Working Group's Terms of Reference, the draft Protocol is submitted to this Committee for comment before being submitted to the Governance and Audit Committee for consideration and recommendation to Council for inclusion in the Constitution.

2.0 Reporting of Panel Decisions

- 2.1 Currently, minutes of Panel Hearings are submitted to the next available Council meeting for noting. This can involve a delay of several weeks depending upon where the Hearing falls in the cycle of meetings and the content of the minutes needs to exclude any information falling under the provisions of Part 1 of Schedule 12A of the Local Government Act 1972 where the Hearing is held in the absence of the public and press.
- 2.2 A review of this practice has been undertaken following recent complaints relating to a licensing review. As a result, the following process will be adopted for reporting Panel decisions in future:
- i) As soon as possible after the Hearing is held, the decision notice produced and read out at the Hearing will be published on the Council website, excluding any "exempt" information.
 - ii) The minutes of the Hearing will be submitted to the next available Council meeting for noting as is done now. These minutes will consist of a brief

summary of the proceedings and incorporate the decision notice, excluding any “exempt” information.

- iii) A comprehensive record of proceedings at the Hearing will be produced to provide a full account of the Panel’s deliberations. This record will be used to defend any appeal or to address any other action arising from the Hearing, but will otherwise be considered confidential

3.0 Equality and Diversity Implications

3.1 There are no equality and diversity implications arising from the revisions to the Protocol.

4.0 Legal Implications

4.1 There are no legal implications arising directly from the review of the Protocol. The revised arrangements in relation to the publication of decisions are designed to reduce the risk of legal challenge in the future.

5.0 Risk Management

5.1 There are no significant risks identified, although the revised Protocol will ensure that it remains fit for purpose to underpin the Council’s procedures for determining licensing matters and mitigates against decisions being challenged through the Courts.

6.0 Resource and Financial Implications

6.1 There are no financial or resource implications arising from the revised Protocol.

7.0 Constitutional Implications

7.1 The revised Protocol will be incorporated into the Council’s Constitution once adopted by Council.

8.0 Corporate Outcomes

- 8.1
 - Effective management.

9.0 Recommendation

9.1 The Committee is

- i) invited to make comments on the draft Protocol for submission to the Governance and Audit Committee.
- ii) asked to note the revised procedure set out in paragraph 2.2 for reporting decisions of Licensing Hearing Panels.

(Reason: To ensure the continued relevance and appropriateness of the council’s policies and procedures)

Legal	Power: Local Government Act 1972				
	Other considerations:				
Background Papers:					
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Date: 21 March 2018					
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Part 5.7:

Code of Practice for Licensing Procedures

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Introduction

In determining applications for licenses the Council, through its Licensing Panels, is acting in a quasi-judicial capacity and needs to ensure that proper procedures and rules are followed, which accord with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights. Because of this, it is important that the system is seen to be open and free from improper influence.

This Code of Practice has been drawn up to set out clearly the way in which the Council deals with applications for licensed activities. It applies to all East Northamptonshire Council councillors and officers, especially those who are involved in the licensing process, but recognises the separate but complementary roles of councillors and officers in this process.

All references to a Panel in this Code of Practice means a Licensing Panel set up to consider applications which have attracted objections or representations or requires a panel decision to be made in accordance with any of the related licensing policies.

Licensing Panels can be called in relation to the following pieces of legislation

- Licensing Act 2003
- Gambling Act 2005
- Local Government Act 1972 – House to House Collections
- Local Government Miscellaneous Provisions Act 1976 and related legislation – taxi licensing
- Local Government (Miscellaneous Provisions) Act 1982 – Sex Establishments

Basic Premise

The licensing system involves balancing the needs and interests of the local community whilst meeting the objectives set out in the various Licensing Acts.

Licensing Act objectives:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm

Gambling Act objectives:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling

Taxi Licensing objectives:

- Ensuring the applicant is a fit and proper person to hold a license
- Protecting the public safety

The successful operation of the licensing system relies on ensuring that officers and councillors act in an impartial and fair way and that the decision making process is seen to reflect such impartiality and fairness. There must be no procedural impropriety; decisions taken must be free from the appearance of bias and there must have been a fair hearing of those applications which have attracted representations.

This Code of Practice applies to all councillors, whether they sit on a Licensing Panel or not. It recognises that councillors have various roles and responsibilities which sometimes conflict, and that a balance has to be struck between representing those in the community and taking forward local concerns, and ensuring that the Council decides applications on their merits..

1. In making decisions on applications, councillors will:
 - act fairly and openly;
 - approach each application with an open mind;
 - carefully weigh up all the material considerations;
 - ensure that reasons for decisions are clearly stated.

- 1.1 The licensing system seeks to balance the consideration of private proposals against the wider public interest. Councillors must take into account the interests of the community and act in a way which is not only fair but is clearly seen to be so.
- 1.2 Councillors shall not give instructions or place pressure on officers to secure a particular outcome on an application which would ordinarily be delegated to officers for determination.
- 1.3 Councillors can expect officers to give them every help and assistance in answering questions relating to licensing matters.
- 1.4 Members of a Panel must be free to vote on licensing applications as they consider appropriate, that is without a party “whip”, in the light of all the relevant information, evidence and arguments. This shall include the licensing objectives, statutory guidance and all other material considerations.
- 1.5 Licensing Panels are appointed by the Council’s Democratic Services Manager on a rota basis.
- 1.6 Ward Councillors shall be entitled to make representations within the prescribed period (normally 28 days) on behalf of supporters or objectors and, provided requisite notice is given, appear on their behalf at any hearing that is called. This entitlement does not apply to consideration of Taxi license applications.
- 1.7 Members of Licensing Panels are required to attend the pre-meeting held immediately prior to the commencement of the Hearing in order to ensure that they are aware of all information relevant to the Hearing. The pre-meeting will be attended by the Panel members, and, if required, the legal advisor to the Panel and the Democratic Services representative only.
- 1.8 A reserve member will be appointed to licensing Hearing Panels and serve on the Panel if required to do so.

1.9 Disclosures of Interest

The law and the adopted Code of Conduct set out the requirements and guidance for councillors on declaring Disclosable Pecuniary and 'other' interests and the consequences of having such interests. (Councillors are reminded that Disclosable Pecuniary Interests relate to both the councillor and their spouse/partner). Councillors should regularly review their situation with regard to interests. Under the adopted Code, not only should impropriety be avoided but also any appearance, or grounds for suspicion of improper conduct or bias. This is particularly important in relation to the licensing process and for this reason Dispensations are unlikely to be granted for Licensing Panels.

- 1.10 Licensing Panel members will have to consider very carefully whether or not they have a Disclosable Pecuniary or 'other' interest. Examples are:
- (a) Councillors living very close to premises the subject of the application;
 - (b) Councillors who are frequent visitors to the premises in a personal capacity,
 - (c) Councillors who are frequent visitors to a competing establishment in the same locality
 - (d) Councillors who serve on, or who are employed by a body which has submitted the application

Participation as a member of a Hearing Panel in these circumstances may give rise to a perception of bias and it may be better to step down, in accordance with the procedure set out in Section 7..

- 1.11 Councillors with a clear Disclosable Pecuniary interest should not attend the hearing, unless they have given notice under the Hearings Regulations to speak, and are permitted to do so. The councillor should withdraw from the room immediately after speaking. Guidance should be sought from the Council's Monitoring Officer if there is any doubt.
- 1.12 Any councillor who is a member of a Panel who wishes to express publicly a final or irrevocable view on a licensing application prior to the hearing at which a decision is to be taken will declare an interest in good time before that hearing and will not participate in the meeting of that particular Panel.
- 1.13 It is the councillor's responsibility to disclose their interest in any application being considered by the relevant Panel. Any interest should be disclosed on every occasion.
- 1.14 A Ward Councillor not hearing the application is permitted to speak on behalf of licensing application supporters or objectors during the Hearing provided the premises the subject of the application are situated in their ward (or in close proximity to their ward) and provided they have made representations on behalf of those supporters or objectors during the objection period and have indicated by notice that they will appear. If they have not made representations/given notice, they will be entitled, unless they have declared a Disclosable Pecuniary interest, to attend the Hearing as an observer.
- 1.15 Ward Councillors will be notified of Hearings relating to premises within their Ward.
- 1.16 Councillors will not disclose or use confidential information for any purpose other than that provided for by the law as stipulated in Section 3.0 (c) of the Councillors' Code of Conduct.
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1.17 Training

All councillors who are members of the Licensing Committee shall receive training in licensing procedures. A commitment to undertake training will be a prerequisite of membership of the Licensing Committee, and must be attended. Councillors eligible to be appointed to a licensing Panel must attend training within six months of appointment to the Licensing Committee and at least annually thereafter. Councillors will not be eligible to serve on a Licensing Hearing Panel unless they attend the training in view of the need for Panel members to be fully aware of changes in legislation and to avoid any difficulties that may arise at appeal hearings. This training will cover subjects as may be determined from time to time by officers in consultation with councillors. Failure to undertake the initial training offered or persistent failure to undertake any further training by councillors who are members of the Committee will result in disqualification from the Committee.

- 2.1 In reporting on applications to a Hearing, officers will:
- (a) provide professional and impartial advice;
 - (b) make sure that all information necessary for a decision to be made is given;
 - (c) set the application in the context of the Council's Statement of Licensing Policy, the Licensing Objectives in the Licensing Act, and the Gambling Act, the statutory guidance and other material considerations;
 - (d) provide a clear and accurate written summary of the issues in the report to the Panel, but will not make a recommendation on an application.
- 2.2 Except where provided for by an adopted scheme of delegation or where the Licensing Committee or Panel gives specific delegated authority, officers will only give advice.
- 2.3 Officers determining applications under delegated powers will observe fully paragraph 2.1 (c) above.
- 2.4 Officers are responsible for carrying out the decisions of the Panels and deal with any subsequent Appeals

- 3.1 Pre-application meetings with prospective applicants are encouraged, but to avoid misunderstandings and any challenge of bias, they will only involve officers. All enquiries by prospective applicants must be addressed to the Head of Environmental Services, who acts as the Council's Licensing Officer.
- 3.2 It will be made clear at pre-application meetings that:
- only officers' initial and provisional views can be given, based on the appropriate Statement of Licensing Policy, the statutory guidance, the licensing objectives; and any other material considerations
 - no decisions can be made which would bind or otherwise compromise the Panel or Councillors and/or officers specifically delegated under an adopted scheme of delegation to make the decision.
- 3.3 All officers taking part in pre-application or pre-decision discussions should make clear that decisions on licensing applications are taken either:
- by the elected councillors at a Panel Hearing, or
 - under specific authorised circumstances in accordance with an adopted scheme of delegation,
- and if the application is to be determined under a scheme of delegation, wherever possible, the officer taking part in the pre-application discussions will not be the decision maker.
- 3.4 A written note will be made of all meetings. A follow-up letter should be normal practice when documentary evidence has been left with the Council.
- 3.5 A note will also be taken of telephone conversations. The meeting note and any follow-up correspondence shall be placed on the licence application file, should an application materialise following initial discussions.
- 3.6 Councillors who are members of Panels will not take part in post-submission meetings with applicants or other parties.

- 4.1 Agendas and supporting papers for Panel Hearings will be available for public inspection five clear working days prior to the meeting, unless they are exempt from publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972
- 4.2 All applications to be determined at a Licensing Panel Hearing will have a written report from officers, including a summary of the application, a summary of representations received, a note of any request by a party for any other person to be called and a brief description of the points on which that person may be able to assist the Panel, and a summary of the relevance of the Council's appropriate Licensing Policy Statement, the Secretary of State's statutory guidance and the legislation, to the application and the representations. The report will not include a recommendation.
- 4.3 Any documents or information received from a party after the written report has been prepared may be presented by that party at the Hearing provided the consent of all the other parties is given.
- 4.4 At the Panel Hearing, parties (or their representatives) will have the right to address the Hearing and, if authorised by the Panel, question other parties provided they have given the necessary statutory notice that they intend to be present. This right is contained in the Hearings Regulations and reflect Articles 6 and 10 of the European Convention of Human Rights (Right to be heard and Freedom of Expression). However, persons who have not submitted representations within the prescribed period are not eligible to speak at the Hearing, as this is not allowed by the legislation.

Procedures at Hearings**Section 5**

- 5.1 The Licensing Committee shall approve the procedures to be followed at a Hearing and shall review them from time to time. Such procedures will be informed by the Hearings Regulations, be fully consistent with Article 6 of the European Convention of Human Rights and observe the rules of natural justice, and any such legislation as may be relevant

Council Related Applications**Section 6**

- 6.1 Where East Northamptonshire Council owns the premises the subject of a licensing application, the application will be submitted to the Council as licensing authority and will be treated in the same way as other applications.
- 6.2 All licensing applications submitted on behalf of the District Council will be determined in accordance with the Council's scheme of delegation to Panels or officers, depending on whether representations are made.

- 7.1 With the exception of Temporary Event Notices, all licensing applications which are submitted by or on behalf of councillors or officers or their families will be reported to a Panel for decision, rather than under any adopted scheme of delegation. Councillors and officers will inform the Council's Monitoring Officer in writing of all such proposals, and declare any interest, in good time, and in any event, not later than seven days before, the Hearing.
- 7.2 The councillor or officer concerned will take no part in the determination of the application.
- 7.3 If circumstances arise whereby an officer involved in the licensing process has an interest in a licensing application, that officer shall take no part in the processing or determination of the application. If present at a Hearing in an official capacity, the officer shall withdraw from the room during the determination of the application.

Amended: Council 27 April 2011 minute 495(c); Council 10 October 2011 minute 217(c), Council 16 July 2012 minute 108
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