PART 5

(E) CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH MATTERS UNDER THE LICENSING ACT 2003

ROCHDALE
METROPOLITAN BOROUGH
COUNCIL

CODE OF CONDUCT FOR MEMBERS AND

OFFICERS DEALING WITH

MATTERS UNDER THE LICENSING ACT 2003

A GUIDE TO PROPER PRACTICES AND PROCEDURES

APRIL 2006

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1. INTRODUCTION

1.1 Since the publication of the Nolan Committee Report, the Local Government Association has published guidelines to assist Local Authorities in framing codes of conduct. (This was updated in March 2002).

1.2 This Code of Conduct has been prepared, having regard to the recommendations and guidance in the Nolan Report and the Local Government Association document, the Licensing Act 2003 (the Act), together with this Council's own, existing procedures and practices and best practice examples from other local authorities.

1.3 The Code applies to all Councillors and Officers who are involved in operating the licensing system.

1.4 The term “Officers” in this Code includes secondees to and employees of the Impact Partnership who act on behalf of the council.

2. PURPOSE OF THE CODE

2.1 The purpose of this Code of Conduct is to regulate the performance of the Council's functions in its role as the Licensing Authority under the Licensing Act 2003.

2.2 The main objectives of the Code are:

- to guide Members, relevant bodies and Officers of the Council in dealing with licensing related matters
- to inform potential applicants and members of the public generally, of the standards adopted by the Council in the discharge of its licensing functions
- to assist Members in dealing with approaches from applicants, objectors (responsible authority and interested party) and other third party interests to ensure the integrity of the decision-making process is preserved.

2.3 The Code is intended to supplement the Council's general Code of Conduct for Councillors and Voting Co-opted Members, which is in line with the national Model Code. The Local Government Act 2000 introduced a comprehensive ethical framework for local government and led to the replacement of a national code of conduct with a system of individual local authority codes based on a national Model Code of Conduct for Councillors and Voting Co-opted Members.

2.4 The Code seeks to ensure that decision-making is governed by an open transparent process. The Code does not seek to extend or alter the requirements of legislation or licensing policies or guidance. It stands as a statement of intended practice as to conduct. The Code supports and follows the nine principles of public life as set out in the Relevant Authorities (General Principles) Order 2001. These are:-

- selflessness
- honesty and integrity
- objectivity
- accountability
- openness
- personal judgement
- respect for others
- duty to uphold the law
- stewardness and leadership

2.5 The Human Rights Act 1998 has had implications for the licensing system and, in particular, compliance with Article 6 of the European Convention on Human Rights. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations. The good practice set out in this Code meets the requirements of Article 6.

3. STATUS OF CODE

3.1 Whilst this is a guidance document, Members and Officers should have full regard to the Code in discharging their responsibilities and duties in relation to licensing matters on behalf of the Council.

3.2 As with the Model Code of Conduct for Members, this local Code of Conduct represents a standard against which the conduct of Members and Officers will be judged, by the public, and by their fellow Councillors and colleagues. The Local Government Ombudsman may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the Council in such circumstances.

3.3 The Standards Committee will monitor the operation of this Code of Conduct.

3.4 Section 26 of this Code ('Sanctions') considers the possible consequences to the Council if the Code is not adhered to.

4. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

4.1 Members and officers have different, but complementary roles. Both serve the public but Members are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise the Members and the Council and carry out the Council's work.

4.2 In terms of the Council's Licensing Committee functions it is the role of Members to make decisions and for Officers to ensure that Members of the relevant Committees and/or Working Groups are advised as to the relevant material licensing considerations and the appropriate courses of action.

4.3 Both Members and Officers are guided by Codes of Conduct.

4.4 The Council's Code of Conduct for Councillors and Voting Co-opted Members, which is in line with the national Model Code, governs the actions of Members.

4.5 The requirements of this Licensing Code of Conduct are particularly pertinent to Members serving on the Licensing Committee or Sub-Committees or who become involved in the licensing process.

4.6 Much is often at stake in the licensing process. Opposing views are often strongly held by those involved. Whilst Members should take account of those views, they need to have regard to their wider responsibilities.

4.7 Guidance on good practice is provided in the set of documents produced by the Commission for Local Government in England (The Local Government Ombudsman) "Guidance on Good Practice".

4.8 Officers are covered by the Council's Officers' Code of Conduct.

4.9 Additionally, in order to ensure that senior officers of the Council act impartially, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as political activity.

4.10 Taking account of the above considerations and requirements it is expected that Members and Officers should have regard to the points set out in paragraphs 4.11 - 4.15 in discharging their duties in relation to the Council's licensing functions.

4.11 Members should act in accordance with the Council's Code of Conduct and the statutory provisions on the disclosure of interests.

4.12 In accordance with the Council's Code of Conduct, Members should not favour any individuals or groups and must represent their constituents as a body and vote in the interests of the Borough as a whole. Whilst Members should take account of all views expressed, they should not put themselves in a position where they appear to favour individuals or groups regardless of the licensing merits of a particular case.

4.13 Officers involved in the processing and determination of licensing applications, and in discharging the Council's functions in relation to other statutory licensing matters, should act in accordance with the Council's Officers' Code of Conduct.

4.14 Officers should act impartially in dealing with all licensing matters.

4.15 The Council will review on a regular basis the restrictions set on outside activities of senior officers through the Local Government and Housing Act 1989 having specific regard to the Council's role and responsibility as Licensing Authority.

4.16 See Section 10 of this Code 'Gifts and Hospitality'.

5. MEMBERSHIP OF LICENSING COMMITTEES

5.1 It is important that members of the public have confidence in the Members who are making decisions on licensing applications and in connection with other licensing matters. Regarding the conduct of Members, not only should impropriety be avoided but also any appearance or grounds for suspicion, of improper conduct. Also, members of the public need to be confident that Members have reasonable capability, in terms of background knowledge, for making these decisions, and are making them in line with agreed and adopted policies, national guidance and legislation. It is, therefore, considered necessary to set down some rules about membership of licensing committees.

5.2 Members who have business or other interests which may bring them into contact with the Council's licensing system on a regular basis should not generally be considered for membership of a Licensing Sub-Committee or the Licensing Committee.

5.3 No Member should be appointed to any of the above Sub-Committees or the Licensing Committee without having agreed to undertake training on licensing issues as specified by the Council. Membership should not continue if training is not subsequently undertaken. (See Section 6 'Members' Training').

5.4 Members who are consistently unable to support the Council's licensing policies should not be considered for membership of a Licensing Sub-Committee or the Licensing Committee.

6. MEMBERS' TRAINING

6.1 All Members of Licensing Sub-Committees or the Licensing Committee shall undertake training on the following matters before serving on these Committees or within two months of their appointment to the Committee.

- The Determination of Licensing Applications
- Enforcement of licensing control and related matters
- Local Code of Conduct for Members and Officers dealing with licensing matters.

6.2 On a regular basis the Licensing Committee will review the training undertaken by Members in relation to licensing matters and will take appropriate action to secure the requirements of this Code.

7. DECLARATIONS OF INTEREST BY COUNCILLORS

7.1 The law and the Council's general Code of Conduct set out the requirements and guidance for Councillors, respectively, on declaring personal and personal and prejudicial interests and the consequences of having such interests.

7.2 These requirements must be followed scrupulously. It is important to ensure that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Councillor.

7.3 By the very nature of the licensing system actions taken by Councillors and Officers easily lead to suspicions of improper conduct. This section of the Code therefore deals with Members involvement in the licensing system with the aim of not only avoiding improper conduct but also reducing the likelihood of suspicions of such conduct.

7.4 Members must declare personal and prejudicial interests in any licensing matter, in accordance with the Council's Code of Conduct. The law requires that any Member who has declared a prejudicial interest must take no part in any discussion on the matter and in the making of any decision at a Committee hearing and must withdraw from the hearing. A prejudicial interest is a personal interest, defined below, which would reasonably be considered by a person, who knew the relevant facts, to be so significant that the Member's judgement of the public interest would be prejudiced. The interest should be minuted.

7.5 Members must also declare any personal interest in a licensing matter, even if it is not a prejudicial interest. These are interests, which might reasonably be expected to affect, to a greater degree than other Council taxpayers or inhabitants of the area, the well-being or financial position of the Member, his/her family, relatives and friends or employer. The interest can arise whether the bias is either for or against a proposal. In such a case, the Member if present should not take part in any discussion on the matter and in the making of any decision at a Committee hearing and should withdraw from the hearing. The interest should be minuted.

7.6 Any Member who has a personal interest (as defined in paragraph 7.5 above) or a personal and prejudicial interest (as defined in paragraph 7.4 above) should not address the Committee in their private capacity.

7.7 An application in which a Member of Council has declared an interest must be determined by the appropriate Committee.

7.8 Members who have an interest in a licensing matter (whether or not it has been declared) should not lobby other Members or Officers either directly or indirectly.

7.9 The Standards Board for England booklet "How do I register and declare interests and register gifts and hospitality" provides helpful advice on how to decide whether there is an interest to declare.

7.10 Practical examples and guidance on whether an interest should be declared is set out in Appendix 7 to this Code.

7.11 In cases of doubt regarding declarations of interest Members should refer to the Borough Solicitor, as Monitoring Officer, for advice.

8. DECLARATIONS OF INTEREST BY OFFICERS

8.1 The Council has an Officers' Code of Conduct, which includes guidance for employees on declarations of interest.

8.2 As with Members, it is extremely important that the risk of unfair bias, or any appearance of possible bias, by Officers is reduced. It is therefore essential that interests of Officers are properly declared to maintain probity.

8.3 An officer may have an interest in a licensing application as applicant (See Section 9), as an objector (interested party), as a supporter or for some other reason where it may be perceived that they may be biased. Such an interest may be as a result of their spouses/partners interest in a proposal or the interest of some close relative or friend.

8.4 Since the Council has around 7000 employees (excluding teachers) it would be unrealistic to try to operate a system where every Officer of the Council is expected to declare interests in licensing applications or other licensing matters. This would create an unwieldy system, which would not be operated consistently. This Code of Conduct therefore suggests that certain Officers or groups of officers should be required to declare interests, and the procedures to be followed when such interests are declared.

8.5 Any Officer listed below, who has any interest in a licensing application or any other licensing matter (either personally or through interests of their spouse/partner, close family or friends) which could be construed by a member of the public as leading to bias in any decision taken, should declare an interest and take no part in the processing of the application or the progressing of any other matter.

Interests should be declared by:

- Any Officer employed in the Planning and Regulation Service.
- Any Officer employed in another Service Group of the Council who has regular involvement in the licensing application process, providing advice or support. e.g. Legal and Democratic Services Officers; Social Services; Policy.
- Any Executive Director or Head of Service of the Council or equivalent Manager of the Impact Partnership.

8.6 An interest should be declared by completing two copies of the Declaration of Interest in a Licensing Application form (obtainable from the Licensing Section); one copy of the form should be returned to the Licensing Section and placed on the licensing application file or the file relating to the matter and the other copy kept on the Officer's personal file.

8.7 Any application in which an Officer has declared an interest must be determined by Committee.

8.8 Any declaration of interest should be noted in any report to Committee and minuted.

8.9 The requirements of this Section of the Code should be brought to the attention of all staff affected together with new employees as part of their induction information.

9. LICENSING APPLICATIONS SUBMITTED BY COUNCILLORS AND OFFICERS

9.1 It is perfectly legitimate for licensing applications to be submitted by Councillors and Officers. However, it is vital to ensure that such applications are handled in a way that gives no grounds for accusations of favouritism or impropriety.

9.2 Members of Council and Officers must not act as agents for anyone pursuing a licensing matter within the Borough unless otherwise agreed with the Borough Solicitor.

9.3 Any Member or Officer * who submits their own application for licensing to the Authority must:-

i) complete a Licensing Application Declaration of Interest Form (obtainable from the Licensing Section or Member's Secretariat). (* Two copies for Officers - see Section 8 paragraph 8.76)
i) not take part in the processing of the application.
ii) not lobby Members or Officers either directly or indirectly.

* This refers to Officers listed in Para. 8.5 in this Code of Conduct.

9.4 An application in which an interest has been declared under this Section must be determined by the appropriate Committee.

9.5 Any declaration of interest should be noted in the report to Committee and minuted.

9.6 Those Officers defined in Para 8.5 should be made aware of paragraph 9.3. New employees should be made aware of these provisions as part of their induction information.

10. GIFTS AND HOSPITALITY

10.1 The receipt of gifts or hospitality by either Members or Officers can affect the perceived integrity of the licensing system. Any offer of a gift, favour or hospitality should be treated with extreme caution, especially where it is from an applicant/agent, objector (responsible authority and interested party) or anyone else having an interest in a licensing application or other licensing issue.

10.2 The Council has accepted the recommendation of the Standards Committee about the acceptance of gifts and hospitality. A copy of this is attached as Appendix 1.

10.3 Members and Officers should avoid knowingly accepting gifts or hospitality from persons who are currently or likely to be promoting or opposing a licensing application or some other licensing issue, or from others connected with such persons. The Council's Code of Conduct should guide members.

10.4 All receipts or offers of gifts or hospitality must be notified to the Chief Executive on the appropriate declaration form.

10.5 Members should carefully consider whether the nature of any gift or hospitality they have received is such that they ought to stand down from participating in any discussion and decision made on a particular licensing application or other licensing matter.

10.6 Members should declare the fact of the receipt of any gift or hospitality at any Committee hearing at which the licensing application or other licensing matter is to be discussed.

10.7 In the case of minor, insignificant or token gifts or hospitality, it will be sufficient to disclose the matter and for Members to subsequently participate fully in the discussion and vote on the matter.

10.8 In the event of more valuable gifts or expressions of hospitality, Members should consider whether to stand down from participating in the discussion. They should be guided by asking themselves whether members of the public, knowing the facts of the situation, would reasonably think that they might be influenced by it. If there is a risk of such a view being taken, members should stand down.

10.9 In cases of doubt Members or Officers should refer to the Borough Solicitor, as Monitoring Officer, for advice.

11. RELATIONSHIPS BETWEEN MEMBERS AND OFFICERS

11.1 Good administration is dependent on a successful relationship between Councillors and Officers which can only be based on mutual trust and understanding of each others roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised. In this regard, the Council has adopted a Protocol on Member and Officer relations.

11.2 All Members and Officers must ensure that contact between them in connection with licensing matters accords with the established convention of mutual respect, despite possible personal and professional differences of opinion on particular issues. Any contact between them should not undermine working relationships which are crucial to the success of the Council and good local government.

11.3 Officers have a duty to give impartial advice to Councillors and the Council on licensing applications and other licensing matters and to make recommendations to Committees in the light of the Council's adopted licensing policies and national licensing policies using their professional judgement. Members should not attempt to use their position to pressurise officers into making a particular recommendation.

11.4 The Council, as the Licensing Authority, is expected to make a decision on all applications as soon as possible. Applications are always listed for the first available hearing within the relevant statutory timescales when relevant representations have been received, so that a decision can be taken in the shortest possible time.

11.5 Members should not request or put pressure on Officers to delay particular licensing applications for their own purposes or following lobbying by applicants or other interested parties. Conversely, they should not put pressure on Officers to submit an application to Committee before all statutory requirements have been met and all necessary information is available. *

11.6 Any criticism of Officers by Members, in relation to the handling of any licensing applications or other licensing matters, should be made, in writing, to the Head of Planning and Regulation Service and not to the Officer concerned or through the local media.

11.7 If any Officer feels or suspects that pressure is being exerted upon him/her by any Member of Council in relation to any particularly licensing matter he/she should notify the matter to the Head of Planning and Regulation Service.

12. LOBBYING OF AND BY COUNCILLORS

12.1 Lobbying is a normal and perfectly proper part of the political process.

12.2 Lobbying of Members for their support in relation to specific applications is likely to come from either:

- applicants or their agents, or other interested third parties (e.g. landowners) looking for support .
- local residents or other third parties objecting to a proposed application.

 MEMBERS OF LICENSING SUB-COMMITTEES OR LICENSING COMMITTEE

12.3 The general practice expected under this Code is that where a Member is likely to be sitting on a Sub-Committee which will be determining a licensing application their response to lobbying will be:-

12.3.1 Members should avoid expressing an opinion which may be taken as indicating that they have already made up their minds on an issue before they have the benefit of all the evidence and arguments.

12.3.2 Members should avoid indicating the likely decision on an application by Sub-Committee or otherwise committing the Authority.

12.3.3 Members should restrict themselves to giving procedural advice, including the Council's public consultation arrangements and how representations can be made.

(See Appendix 2 'Guidance notes to elected Members in dealing with representations on licensing applications' and Section 18 'Public Speaking at Licensing Committees').

12.3.4 Members should refer any approaches to Licensing Officers and/or where considered appropriate, and possible, direct the lobbyist to a Member of Council not on the decision making Committee.

12.3.5 Where a Member receives written representations, documents or other information directly in relation to a licensing application under consideration, or a prospective application, a copy of the correspondence, documents or information should be passed to the Manager in the Planning and Regulation Service immediately and in order that they can be included in the Committee Report. When this is not possible due to timescales the Member should present the representations, documents and information at the Committee Hearing.

12.3.6 Members should make it clear that they will only be in a position to make a final decision after having heard all the relevant evidence and arguments at the Committee Hearing*.

* The Committee report may well contain issues previously unknown to the Councillors. Also, further aspects affecting the decision can arise during the discussion or through public speaking rights at the hearing, which were not previously evident.

NOTE: In order to assist Members to comply with the Code as Paragraph 12.3, a standard reply for Members to use in response to both verbal and written representations on licensing applications is attached as Appendix 3. This suggested wording sets out Members' neutral position on such licensing matters until they have all the facts before them.

 ALL MEMBERS OF COUNCIL

12.4 Members should advise lobbyists of the Council's procedure for making representations and procedure for hearings under the Act.

(See Appendix 2 and Section 18 of this Code).

12.5 Members should report instances of significant or persistent or inappropriate lobbying, particularly from an applicant or their agent, to the Head of Planning and Regulation Service or the Borough Solicitor.

12.6 No Member of Council should state, or give the impression, that he/she is able to secure a particular outcome on a licensing application.

 PUBLIC SUPPORT FOR A PARTICULAR OUTCOME PRIOR TO COMMITTEE MEETINGS/WARD MEMBERS.

12.7 Any Member of a Licensing Sub-Committee or the Licensing Committee who responds to lobbying by going public in support of a particular outcome on a licensing application prior to a Committee hearing should make an open declaration at the hearing at which the application is considered and not vote on the issue. The Member may only seek to address the hearing on the same basis as a non-committee member provided a representation was received from the member within the time limit specified by the Act.

12.8 This could be seen as a restriction on the Councillor's wish, and duty, to represent the views of the electorate. The situation therefore underlines the advice earlier in this section, that Members should await the presentation of all the evidence at a Committee hearing before making a final decision (See paragraph 12.3.6).

12.9 A member who represents a ward affected by a licensing proposal can make a representation. A ward member can also make a representation on behalf of residents and businesses.

13. DISCUSSIONS/MEETINGS BETWEEN POTENTIAL APPLICANTS OR APPLICANTS AND THE COUNCIL

13.1 Discussions and meetings between applicants, agents, relevant parties and the Council prior to the submission of an application can be of considerable benefit to both parties.

13.2 Following the submission of an application such discussions and meetings are a normal part of the licensing process of negotiation to seek further information and to achieve improvements to submitted applications.

13.3 These discussions and meetings usually take place with officers. However, applicants sometimes seek to involve councillors. In these cases it would be easy for these meetings to become, or be seen to become (particularly by objectors), part of the lobbying process.

13.4 In order to avoid such problems, these meetings and discussions with potential applicants, or their agents, should take place within the guidelines set out below.

 GENERAL

13.5 It should always be made clear at the outset that the discussions will not bind the Licensing Authority to making a particular decision and that any opinions expressed are given without prejudice.

By the very nature of such discussions not all relevant information will be to hand, and in the case of pre-application discussions, no consultations have taken place.

13.6 Advice should be based upon the Licensing Act 2003 and the Secretary of State's Guidance

There should not be a significant difference of interpretation of licensing policies and standards between Licensing Officers and between Licensing Officers and Members when both are involved.

13.7 A written note should be made of any discussion/meeting and placed on the appropriate file.

13.8 A follow up note or letter should be sent following any potentially contentious meeting or a meeting involving a number of issues or where documentary material has been left with the Council.

13.9 Care should be taken to ensure that advice is impartial, or seen to be, otherwise a subsequent report could appear to be promoting a particular view.

COUNCILLORS INVOLVEMENT IN DISCUSSIONS/MEETINGS

13.10 Members, particularly those serving on a Licensing Sub-Committee or Licensing Committee should not take part in discussions/meetings with potential applicants or applicants, or their agents, concerning specific licensing applications.

TELEPHONE CALLS

13.11 A note should be made by Officers of contentious telephone discussions and should be placed on the appropriate file.

14. PUBLIC MEETINGS

14.1 Publicity for licensing applications is an important part of the process of determining such applications. Public meetings can be a useful part of the publicity exercise. The purpose of a public meeting is to provide information about a proposal or the licensing process, and to provide an opportunity for the public to make their views known to the Council so that they can be taken into account, so far as material. It also allows an applicant or developer the opportunity to hear the views of the public and possibly take account of these views in providing additional information or amending a scheme. It also allows an applicant or developer to explain their proposals.

14.2 The role of Members at such meetings is to listen to views and not to promote or oppose an application. This is most important in the case of members of a Licensing Sub-Committee or Licensing Committee who will be determining the application.

14.3 Similarly the role of Officers is to explain the licensing process and background to the application and to listen to and note views, and to ensure that as far as possible a meeting is conducted fairly.

14.4 Public meetings to discuss licensing applications should only be arranged by the Council or attended by Officers and/or Members where strictly necessary and beneficial to assist in the determination of a licensing application.

With public speaking being allowed at Licensing Sub-Committee hearings the usefulness of public meetings has been reduced as members of the public can air their views directly to Members and Officers at the Licensing Sub-Committee hearing when an application is being considered. Public Meetings are not an appropriate part of a lobbying process.

14.5 Officers or Members, particularly Members of Licensing Sub-Committees or Licensing Committee, shall not attend meetings arranged by individuals or groups to specifically organise opposition to an application or by an applicant or developer in order to gather support for their proposal.

14.6 Attendance by Officers at any public meeting organised by any group or individuals should be subject to the approval of the Chair of the Licensing Committee. In such circumstances Officers should ensure that an invitation to the meeting is extended to the applicant or their agent and that the venue is acceptable in terms of location, layout and accessibility and that the meeting is open to all.

14.7 Attendance by Officers at any public meeting organised by an applicant or developer should be subject to the approval of the Chair of the Licensing Committee. In such circumstances officers should ensure that the necessary publicity has been given to the meeting and that the venue is acceptable in terms of location, layout and accessibility and that the meeting is open to all.

14.8 Where a public meeting is to be organised by the Council the meeting should be chaired by the Chair of the Licensing Committee (or their nominated stand-in). All publicity arrangements and venues should be organised by Officers in the Licensing Section

15. COMMITTEE REPORTS ON LICENSING APPLICATIONS

15.1 A common format will normally be used for all application reports.

15.2 All application reports will include (where relevant)

- Details of the application.
- Related history if appropriate.
- The substance of objections and views of people who have been consulted.

15.3 Any declaration of interest made by Members or Officers prior to the drafting of the report shall be included in that report.

15.4 Each application report should set out what decision can be taken by the Committee under the Act.

15.5 For any licensing application for which the Head of Planning and Regulation Service has declared an interest, an individual report shall be prepared in the name of the Licensing Manager, as a separate agenda item stating the Head of Services' interest.

16. SITE VISITS BY INDIVIDUAL MEMBERS OF COMMITTEES

16.1 Members are encouraged to familiarise themselves with an application site following the receipt of the Committee agenda/report and prior to the date of the Committee meeting. This will enable them to acquaint themselves with the nature of the proposal and its likely implications and will help avoid delay and unnecessary Committee site visits. However, it is important that certain rules are followed to reduce the risk of bias or the appearance of this.

16.2 Members of Committee should conduct such site inspections unannounced, from a public vantage point and should not discuss the application with any applicant/agent, objector (responsible authority and interested party) or other third party.

16.3 If a Member is approached on site by an applicant/agent or third party interest the rules relating to Lobbying (See Section 12) should apply and the Member should report this to the Committee meeting. Under no circumstances should any indication of the views of the Member or the likely decision of Committee be given.

16.4 Under no circumstances should Members arrange to meet applicants/agents or third parties for the purpose of a site inspection.

16.5 If any Member has difficulty getting to or locating a particular site(s) they should contact the Licensing Manager or the Licensing Officer dealing with the application. Every effort will be made to accompany the Member on site prior to the Committee hearing at which the application will be considered.

16.6 Members of Licensing Sub-Committees or the Licensing Committee should avoid entering any premises not normally open to the public which are either:

a) the subject of, or affected, by a current licensing application, or
b) known by the Member to be likely to become the subject of, or affected by, a licensing application for any purpose in connection with such an application, save in the course of a Committee site visit.

17. COMMITTEE SITE VISITS

17.1 The Code of Conduct for Councillors and Voting Co-opted Members applies as much to site visits as any other area of conduct and suggests that Councils should set out criteria for when a site visit is justified and consider the procedure for such visits. This Section of the Code addresses these points.

 PURPOSE AND STATUS OF SITE VISITS

17.2 The purpose of a site visit should be:-

- to provide Members the opportunity to familiarise themselves with relevant features of a site and its surroundings and
- to learn something from the visit which is otherwise not ascertainable from the Officer's report to Committee and the submitted documentation and plans.

17.3 Committee site visits should take the form of informal meetings of the relevant Licensing Sub-Committee or Licensing Committee within the rules set out in this section of the Code.

17.4 No decision on an application will be made at the site visit and those Members attending will report back to the formal meeting of the relevant Sub-Committee when the particular application is considered.

 DECISION TO HOLD A SITE VISIT

17.5 Site visits should be held only where there is an expected identifiable benefit and specific justification for doing so.

17.6 Justification for a site visit will normally be in cases where:-

i) the impact of an application is difficult to visualise from plans and submitted material or from the Officer's report.
ii) There is a good reason why the comments of the applicant or objectors (responsible authority and interested party) cannot be expressed adequately in writing.
iii) an application is particularly contentious or significant.

17.7 The decision to hold a site visit will normally be made in one of the following ways:

i) by resolution of a Licensing Sub-Committee to defer consideration of an application for viewing, at the request of a Member(s) of that Committee. Such requests should be made and seconded and Committee should vote on the issue and the Borough Solicitor will be asked to check that the Act permits it.
ii) Where the Head of Planning and Regulation Service considers that an application site should be viewed by Members prior to the application being determined *.

* This may be because of the nature of the application or following a request from a member of Committee or a Ward Councillor. In cases of doubt, the Chair of the Licensing Committee will be consulted.

17.8 Members requesting a site visit should state their reasons and whether or not they have been approached by the applicant/agent, objector (responsible authority and interested party) or other third party. The decision of the Committee and their reasoning should be minuted.

17.9 Requests for site visits by Members should not be made for the purpose of delaying an application, hearing local views or holding a public meeting on site or to allow lobbying by an applicant/agent or other interested third party.

17.10 When an application is placed on the viewing agenda by the Head of Planning and Regulation Service the reasons for this will be noted in the Committee report and the holding of the site visit shall be minuted.

17.11 The presumption is that Committee Members will have made themselves acquainted, as necessary, with the location of the sites covered on the agenda, prior to the Committee meeting. (See Section 16 'Site Visits by Individual Members of Committees'). The need for Committee site visits should, therefore, be limited.

17.12 In exceptional circumstances the Head Planning and Regulation Service, in consultation with the Members of the relevant Licensing Sub-Committee, may place items on the viewing agenda of a Sub-Committee meeting after the Committee agenda (which will normally include details of viewing arrangements, if any) or the letter setting out viewing arrangements has been sent out to Members.

17.13 Such circumstances may arise: -

- From emergency items being put on to the agenda and where site viewing by Committee is considered necessary or advisable.
- a request is made by a member of Committee or a Ward Councillor who have had sight of the Committee report and consider viewing is justified.
- Further information is received by officers which justifies viewing of a site.

17.14 This mechanism for allowing items to be added to a viewing agenda should be used sparingly but it does allow sites to be viewed prior to a meeting where otherwise the application would be delayed if the application had to be deferred for viewing at the Committee meeting. The reasons for the viewing will be explained on site.

17.15 Where requests for site visits are made from Members who are not on the relevant Committee or not Ward Councillors, MP's or from applicants/agents, objectors (responsible authority and interested party) or other third parties, the Committee are not obliged to defer an application for viewing unless they consider the request to be justified and that viewing is necessary and complies with the legislation *.

17.16 * Committee Members may already be familiar with the site and therefore do not consider a site visit is necessary.

ATTENDANCE AT SITE VISITS

17.17 Site visits will normally consist of an inspection by Committee Members accompanied by a Licensing Officer. Other Officers may be present to provide other relevant specialist information where required (e.g. Highways; Environmental Health).

17.18 Except for any necessary attendance to permit access to land or premises, such a visit should normally be unaccompanied by applicants, objectors (responsible authority and interested party) or other third party interests.

Given the purpose of site visits this arrangement is, in most cases, the most fair and equitable between applicant and objectors (responsible authority and interested party) .

17.19 Ward Councillors who are not on the decision making Committee are free to attend. Councillors who are not members of Committee or Ward Councillors should not attend.

17.20 There should be no public announcement of a visit and no Member of Council should seek or organise any site demonstration of public opinion or lobbying by the applicant/agent or other third party.

17.21 Any Member who has a personal or personal and prejudicial interest (See Section 7) in an application which is the subject of a site visit should not attend the organised visit to the specific site.

If that Member is attending viewing of a number of sites which include the site in which they have declared an interest they should remain separate from other members of Committee, off the site.

17.22 Members of Committee who do not attend the Committee site visit are not prevented from taking a decision on the application.

However, Members should only vote on a particular item if they feel sufficiently confident that they are familiar with the site and in particular are confident that they have sufficient knowledge of the issues that necessitated the site visit in order to make an informed decision.

17.23 In circumstances where objectors (responsible authority and interested party) or other third party interests attend a site visit this will be allowed, but entry onto the application site will only be at the applicant/landowner's consent.

NOTIFICATION

17.24 Members of Committee will be notified of arrangements for site visits on the Committee agenda or by letter by Officers of the Planning and Regulation Service.

17.25 In the case of late arrangements for site visits, Members will be notified of revised or additional viewing arrangements by letter or telephone (depending on timescales) by Officers of the Planning and Regulation Service.

17.26 Ward Councillors who are not on the Committee will be notified of viewing arrangements.

PROCEDURES ON SITE

17.27 The following rules will be observed in relation to Committee site visits: -

1) The Chair (or nominated 'stand in') will control the proceedings throughout.

2) If non-Committee Members (Ward Councillors, applicant/agent, objectors (responsible authority and interested party) or other third parties) are present the Chair or Licensing Officer will explain the purpose of the visit and the constraints set out below.

3) The Licensing Officer will describe the application with references to the operating schedule and the submitted plans.

4) Other Officers will provide specialist information.

5) The Officers will provide clarification on matters relevant to the application in response to questions from Committee Members. He/she will not respond to points made by other parties except when the Chair agrees that clarification is required.

6) During site visits no separate discussions should take place between Officers/Members and either the applicant/agent, objectors (responsible authority and interested party) or other third parties.

7) No hospitality will be accepted from the applicant/agent or any other party on the site visit.

8) Applicants or their representatives shall not be permitted to make representations to members of Committee during the site visit. They may, however, with the Chair's agreement, give purely factual information which is requested by Members and which cannot be ascertained by viewing alone.

9) Lobbying by applicants/agents or objectors (responsible authority and interested party) or other third parties during a site visit should not be allowed.

10) Members should avoid making any statements which would prejudice their later consideration of the application.

11) The Chair will conclude the site visit. No decision will be made on the visit and no indication of the views of Members or the likely outcome of the Committee deliberations should be given.

12) If the Members require any further information or clarification of any aspect of the proposed development, the Officer attending the visit should be asked to ensure that such information is available at the subsequent Committee meeting.

17.28 A note of those attending a Committee site visit shall be kept by the Licensing Officer, together with a note of any issues/incidents arising. A minute shall be made of those attending.

17.29 An extract from this Code setting out the procedures on site shall be available at all site visits.

18. PUBLIC SPEAKING AT LICENSING COMMITTEE MEETINGS

18.1 The Licensing Act 2003 (Hearings) Regulations 2005 sets out the procedure holding for hearings.

18.2 The procedure for dealing with licensing matters at Licensing Sub-Committee hearings can be found in Appendix 5.

19. DECISIONS BY LICENSING SUB-COMMITTEE

19.1 The Licensing Sub-Committees and the Licensing Committee are open to the public. These hearings may be well attended, particularly when there are contentious or significant proposals on the agenda.

19.2 It is necessary to bear in mind that those attending hearings may include applicants/agents and other parties supporting a proposed application and objectors (responsible authority and interested party) who are against an application. It is essential that decisions are made, and are seen to be made, in the correct manner. Applicants may look to challenge a decision (whether by appeal or legal challenge) if it goes against them. Objectors (responsible authority and interested party) may look to challenge decisions, which they are not happy about, either through the Courts or the Local Government Ombudsman (See Section 26 'Sanctions'). Also there may be challenges under the Human Rights Act.

19.3 Having regard to the fact that decisions on licensing applications are made in the public arena, Members of the relevant Sub-Committees/Committee should conduct their business in a fair and sensitive manner. The debate on a licensing application should be confined to the licensing merits.

19.4 In determining all types of applications pursuant to the Act, members should follow the guidelines set out in Appendix 5 to this Code. The guidelines will be subject to change from time to time to reflect Government guidance and case law.

19.5 The following statements of law should be observed when licensing applications or other licensing matters are determined.

i) a party political stance on a licensing application is unlawful;
ii) a party whip upon a licensing application is unlawful.
iii) it is for Members as individuals to balance the proper licensing considerations in order to reach their judgement on a licensing application.
iv) it is wrong for a Member to vote for a motion on a licensing application simply because it is moved by a Member of his or her party.
v) it is wrong for a Member to vote on a licensing application with other Members of his or her party because they are members of that party; and
vi) it is wrong for a Member to vote on a licensing application without coming to a properly balanced judgement on the basis of proper licensing considerations.
vii) group meetings held prior to Committee hearings, at which members decide on which way they will vote on particular licensing applications, should not be held.

19.6 If an application is deferred (adjourned) by Committee the reasons for adjournment should be clearly stated, minuted and comply with the legislation. (See also Section 17 'Committee Site Visits' Para 17.8).

19.7 The Council has a duty to process applications without undue delay. Applications should not be deferred (adjourned) as a delaying tactic or to put off making a decision because of the number of objectors (responsible authority and interested party) at a hearing or because of uncertainty in the face of opposing parties being present at the hearing.

19.8 Decisions taken by Committee should be open and transparent in the sense that any fact or document, which Committee takes into account in coming to a decision, should be a matter of public record.

19.9 Where a document or information received appears to indicate that the recommendation to Committee or the views expressed in an application report are incorrect, then the document or other information should be drawn to the attention of the officers in good time, prior to the Committee hearing. If this is not possible, the matter should be deferred (adjourned) for proper consideration of the document or information. The Committee should liaise with the Borough Solicitor before adjourning a matter.

20. APPEALS AGAINST DECISIONS MADE BY COMMITTEE

20.1 Where an appeal to the Magistrates' Court is subsequently lodged against a decision made by Committee, Licensing Officers (and other Officers as appropriate) will act as professional witnesses to present the Council's case at the Magistrates' Court unless the Borough Solicitor considers that this would prejudice the outcome.

20.2 The Committee making the decision should consider identifying a Member or Members to support the case at a Magistrates' Court hearing.

20.3 At the earliest stage possible after an appeal is lodged, the following issues should be determined.

i) whether it would be appropriate to engage external counsel to advocate the Council's case;
ii) which Officers should appear at the Inquiry to support the Council's case;
iii) whether it would be appropriate to engage external consultants to give evidence on behalf of the Council.

The Borough Solicitor should determine these issues after consultation with the Chair of the appropriate Sub-Committee.

21 DECISIONS DELEGATED TO OFFICERS

21.1 The Council's Scheme of Delegation to Officers specifies those licensing decisions, which may be taken by Officers.

22. PRESS COMMENTS

22.1 All Members and Officers should ensure that any contact, which they have with the press, should accord with the principles of this Code and should not affect the integrity of the licensing system.

22.2 In particular, Members of the relevant Licensing Sub-Committee or Licensing Committee should ensure that they do not create the impression that they have prejudged the application.

22.2.1 All other Members should ensure that they do not create the impression that the Council has already prejudged the licensing application.

22.2.2 Officers should restrict their comments to factual matters and should ensure that they do not prejudice the Council's position with regard to any application.

23. COUNCIL LICENSING APPLICATIONS ON COUNCIL PREMISES AND PERSONS CARRYING OUT LICENSABLE ACTIVITIES

23.1 As a local authority exercising a wide range of functions the Council will often require licensing permission to carry out licensable activities, namely regulated entertainment, the sale and supply of alcohol and late night refreshment. This can be described as Local Authority applications.

It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them, as they could give rise to suspicions of impropriety - the Council looking after itself.

23.2 Applications submitted by the Council for the licensing of premises or persons to carry out licensable activities will be handled in the same way as applications to carry out licensable activities for private premises or persons to carry out licensable activities.

23.3 It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.

23.4 Council applications shall be dealt with in accordance with the Licensing Act.

24. REGULAR REVIEW OF LICENSING DECISIONS FOR PREMISES

24.1 Councillors should visit a sample of implemented licensing applications for premises to assess the quality of the decisions. A review is seen to be a way of improving the quality and consistency of decision-making, thereby strengthening public confidence.

24.2 This recommendation is supported by the Council and is recognised as an important contribution to continuous improvement of the licensing service in achieving Best Value.

24.3 The Licensing Committee shall undertake a regular review of implemented licensing decisions.

24.4 Details of the form of the Review are set out in Appendix 6, to this Code.

25. COMPLAINTS AND RECORD KEEPING

25.1 Whatever procedures and practices are put in place it is possible that complaints will be made. However, the adoption of the advice in this Code should reduce the occasions on which complaints are justified. It should, hopefully, also provide less reason for people to complain in the first place.

25.2. Complaints about the licensing process will be dealt with through the Planning and Regulation Service (Objections to licensing applications are not treated as complaints). However, complaints by applicants/agents about the decision made (not the process) will not be entertained as a complaint as they are able to make use of the external statutory appeals process.

25.3 In order that complaints can be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate,

25.4 Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule is that every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with the application to understand what the decision was and how and why it was reached. These principles apply equally to enforcement.

25.5 Regular monitoring of files should be undertaken by the Licensing Manager and any necessary action, including improvement to the recording system, should be carried out.

26. SANCTIONS

26.1 The application of, and adherence to this Code is intended to build public confidence in the Council's licensing system and to produce a strong platform for decision-making on licensing applications and other licensing matters. The Code does not remove the responsibility of Members to exercise their discretion to determine the merits of individual applications and/or proposals.

26.2 A failure to adhere to the Code may give rise to a range of potential consequences to a Council, and individual Members, especially if this results in a pattern of inconsistency. The normal sanction of the democratic process is through the ballot box. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Committees dealing with licensing matters. Beyond the normal democratic process, a number of specific consequences can be identified.

- THE LOCAL GOVERNMENT OMBUDSMAN

26.3. Although the Local Government Ombudsman will not investigate the balance or argument in any licensing decision, the Ombudsman may agree to investigate a licensing complaint if it concerns the manner in which a decision was taken. If it is found that injustice has been caused by maladministration in the light of statutory or established Council procedures, the Ombudsman will recommend redress, which may take the form of compensation.

26.4 Where the Local Government Ombudsman makes a finding of maladministration then the report may name the individual Member and give particulars of the breach.

- APPEALS TO THE MAGISTRATES

26.5 An applicant who has been refused licensing permission or where permission has been granted subject to conditions with which he/she is not satisfied has a right of appeal to the Magistrates' Court. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council.

- JUDICIAL REVIEW

26.6 If objectors (responsible authority and interested party) are convinced that the Council, in determining to grant an application, did not observe their statutory obligations to carry out all necessary procedures, and take into account all representations, they may apply for judicial review of the decision, which might result in it being quashed. In such circumstances it would be normal for the costs of the Court hearing to be awarded against the Council.

27. REVIEW OF CODE

27.1 This Code of Conduct will be reviewed by the Borough Solicitor and the Head of Planning and Regulation Service on a regular basis. Any amendments or additions, which are considered necessary, in the light of experience or changing circumstances, will be made with the approval of the Standards Committee.

Appendix 1

GIFTS AND HOSPITALITY

1. Recommendation of the Standards Committee as accepted by Council.

1.1. Members and Officers within 28 days of receiving any gift or hospitality over the value of £25 provide written notification to the Borough Solicitor of the existence and nature of that gift or hospitality;

1.2 All Members and Officers refuse all gifts or hospitality in excess of £100 (if received on more than one occasion in the same Municipal Year from the same individual or organisation), except with the approval of the Chief Executive (all such exception to be reported to the Standards Committee.

1.3 The Mayor and Deputy Mayor when acting in a representative capacity be exempted from (1) and (2) above but that any gift with a value in excess of £100 should be registered and a record kept where kept or displayed.

2. Licensable activities

2.1 Insofar as consideration of licensable activities is concerned, Members should accept no offer of gifts or hospitality that could be attributed to membership of the Licensing Committee or Sub-Committees, or directly to a licensing application.

LICENSING ACT 2003: Guidance notes to elected members responding to licensing applications

QUICK REFERENCE GUIDE

SUBJECT		
• What licences are covered by the Licensing Act 2003? • When does the new regime start? • Does this mean that all converted Licences will allow premises to open 24 hours? • So how can premises open for 24 hours in the future? • How will I know that the premises in my ward have made an application? • Notification to ward members • I've heard about an application - how do I find out more about it? • What happens if no representations are made? • I've checked the operating schedule and I think I need to make an objection -what do I do? • So what is a relevant representation? • Can I make a representation on behalf of residents in my ward? • What sort of information should I put in the representation? • What happens after I have made a Representation? • Members interests and representations to The Licensing Committee • Can I appear before a sub committee to object on behalf of my constituents? • So can I put in written representations on behalf of my constituents? • Can I lobby the committee or officers?		**Contact Details:** **The Licensing Section** **Rochdale Metropolitan Borough Council** **PO Box 32** **Telegraph House,** **Baillie Street,** **Rochdale OL16 1JH** **Telephone: 01706 864307**

INTRODUCTION

The purpose of this guidance is to advise Members of the provisions of the Licensing Act 2003, how and when applications to vary existing licences (e.g. by extending hours) can be made and what steps Members should take if they wish to object to extended licences on behalf of the community.

Further details about the new Licensing Act can be found on the website for the Department of Culture, Media and Sport (www.dcms.gov.uk).

WHAT LICENCES ARE COVERED BY THE LICENSING ACT 2003?

The Licensing Act 2003 overhauls the way in which various licences are applied for and granted in England and Wales. Under the old system the Magistrates Court granted licences for alcohol whilst the Council dealt with licences for entertainment and late night refreshment.

Under the new system the Council inherits the licensing responsibilities of the Magistrates Court and will issue licences covering:

- the sale or supply of alcohol
- the provision of regulated entertainment
- the provision of late night refreshment between 11pm and 5am

The aim of the Act is to simplify and streamline the existing processes. It is designed to bring greater flexibility in licensing (including later closing hours) together with new responsibilities for licensees and powers to the Council and the Police to deal with irresponsible licensing activities.

WHEN DOES THE NEW REGIME START?

The new regime will come fully into force in November 2005. This is the earliest date at which pubs and clubs can take advantage of extended opening hours.

Before that date, however, there is a transitional period in which existing licence holders can convert their licences to new style licences under the Act that will take effect from November 2005.

The transitional period starts on 7 February 2005 and applications must be made to the Council between ASAP. The Council has two months from receipt of each application to deal with it.

DOES THIS MEAN THAT ALL CONVERTED LICENCES WILL ALLOW PREMISES TO OPEN 24 HOURS?

Converting a licence **does not** automatically allow a licensee to open 24 hours under the new regime.

Simple conversion of existing licences is on the same terms and conditions that currently apply to the premises. For example if a pub currently closes at 11pm then the new converted licence will also require the premises to close at 11pm. If the premises are currently open until 2am then the new licence will similarly run until 2am.

SO HOW CAN PREMISES OPEN FOR 24 HOURS IN THE FUTURE

Any premise that wishes to open for longer hours (or add new licensable activities such as entertainment or alcohol which were not previously provided) must apply to vary the terms of their licence. This will be done at the same time that they apply to convert their licence.

HOW WILL I KNOW THAT THE PREMISES IN MY WARD HAVE MADE AN APPLICATION?

This will depend upon whether the application is to convert the licence on the same terms and conditions or to vary the terms of the existing licence.

If the application is simply to convert the licence then the licensee must also serve a copy of his or her application on the Police. Only the Police have a right to object to the conversion and this can only be done on very limited grounds relating to crime and disorder.

In the case of a simple conversion ward members will not automatically receive notification of the application although Licensing Section will be able to tell you on request whether premises in your area have already converted or have applied to convert.

However, where the premises make an application to vary the terms of the licence then the requirements on the applicant to inform various agencies and the public is much stricter.

In these circumstances the Licensing Section will make sure that copies of the application have also been sent to Greater Manchester Police, the Fire Service, Environmental Health, Social Services, the Health and Safety Team of the Council and Trading Standards. All of these agencies have the right to object to the licence being granted at all or being granted in the form applied for.

The community will find out about the application because the applicant must place a notice in a local newspaper circulating in the area within 10 days of making the application to the Council. The applicant must also display at or on the premises a notice of the application. The notice must be displayed somewhere where it can be conveniently read by the public and must not be obscured. The notice will be pale blue in colour, at least A4 in size and should be in black ink giving details of the existing licence and the proposed variation and should tell the public how to object to the Council and the date by which objectives must be received.

The notice must be displayed for 28 day, which is the same period of time that local residents have to make an objection to the Council.

NOTIFICATION TO WARD MEMBERS

The Licensing Section will ensure that ward members receive notification of applications for premises in their particular wards.

I'VE HEARD ABOUT AN APPLICATION - HOW DO I FIND OUT MORE ABOUT IT?

Each applicant must complete a standard application form. This application form includes an **operating schedule**, which sets out the full detail of the application together with the steps that the applicant proposes to minimise the impact of the licence on the community. If you are concerned about an application for example because you think that activities at the premises are causing a problem in the locality or because of the hours proposed you should contact the

Licensing Section and request a copy of the application so that you can see exactly what is being proposed and the steps that the applicant is suggesting he or she will take.

WHAT HAPPENS IF NO REPRESENTATIONS ARE MADE?

If no representations are made then the licence must be granted by the Council and the only terms and conditions that will apply are those that have been suggested by the applicant.

This means if the applicant has requested a 24-hour licence he or she will receive a 24-hour licence if no objections are received.

I'VE CHECKED THE OPERATING SCHEDULE AND I THINK I NEED TO MAKE AN OBJECTION - WHAT DO I DO?

The first important point to note is that there is a time limit for making objections. The Licensing Section must receive the objection within **28 days** of the date of the application being made to the Council. This date will be clearly stated on the advertisement, the notice and in the notifications to ward members. Late objections **cannot** be considered.

Any objection must be made in writing to the Licensing Section and a form has been devised which will help you to make a **relevant representation**. Copies of this form are available from the Licensing Section telephone 01706 864643.

SO WHAT IS A RELEVANT REPRESENTATION?

A relevant representation is one, which addresses the likely effect of the licence on the promotion of the four licensing objectives. These are:

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

So for example if you are concerned about noise at late hours your objection is on the grounds public nuisance that would be caused to local residents.

If you are concerned about the increase in alcohol related disorder your objection will be based on the prevention of crime and disorder.

If you are concerned that premises want to provide adult entertainment and are near to a school your objection will be about protecting children from harm.

Representations can relate to more than one objective.

Representations that do not relate to the licensing objectives are not relevant and may not be considered. An example of a representation that is not relevant is the effect of the premises on house prices in the area.

CAN I MAKE A REPRESENTATION ON BEHALF OF RESIDENTS IN MY WARD?

Representations can come from responsible authorities or interested parties. Responsible authorities are bodies such as the Police, Fire Service and Environmental Health. Interested parties are defined as residents or businesses in the vicinity of the premises **and those who represent such residents or businesses**. This means that you **can** make a representation on behalf of residents in your ward who live in the vicinity of the premises.

If the premises are close to or on a ward boundary then it is possible that Members from more than one ward may be able to object. However, you will not be able to object to an application, which is not in your ward under any other circumstances, as you would not fall within the definition of interested party.

WHAT SORT OF INFORMATION SHOULD I PUT IN THE REPRESENTATION?

Representations should contain as much detail as possible. If for example you have received letters from 10 residents in the last 6 months complaining about noise problems from a particular premise that is now applying for longer hours then the full details of these letters should be included in your representations. If you have the permission of the residents who wrote to you, you could attach copies of the letters to your representation form.

It may be that you also have photographic evidence or video footage that local residents have given you showing the problems that they are complaining of. In these cases you should tell the Licensing Section that you have such evidence in that form as soon as possible and you may then be able to produce it at any subsequent hearing of the application.

WHAT HAPPENS AFTER I HAVE MADE A REPRESENTATION?

Your representation, together with any others that the Council has received, will be put before a hearing of a Licensing Sub Committee. The sub committee will consist of three Members of the Licensing Committee.

Officers cannot be delegated to take decisions in cases where objections have been received.

The hearing could take the form of a full hearing before the sub committee where all parties can attend and address the committee and with permission may call witnesses. Alternatively you could all agree that the matter can be dealt with on paper and if the sub committee agrees then there will be no need for anyone to attend.

There are strict time limits within which the Council must convene the hearing. Generally for applications to vary licences the hearing must take place within 20 working days of the close of the period for making objections.

If the Council does not hold a hearing to determine the application within two months of the application being received, the application will be deemed to have been refused and the applicant will have an automatic right of appeal to the Magistrates Court.

MEMBERS INTERESTS AND THE LICENSING COMMITTEE

Members will be familiar with the Council's Member Code of Conduct, which applies whenever a Member is acting in this official capacity. The Members Code of Conduct will therefore apply to Members when they are making representations, appearing as an objector before a sub-committee or if they sit on a licensing sub-committee, which is determining any applications. A separate Code of Practice for Members determining licensing matters will be produced. This guidance relates to Members who wish to make representations to the Licensing Committee or sub-committees.

CAN I APPEAR BEFORE A SUB COMMITTEE TO OBJECT ON BEHALF OF MY CONSTITUENTS?

Members who wish to appear before a sub committee should consider whether they have a personal and prejudicial interest in the application. Where the interest is personal and prejudicial then the Member should not appear before the sub-committee. Neither should the Member be in the meeting room whist the application is being considered. This is to avoid any appearance of improper influence. It does not have to be shown that the committee was influenced, merely that they might have been.

An example of such an interest is where you live very close to the venue or own a business (or stake in a business) next door.

SO CAN I PUT IN WRITTEN REPRESENTATIONS ON BEHALF OF MY CONSTITUENTS?

Members with a personal and prejudicial interest are advised to rely only on written representations providing that the existence and nature of the interest is disclosed and that such Members do not seek preferential consideration for their representations.

Written representations can be made to licensing officers within the 28 days, but not to individual Members of the committee. If a Member with a personal and prejudicial interest wishes to ensure that the views of constituents within their area are presented verbally to the committee they should consider arranging for a ward colleague to present those views.

CAN I LOBBY THE COMMITTEE OR OFFICERS?

Members must be cautious about lobbying Members of licensing sub-committees where a representation has been made.

Members with a personal and prejudicial interest should also certainly not attempt to lobby committee Members about the matter, before or after a meeting or attempt to use their status as a Member to influence consideration of a submission.

Members should also note that the role of the Licensing Officer at the sub-committee is a neutral role. The Licensing Officer will not make any recommendations to Members about whether particular applications should be granted or refused.

If a Member having considered this guidance requires more detailed advice on their own specific circumstances, then they should raise this with the monitoring or legal officers.

Appendix 3

SUGGESTED WORDING OF LETTERS FOR MEMBERS DEALING WITH REPRESENTATIONS (OBJECTIONS) ON LICENSING APPLICATIONS

SUGGESTED WORDING OF LETTER FOR REPRESENTATIONS/REQUESTS FOR APPLICATIONS NOT IN THE MEMBER'S WARD

Dear

LICENSING ACT 2003
LICENSING APPLICATION ……
(Applicant)
(Premises)
(Type of Application

I refer to your request for assistance regarding the above licensing application currently being considered by the Licensing Section.

I regret to inform you I will not be able to object to this application. Under the Licensing Act 2003, only Interested parties and Responsible authorities can object to a licensing application. Interested parties are defined as residents or businesses in the vicinity of the premises and those who represent such residents or businesses.

I cannot object to this application on your behalf as it is not in my ward and/or you do not live in the vicinity of the premises. (*PLEASE AMEND IF APPROPRIATE)*

* See note re additional paragraph if required in circumstances where residents do live in the vicinity

I enclose an Interested Party Representation for completion and to be returned to the Licensing Section **within 28 days** from the day the notice was displayed on the premises or the date specified in the public notice. Please return the form to the Licensing Section.

Yours sincerely

Councillor ……

* Additional paragraph if required.

Should you wish me to pass your views to Councillor. (telephone ……..) who is a Ward Member then I will happily do so. Please advise me as soon as possible. Please note there are strict time limits for making representations. **Representations must be made to the Council's Licensing Section within 28 days from the day the notice was displayed on the premises or the date specified in the public notice.**

GUIDANCE FOR MEMBERS IN DEALING WITH (OBJECTIONS) REPRESENTATIONS ON LICENSING APPLICATIONS

SUGGESTED WORDING OF LETTER FOR REPRESENTATIONS/REQUESTS FOR APPLICATIONS IN THE MEMBER'S WARD

Dear

LICENSING ACT 2003
LICENSING APPLICATION ……
(Applicant)
(Premises)
(Type of Application

I refer to your request for assistance regarding the above licensing application currently being considered by the Licensing Section.

As your elected representative I will make representations on your behalf to the Council's Licensing Section.

May I suggest that you also make your representations known to the Licensing Section. Please could you complete the enclosed Interested Party Representation form and return it to the Licensing Section.

Please note the above Representation form must be completed within **28 days** from the day the notice was displayed on the premises or the date specified in the public notice. This time limit must be complied with. If a representation is not received within this time limit, then the Licensing Section cannot accept it.

Yours sincerely

Councillor ……

GUIDANCE FOR MEMBERS IN DEALING WITH (OBJECTIONS) REPRESENTATIONS ON LICENSING APPLICATIONS

SUGGESTED WORDING OF LETTER FOR REPRESENTATIONS/REQUESTS TO A MEMBER OF THE LICENSING SUB-COMMITTEE WHO WILL BE DETERMINING THE APPLICATION

Dear

LICENSING ACT 2003
LICENSING APPLICATION ……
(Applicant)
(Premises)
(Type of Application)

I refer to your request for assistance regarding the above LICENSING application currently being considered by the Council.

I will ensure your views on this application are both brought to the attention of the licensing officer dealing with it and are considered by the ……. Licensing Sub-Committee.

However, my role as a member of the Licensing Sub-Committee requires that I maintain a

'neutral position' on all licensing applications until such time as I receive a report setting out the

full facts and policy considerations to enable a decision to be made. For these reasons I am

unable to express a view on this matter at this particular point in time.

* See note re additional paragraph if required.

I do hope you understand my position and I will ensure that you are advised on the outcome of the application.

Yours sincerely

Councillor ……

* Additional paragraph if required.

Should you wish me to pass your concerns to Councillor ……. (telephone ……..) who is also a Ward Member but not on the Licensing Sub-Committee, then I will happily do so. Please advise me as soon as possible.

Rochdale Metropolitan Borough Council

Interested Party Representation Form

The Licensing Act 2003 (the act) makes local authorities responsible for the licensing of pubs, clubs, theatres, cinemas, restaurants, takeaways and so on. Some premises may apply to extend their hours or add some form of regulated entertainment and this is where interested parties can have their say by making relevant representations and objecting to the proposals.

Interested parties

An interested party is defined by the act as:

- A person living in the vicinity;
- A body representing persons living in the vicinity;
- A person involved in business in the vicinity of the premises; or
- A body representing persons involved in such businesses.

The word "vicinity" has not been clearly defined by the act. If you are living or working close enough to a premises and you are to be affected by the activities, we will look at your location to determine if you can be described as 'in the vicinity'.

What are the objectives?

Representations can only be made on the grounds that there may be a breach of the licensing objectives in the act. These are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

What are relevant representations?

"Relevant representations" is the term used in the act for comments including objections on applications, reviews etc.

For the purposes of making a representation by an interested party, a representation must be relevant. For a representation to be relevant it must:

- relate to the effect of the grant of the licence on the promotion of the licensing objectives (stated as above);
- be made by an interested party or responsible authority;
- not have been withdrawn;
- not be 'frivolous' or 'vexatious' or, in the case of a review, 'repetitious' if made by an interested party.

Section 1 - Application Details	
I object to the following Application: Applicant's name (if known): Premises name and address:	
Type of Application:	
Application Number (if known):	

Section 2 – Objector's details	
Individual Objector's Details: If you are objecting as a representative go to the next section	
Objector's Title	Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other_____
Surname	
First name(s)	
Telephone:	
Address (including post-code): Please complete this information or your objection may not be considered. This is because it is only a relevant objection if you live in the vicinity of the premises.	

Please note that a full copy of your objection will be sent to the applicant and will be a public document at any hearing of this matter.

If you represent residents or businesses in the vicinity please complete the boxes below.

Section 3 – Representative's details
Representative's Details: Representative's Title Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other_____ Surname First name(s) Telephone: Organisation
Address (including post-code): Please complete this information or your objection may not be considered. This is because it is only a relevant objection if you live in the vicinity of the premises.
Please state nature of representation: e.g. Residents association Ward councillor **MP** *Trade association*

Section 4 - Objection Details
I object to the application being granted at all I object to the application being granted in it's current form* *If you choose this option remember to tell us in the next section what changes you would like to see.
You need to complete the boxes below as fully as possible. If you do not then the Licensing Sub-Committee may not understand why you have objected. Please attach supporting documents/further pages as necessary. Please number all extra pages and add the applicant's name and your name to each page. Try to be as specific as possible and give examples *e.g. on 1 February I could hear loud music from the premises between 10pm and 1 am. I am concerned that if the premises open until 2 am this will cause a public nuisance to me and other residents of the street.*

To prevent crime and disorder	*Please state your reasons:*

Public safety	*Please state your reasons:*
To prevent public nuisance	*Please state your reasons:*
The protection of children from harm	*Please state your reasons:*

Please give any suggested conditions that could be added to the licence to remedy the cause of your representations, or other suggestions you would like the Licensing Sub-Committee to take into account.
Signed……Date……..

N.B if you do make a representation you will be expected to attend the Licensing Sub-Committee and any subsequent appeal proceedings.

Please return this form along with any additional sheets to: **The Licensing Section, PO Box 32, Telegraph House, Baillie Street, Rochdale, OL16 1JH**, **email: licensing.reg@rochdale.gov.uk. (If you email this document, please also send a hard copy within the relevant time limit, as service of documents by email is not accepted. This form must be returned within the Statutory Period. Generally 28 days from the day the notice was displayed on the premises or the date specified in the Public Notice in the newspaper. Please check with the Licensing Section. 01706 864643.**

Appendix 5

ROCHDALE METROPOLITAN BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

PROCEDURE FOR HEARINGS UNDER

THE LICENSING ACT 2003 WHERE REPRESENTATIONS ARE MADE

1. INTRODUCTION

The Licensing Sub-Committee will use the procedure set out below to decide matters under the Licensing Act 2003 (the Act).

These guidance notes will be made available to applicants, responsible authorities and interested parties in respect of all applications where representations are made or a hearing is to be convened.

2. BEFORE THE HEARING

Special needs

If any party to the hearing is aware of any special needs of any witness, party or representative they are asked to make this known to the Licensing office at least two working days in advance of the hearing.

Length of the hearing

If any party is aware of any factor that might affect the length of the hearing, they are asked to inform the Licensing office as soon as possible so that steps can be taken to ensure sufficient time is set aside to deal with the matter.

Mediation

Where it appears that there is a prospect of agreement being reached between the applicant and any interested party who has made representation upon the application, the Licensing office may facilitate a meeting or negotiations between the various interested parties to establish whether an agreement is possible without the need for a hearing. The method of undertaking such mediation is likely to differ from case to case, but in the event that agreement is not reached, the nature of those discussions will not be disclosed to the members of the Licensing Sub-Committee dealing with the application. Where agreement is reached between the parties, the parties will be invited to confirm in writing that the application can be resolved without a hearing. The terms of the agreement will thereafter be referred to the members of the Licensing Sub-Committee for a formal decision to be made in the absence of the parties.

Notice of representation

A party to a hearing should give notice to the Licensing office stating whether they intend to attend or be represented at the hearing and whether they consider a hearing to be unnecessary. Where a party wishes any other person to appear at the hearing they should request permission for that person to appear giving their name and a written summary of the representations, which they wish to make to the Licensing Sub-Committee together with any documentary or other evidence in support.

Right to dispense with hearing under the Act

The Licensing office can dispense with holding a hearing if all the parties required by the Act have notified the Licensing office that they consider a hearing unnecessary. If the Licensing office agrees that no hearing is necessary, it must give notice to all parties that the hearing has been dispensed with.

Written evidence and submissions

The Licensing Sub-Committee who will determine the application will consider written evidence and submissions. Applicants and interested parties must provide the Licensing office with five copies of their written evidence and submissions at least two working days in advance of the hearing date.

Withdrawal of application

A party who wishes to withdraw any representation may do so by giving written notice to the Licensing office no later than 24 hours before the hearing or orally at the hearing itself.

3. THE HEARING

Constitution of the licensing hearing panel and persons in attendance

A Licensing Sub-Committee consists of 3 Members of the Authority's Licensing Committee. One of the Members will act as Chair of the Sub-Committee.

A member of staff from the Committee Services Section of the Authority will act as Clerk to the Sub-Committee and a Legal Officer of the Authority will be present to give legal advice. At no stage will the Clerk, Legal Officer or any other officer take part in the decision making process.

Public access to hearings

The hearing will normally be conducted in public but the Licensing Sub-Committee does have the right to exclude the public from all or part of the hearing where it considers that the public interest in so doing outweighs the public interest in the hearing.

Any person behaving in a disruptive manner will be asked to leave the hearing. If this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

Failure of parties to attend

If a party notifies the Licensing office they will not be attending or be represented at the hearing, the Licensing Sub-Committee may proceed in its absence.

If a party fails to attend or be represented at the hearing without notifying the Licensing office, the Licensing Sub-Committee may:

- Where it considers it necessary in the public interest, adjourn the hearing to a specified date; or
- hold the hearing in the party's absence.

Where the licensing sub-committee holds the hearing in the absence of a party, it shall consider at the hearing the application, representations or notice made by that party.

Evidence

Documentary evidence may be relied on and considered by the Licensing Sub-Committee if it has been sent to the Licensing office before the hearing, or if all parties agree it can be produced on the day of the hearing.

The Licensing Sub-Committee does not expect the parties to repeat evidence or submissions that have been previously submitted in writing, although the parties may wish to clarify or expand on points that they have made within their written submissions by referring to that evidence.

The strict rules of evidence will not apply to these hearings. However, if hearsay evidence is to be admitted then caution must be exercised with regard to the weight to be given to it.

Order of Proceedings

The procedure in these guidance notes will be followed at the hearing although the Chair has the right to deviate from it if necessary to ensure a fair hearing.

Chairs Opening Comments

The Chair will introduce members of the Licensing Sub-Committee and officers present. Applicant and other parties introduce themselves.

Declaration of interests

Members of the Licensing Sub-Committee must declare and withdraw as appropriate (if not already done so).

Introduction

The Chair will outline the procedure to be followed (as set out below).

Licensing Officer

The Licensing Officer will present his/her report.

The Representations

The party making representations and/or their representative to address the members of the Licensing Sub-Committee, providing any information in support of their representation, and to call any witnesses in support of their representation.

These representations will be taken in the following order: -

- Police Representation
- Fire Service Representation
- Environmental Health Representation
- Weights and Measures
- Planning
- Social Services Representation
- Any other interested person *(including the local ward Councillor if present)*

The Application

The applicant and/or their representative will address the Licensing Sub-Committee, present information in support of the application, and to call any witnesses in support of the application, one witness at a time.

Points to note:

- Cross-examination shall not be permitted at the hearing unless the Licensing Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

- With the permission of the Chair, any party may ask questions of another party.

- Each party will have the same amount of time in which to address the Licensing Sub-Committee. Every party will have 20 minutes to address the Licensing Sub-Committee, give any further information and call any witnesses. Where any party considers this time to be insufficient then, a request in writing may be made to the Licensing office for an extension of time at least two working days before the hearing, however this will not automatically be granted and will be at the discretion of the Licensing Sub-Committee Panel.

- The Licensing Sub-Committee may ask the parties to draft conditions for use if the Licensing Sub-Committee is minded to grant the application. Comments will then be invited on the proposed conditions.

Determination

The Licensing Sub-Committee will retire to make its decision. The Legal Officer and the Clerk will remain with the Licensing-Committee to give legal or procedural advice only.

Upon reaching a decision, the Licensing Sub-Committee will return and the Chair will announce the decision.

If the Licensing Sub-Committee defer in reaching a decision, the Clerk will write to the relevant parties to tell them of the Licensing Sub-Committee's decision within the relevant time-scale.

Record of Proceedings

The Licensing office will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal.

Appendix 6

27. REVIEW OF LICENSING DECISIONS: FORMAT

27.1 The review will be in the form of visits to a sample of recently implemented licensing permissions to enable an assessment of the quality and consistency of decision-making.

27.2 The sample should consist of a minimum of 20 cases.

27.3 The sample should include examples from a broad range of categories:

- Premises Licences
- Club Premises Certificates
- Temporary Event Notices
- Personal Licences
- Variations, Conversions, Reviews

27.4 Prior to the visits briefing notes will be prepared by Officers on each case setting out the background and the issues which had been involved.

27.5 The Licensing Committee should assess the applications in terms of the Licensing Objectives:

These are: -

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

27.7 Once the assessments have been completed the Committee should formally consider the review and decide whether it gives rise to the need to review any of the Council's policies or practices.

Appendix 7

DECLARATIONS OF INTEREST: Practical examples and guidance on whether an interest in a submitted licensing application should be declared.

A - Personal Interest
B = Personal and Prejudicial Interest
C = No interest and no declaration needed.

Application Circumstances: -	A	B	C	Comments
1. Submitted by a close relative e.g. brother, cousin	3	3		Certainly declarable. B if spouse, otherwise A and possibly B.
2. Submitted by a local company for which your partner works.	3			Partner's pecuniary interest is your interest. There may also be a prejudicial interest.
3. Submitted by an acquaintance who you know by name and speak to but who you would not consider a personal friend.		3		Such a person does not fall within the categories of persons listed in the Model Code, in respect of whom a personal interest arises, but treat as A.
4. Submitted by a former Councillor.	3	3	3	Depends on whether the person is a friend. If he is, then there will be a personal interest and probably a prejudicial interest. If not, then there is no interest.
5. Submitted on behalf of a school or church with which you have connections. □ hold position e.g. Governor/Secretary □ no position e.g. children attend/you attend.	3	3		School or Church to gain. Real danger of bias.
6. Submitted by a restaurant where you eat regularly		3		Real danger of bias.
7. Submitted by a close neighbour	3	3	3	There will be a personal interest and probably a prejudicial interest.

8. Submitted by a large (national or international) company or organisation for whom you work.	3	3		Certainly A; could be B depending on your position in the company.
9. Where you own land or property (other than your house) close to the application site.	3	3		Personal and prejudicial.
10. Submitted by someone you attended primary school with.	3	3	3	A and B if continued friendship, otherwise C.
11. Submitted by a distant relative (e.g. your partners second cousin) on behalf of the Company for whom he/she works.	3	3	3	A, B or C depending on closeness of relationship or friendship.
12. Acting on behalf of the Council, or as Ward Member, you have accepted hospitality from a Company or organisation e.g. an official opening/anniversary celebrations. An application is then submitted for further expansion of the company's/organisation's premises.	3	3	3	A, B or C depending on level of hospitality.
13, Submitted by a fellow member of a club or organisation of which you are a member.	3	3	3	Depends on circumstances e.g. closeness of relationship; size of club or organisation. You need to weigh these against the likely public perception.
14. Submitted by a shop, which you use regularly.	3	3	3	Depending on size of shop e.g. local corner shop where you are friendly with the owner or large supermarket where no personal contact with owner.
15. Submitted by a public house where you drink regularly.		3		Real danger of bias.

16. Where a personal friend who is an objector to a submitted application.	3	3		Too close a relationship not to declare an interest (whether you support or object to the application).
17. Submitted by someone for whom you have a known dislike or have had a previous dispute.	3	3		Open to allegation of bias.
18. Where you have stated publicly your support or opposition to a type of licence now the subject of a submitted application or have been involved with an action group or organisation having such views.		3		Real danger of bias
19. Where, as a Ward Councillor, you have been lobbied by the applicant or objectors and have visited the site with them.	3	3		See Section 16 (particularly paragraph 16.4).
20. Submitted for a licence by a party political club-premises of which you are a member of the party.		3		Open to allegations of bias depending
21. Submitted by a personal friend of a member of your household (e.g. partner, son/daughter.	3	3		Real danger of bias.
22. Where an objector is a work colleague of a member of your household (e.g. partner, son/daughter).			3	Could be A and B if the person is also a friend of yours or a member of your household.
23. You work for a company who act as consultants/advisers to a local company who regularly submit licensing applications.	3	3		Personal and prejudicial interest.