

# Merton Council

## Licensing Committee

Membership:

Councillors

John Bowcott (Chair)

Steve Austin

Jeremy Bruce

Richard Chellew

Philip Jones

Gilli Lewis-Lavender

Russell Makin

Barbara Mansfield

Judy Saunders

David Simpson

Gregory Udeh

Martin Whelton

Kryisia Williams

Ron Wilson

A meeting of the Licensing Committee will be held:

Date: 24 January 2007

Time: 19:15

Venue: Committee Rooms B & C

**Merton Civic Centre, London Road, Morden SM4 5DX**

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda and the decision making process contact Colin Millar, Democratic Services, 020 8545 3616 or e-mail [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk) Further information about Merton Council can be found on its web site [www.merton.gov.uk](http://www.merton.gov.uk)

# Licensing Committee

## 1 November 2006

1. Declarations of Interest (See note<sup>1</sup> at end of agenda)
2. Apologies for Absence
3. Minutes of the meeting held on 1 November 2006 3
4. Guidance for members dealing with Licensing issues 5

### Notes:

*(1) Members are advised to make declarations of **personal or prejudicial** interests they may have in relation to any item on this agenda. Members may make their declaration either under this item or at any time it becomes apparent that they have an interest in any particular item.*

*(2) If a Member believes that their interest is **prejudicial** they should leave the meeting while the item is discussed. If in doubt, Members are advised to seek advice from the Head of Civic and Legal Services prior to the meeting.*

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LICENSING COMMITTEE  
1 NOVEMBER 2006

(19:15 TO 19:45)

PRESENT: Councillors John Bowcott (in the Chair), Richard Chellew, Philip Jones, Gilli Lewis-Lavender, Barbara Mansfield, Judy Saunders, David Simpson, Gregory Udeh, Martin Whelton and Krysia Williams.

Steve Clark (Head of Planning and Public Protection), Richard Nash (Licensing Manager), Elizabeth MacDonald (Licensing Officer), Solomon Agutu (Legal Services) and Colin Millar (Democratic Services)

ALSO PRESENT: Sergeant Peter Sparham (Metropolitan Police)

Apologies for absence were received from: Councillors Steve Austin and Ron Wilson

1 MINUTES OF THE MEETING HELD ON 13 JUNE 2006 (Agenda item 3)

RESOLVED: That the minutes are agreed

2 MERTON COUNCIL'S LICENSING POLICY STATEMENT ON GAMBLING  
(Agenda item 4)

The Licensing Manager said that in addition to the amendments put forward in the report the following additional amendments were proposed:

Paragraph 1.8, first line replace "will be" with "is"

Paragraph 2.5 second bullet point remove the word "disturbance"

RESOLVED: that the Licensing Policy statement on Gambling as amended by the report and including the amendments put forward by the Licensing Manager at this meeting is recommended to Council for agreement.



**Committee:** LICENSING COMMITTEE  
**Date:** 24 January 2007  
**Agenda item:**  
**Wards:** All  
**Subject:** GUIDANCE FOR MEMBERS DEALING WITH LICENSING ISSUES  
**Lead officer:** Keith Minear Head of Civic and Legal Services  
**Lead member:** Chair of Licensing Committee  
**Key decision reference number:**N/A

**Recommendations:**

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- A. That Licensing Committee adopts the guidance subject to any comments of the Standards Committee being reported to a subsequent meeting of this Committee for consideration.
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**1. Purpose of report and executive summary**

The purpose of this report is to introduce the attached Guidance for Officers and staff dealing with Licensing Applications under the Licensing Act 2007. In summary the Guidance is aimed at assisting Members and officers to understand how Licensing issues affect their conduct under their respective Codes of Conduct.

**2. Details**

Paragraph 1 of the Guidance document sets out the necessary detail.

**3. Alternative options**

- 3.1 In preparing the Guidance Officers have examined options which are contained in the report.

**4. Consultation undertaken or proposed**

- 4.1 Standards Committee will be considering this guidance on 25 January. If they have any comments they will be reported to a subsequent meeting of the Licensing Committee for further consideration.

## **6. Financial, resource and property implications**

6.1 There are no additional resource, finance or property implications.

## **7. Legal and statutory implications**

7.1 The purpose of the Guidance is to assist Members in complying with their obligations under the Code of Conduct.

## **8. Human rights, equalities and community cohesion implications**

8.1 Licensing matters engage applicants' and objectors' Human Rights. This Guidance embeds Human Rights and Equalities as part of the Guidance. The proper conduct of Members and Officers on planning matters will enhance community cohesion.

## **9. Risk management and health and safety implications**

9.1 The Guidance is designed to minimise risk of Challenge of Committee decisions.

## **10. Appendices – the following documents are to be published with this report and form part of the report**

10.1 Draft Guidance.

## **11. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report**

11.1 None

## **12. Contacts**

12.1.1. Report author:

- Name: Solomon Agutu
- Tel: 0208 545 3338
- email: [solomon.agutu@merton.gov.uk](mailto:solomon.agutu@merton.gov.uk)

12.1.2. Meeting arrangements - Democratic Services:

- email: [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)
- Tel: 020 8545 3356/3357/3359/3361/3616

12.1.3. All press contacts - Merton's Press office:

- email: [press@merton.gov.uk](mailto:press@merton.gov.uk)
- Tel: 020 8545 3181

12.1.4. London Borough of Merton:

- Address: Civic Centre, London Road, Morden, SM4 5DX
- Tel: 020 8274 4901

### **13. Useful links**

13.1 Merton Council's Web site: <http://www.merton.gov.uk>

13.2 Readers should note the terms of the legal information (disclaimer) regarding information on Merton Council's and third party linked websites.

13.3 <http://www.merton.gov.uk/legal.htm>

13.4 This disclaimer also applies to any links provided here.

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**DRAFT GUIDANCE**

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**FOR COUNCILLORS AND OFFICERS  
DEALING WITH LICENSING  
MATTERS IN THE LONDON  
BOROUGH OF MERTON**

**ISSUED BY THE  
LICENSING COMMITTEE &  
THE STANDARDS COMMITTEE**

**January 2007**



**This guidance is intended to service two main purposes.**

**Advice**

**Advise Members of circumstances where experience has shown that Members may face difficulties: the advice is offered so that Members may proceed with caution.**

**Caution**

**To caution Members about circumstance of conduct which are neither right nor wrong in themselves but where the exercise of individual judgement is necessary in order to maintain public confidence in the Council.**

## Introduction to 2005 Revision

Following the Implementation of the Licensing Act 2003, the Council established a Licensing Committee separate from the Planning Applications Committee. This Guidance is issued as part of this change, and also reflects other organisational changes. Separate guidance exists for Planning Committee Members.

### CONTENTS

	Page
1	The Need for Guidance on Licensing
2	Relationship between this Guidance and the Code of Conduct for Councillors
3	Declaration and Registration of Interests
4	Representational Role
5	Applications Submitted by Councillors and Officers, and Council Premises
6	Contact between Councillors and Applicants/ Third Parties
7	Contact between Officers and Applicants/ Third Parties
8	Liaison between Councillors and Officers
9	Press Statements
10	Delegation of Licensing Decisions
11	The Role of the Licensing Officer
12	Training and Review of Decisions
13	Meetings in Public
14	Signing the Register

## **1. THE NEED FOR GUIDANCE ON LICENSING**

- 1.1 Lord Nolan in the Third Report of the Committee on Standards in Public Life (1997) indicated that planning is probably the most contentious matter with which Local Government deals and the one on which he received by far the most submissions. He recommended the production of a local code dealing specifically with best practice in planning procedures, which would be accessible to Councillors, staff and members of the public. The recommendation was endorsed by the Government in *Modernising Local Government: A New Ethical framework*.
- 1.2 In 2005 following the implementation of the Licensing Act 2003, Local Authorities assumed responsibility for Licensing. Experience has shown that dealing with Licensing applications can be just as contentious as planning matters.
- 1.3 The following is a Guidance for all Members and officers who are involved in the licensing process in Merton.
- 1.4 This guidance is based on the Code of Conduct for Councillors, LACORS guidance (February 2005) and experience within Merton. It is publicly available. Failure to take account of the guidance without good reason could lead to a finding of maladministration by the Ombudsman or by the courts or be a criminal offence if there are pecuniary implications. Failure to take account of this guidance could also amount to breach of the Council's Code of Conduct for Members and could be referred to the Standards Board for England and/or the Council's Standards Committee. Officers may also breach the Staff Code of Conduct.

## **2. RELATIONSHIP BETWEEN THIS GUIDANCE AND THE CODE OF CONDUCT FOR COUNCILLORS.**

- 2.1 This Guidance must be read in conjunction with the Members' Code of Conduct for Councillors. It is not part of any local code. It is guidance on how to comply with the Members' Code of Conduct. To the extent that it relates to staff it is also guidance on how to comply with the staff Code of Conduct.

## **3. DECLARATION AND REGISTRATION OF INTERESTS**

- 3.1 In terms of declaring interests, the main requirements and guidance for both Councillors and officers are set out in the Code of Conduct for Councillors and the Officers Code of Conduct.
- 3.2 The Decision making process involved in dealing with opposed applications is crucial. Members must strike a balance in considering the application before them, any relevant representations put forward, and the wider community interest.
- 3.3 The Code of Conduct for Councillors requires Members to register their financial interest in the Council's register maintained under Section 81(1) of the Local

Government Act 2000. Councillors who have registered interests which would prevent them from voting on a regular basis should avoid sitting on the Licensing Sub-Committee. Any change in circumstances should be reported to the Council's Monitoring Officer.

- 3.4 Part 2 of the Code of Conduct for Councillors sets out the obligations of Members in respect of Interests and also provides guidance as to what Interests have to be disclosed and when Members may participate or withdraw from consideration of items. Councillors, who are unsure whether an Interest should be declared, must seek the advice of the Head of Civic & Legal Services,
- 3.5 Councillors who find that they have a personal interest which is also a prejudicial interest, through for example, business, family, social contacts, clubs, freemasons, trade unions or voluntary bodies etc., in the case of specific applications or licensing policy decisions must declare this interest, take no part in the debate or vote; and, leave the Committee Room whilst the matter is debated.

In addition to the normal rules on declaration of interests, a Member has to consider whether there may be a perception of bias on their part. It does not matter whether there is actual bias. The test is 'would a reasonable person think there could be bias'?

For example, are you a regular customer at the premises concerned? Members will need to consider whether the public might perceive that they hold a particular view in advance of any hearing. In such circumstances, Members should not participate in the hearing.

If there is a similar conflict of interest for officers relating to particular applications they must declare this to their departmental Head of Service and play no part in the processing of the particular issue.

- 3.7 Members and Officers should avoid offers of hospitality but where unavoidable these should be kept to a low level. By law Members receiving a gift or hospitality over the value of £25 (twenty five pounds) must within 28 days of receiving a gift of hospitality, provide written notification to the Council's Monitoring Officer of the existence and nature of that gift or hospitality. However to avoid potential perceptions of bias **it may be appropriate** that generally any gifts or offers are unacceptable and should be registered ....However, in particular circumstances

where a gift or offer is accepted, eg, free drinks, meals, admission to events etc then local authorities may wish to follow a procedure that the details are registered and stored for example on the licence file.

#### **4. REPRESENTATIONAL ROLE**

##### **4.1 Members' who are also 'interested parties'**

4.2 Under licensing legislation, 'interested parties' are entitled to make representations regarding licensing applications "Interested Parties" are those persons who live in the vicinity of the premises or a body representing those persons, a person involved in a business in that vicinity or a body representing those persons.

4.3 The legislation does not define the term 'vicinity'. A dictionary definition is *'the immediately surrounding area'* of the premises. However, this will need to be considered in every case. For a small premises in a busy town centre, 'in the vicinity' could be as little as 100 metres. In isolated area, it might be considered to be the full length of the road or community in which the premises is situated.

4.4 Where a Councillor lives or works close enough to the premises for which they are an 'interested party', they will have a personal interest in the matter to be considered. That interest will also be 'prejudicial' if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the member's judgment of the public interest. Given that the member must either live or be involved in a business in the vicinity of the premises, it is likely that a member who is an interested party will have a prejudicial interest, as they will be affected by the application to a greater extent than many other residents or persons working in the borough. Members who are unsure whether an Interest is prejudicial must seek the advice of the Head of Civic & Legal Services or nominated Committee Lawyer

4.5 Where a member has a prejudicial interest in the matter under consideration, they must not attend the hearing in any capacity. This was confirmed in the Court of Appeal decision widely known as Richardson.

4.6 Where a member is an 'interested party', they may submit a written representation regarding the application, as any other member of the public who is an interested party is entitled to do. It is advisable that Members specify in that written representation the nature of their interest in the matter and state that they make the representation in a purely private capacity.

## **Representation of Ward Constituents**

- 4.7 The licensing legislation does not provide for Members to make representations on behalf of ward constituents unless they are an interested party. Therefore a Member who does not live or is not involved in a business within the vicinity of the premises to which the application relates may not submit a relevant representation. However a Member may be appointed to represent 'interested parties' at a Committee Meeting
- 4.8 If a Member who has a prejudicial interest is requested to attend a hearing to represent the views of their ward constituents, they may ask another Member to attend and represent the constituents on their behalf.
- 4.9 There shall be at least one Member per Ward who does not sit on the Licensing Committee, thus enabling the public/ward constituents to be represented at Committee.

## **5. APPLICATIONS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL PREMISES**

- 5.1 To avoid any suspicion of impropriety, all applications submitted by Councillors, whether as agents for users or on their own behalf, shall not be dealt with under delegated procedures and will be referred to the Licensing Sub-Committee for a decision.
- 5.2 All Council applications, including applications school premises or Leisure Premises, when put before the Licensing Sub-Committee shall be identified as Council applications.
- 5.3 Applications for the Council's own premises and offices must be treated in the same way as those of private applicants in terms of procedures, particularly in relation to consultation and Licensing officers' advice.
- 5.4 Where Councillors and officers submit their own personal applications or act as agent for users they must take no part in the procedures for their consideration either internally within the Council or at Committee or Sub-Committee.
- 5.5 Where applications are submitted by consultants or agents, these must be included as Council applications where they relate to Council premises.

## **6. CONTACT BETWEEN COUNCILLORS AND APPLICANTS & INTERESTED PARTIES**

- 6.1 No Member sitting on the Licensing Sub-Committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse

- him/herself from membership of the Sub-Committee which is considering the application and address the Sub-Committee as an 'interested party'.
- 6.2 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 they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making. If the Member who sits on the Licensing Sub-Committee wishes to represent them then s/he will need to excuse him/herself from the Licensing Sub-Committee.
  - 6.3 Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to Licensing Sub-Committee meeting. To do so could indicate that the Member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the Licensing Objectives nor the Licensing Authority's Statement of Licensing Policy.
  - 6.4 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 matter may amount to maladministration.
  - 6.5 Councillors must not be members of the Licensing Sub-Committee if they are involved in campaigning on the particular application.
  - 6.6 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 with Committee Members as this can easily be viewed as bias/pressure and may well open that Sub-Committee Member to accusations of such.
  - 6.7 Membership of Lobby/Campaign groups should be included in the register of interests. While the Members Code does not require a Member to withdraw from the Sub-Committee Meeting unless they have a prejudicial interest both the Licensing Committee and Standards Committee take the view that in such a situation the Member may not sit. This is in order to avoid perceptions of bias. However, this guidance does not apply to a Member attending a Sub-Committee Meeting either as an applicant for a licence or representing an interested party.
  - 6.8 If the interest is also a prejudicial one then the member must not be present in the meeting in any form. Should s/he be the licence applicant or be/represent an interested party then an agent should be utilised at the meeting instead, to present the member's views.

## **7. CONTACT BETWEEN OFFICERS AND APPLICANTS & INTERESTED PARTIES**

- 7.1 Discussions between the licence applicant and the Licensing Authority prior to the submission of an application (or prior to a decision being made) are often helpful to both parties. For example, a premises licence applicant may ask for advice on how to complete an 'operating schedule'. However, these discussions can often be viewed by objectors as a form of 'lobbying' and the Licensing Authority must ensure it is not open to accusations or appearance of bias.
- 7.2 In order to prevent the appearance of pre-determination or bias, Licensing Officers must ensure that any advice or assistance given to applicants is clearly identified as being such and is not any type of 'predetermination'.
- 7.3 Officers should make clear that the discussions do not bind the Licensing Authority to any particular decision and when suggestions are made that these are provisional only.
- 7.4 Any advice given by Officers must be consistent with the Licensing Objectives and the Licensing Authority's Statement of Licensing Policy.
- 7.5 Any advice given by Officers must be impartial and make clear the limited decision making power of the Licensing Officer.
- 7.6 Although officers cannot commit the Council to a decision on an application, it is appropriate for them to give a view on the likely outcome on the basis of the Licensing Policy. It will always be made clear that such a view is provisional and does not bind the Council in any way.
- 7.7 Reports which are submitted to the Licensing Committee will briefly summarise the process of discussion with applicants or third parties, should discussion have taken place.

## **8. LIAISON BETWEEN COUNCILLORS AND OFFICERS**

- 8.1 Whilst Councillors can seek advice from Officers, including whether an application complies with Council or Government policies/guidelines, they shall not put undue pressure on officers for a particular recommendation.
- 8.2 Members need to demonstrate that they have not influenced the way in which officers present the cases before them. Any briefings by officers in advance of a hearing must relate to procedural points only and not on the merits of the case.



## **9. PRESS STATEMENTS AND OTHER STATEMENTS**

- 9.1 Members must refrain from making any statements to the press prior to any hearing. Any enquiries received should be referred to the Head of Licensing. Any comments will be of an explanatory nature only and will not express a view on the merits of a particular case. After a hearing, Members must not make any media statements to avoid prejudicing any possible appeal.
- 9.2 The decision of the sub committee may be a unanimous decision or a majority decision. However it is the decision of the sub committee. The committee decision is as recorded by the committee clerk. It is advisable that only the official reasons for the decision is communicated and not member's interpretation of the reasons for decision.

## **10. DELEGATION OF LICENSING DECISIONS**

- 10.1 The officers must follow the agreed procedures for determining which applications can be dealt with through delegated powers as set out in the delegation from Licensing Committee.
- 10.2 All delegated decisions must be fully documented.
- 10.3 In accordance with the Committee Scheme of Delegation, Council Members can request in writing that officers put particular applications to Committee.

## **11. ROLE OF LICENSING OFFICER**

- 11.1 Licensing Officers have no ability under the Licensing Act 2003 to make representations or to be a party to the hearing. There is no legal provision for Licensing Officers to make recommendations to the Sub-Committee in terms of the outcome of the Committee hearing as is seen in planning cases. However, a summary report of the application, the representations, and the Officer's comments as to how these relating to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.

## **12. TRAINING AND REVIEW OF DECISIONS**

- 12.1 As recommended in the Nolan Report, all Members of the Licensing Committee must attend, and other Members if interested should be encouraged to attend, training courses/seminars at the beginning of each new administration, with refreshers at regular intervals, on the Code of Practice & Procedure, best practice and licensing law. Courses will be arranged by officers and external courses will be used where appropriate.

### **13. MEETINGS IN PUBLIC**

- 13.1 Licensing Committees are meetings open to the public. The public are entitled to expect that they will have access to the meeting throughout the time that the Committee is sitting. The chair of the committee should ensure at the beginning of each meeting that the internal and external doors to the venue are open.
- 13.2 Sometimes there is a temptation to change the published order of proceedings. Such motions should not be moved except in very exceptional circumstances

### **14. SIGNING THE REGISTER**

- 14.1 Following the *Richardson* decision all members of the Council who are present at a Committee Meeting in whatever capacity must sign the register of attendance.