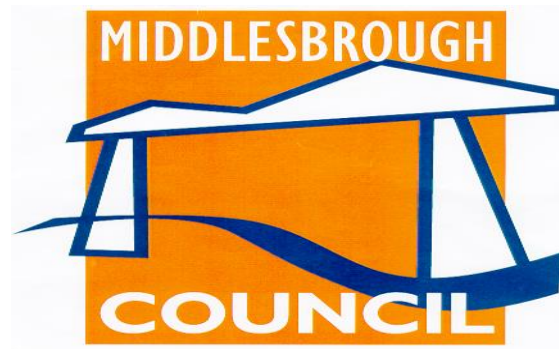


MIDDLESBROUGH BOROUGH COUNCIL



LICENSING SUB COMMITTEE HEARINGS PROTOCOL

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CHAPTER 1 **INTRODUCTION**

THE LICENSING ACT 2003

The Licensing Act 2003 was enacted in order to regulate the use of premises for licensable activities, namely, the sale and supply of alcohol; provision of regulated entertainment; and the provision of late night refreshment.

The aim of the Act is to ensure the Council carries out its functions with a view to promoting the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm.

The Council, through its licensing committee, its sub committees and officers is required to deal with licences for premises where licensable activities take place and personal licences under the Act.

THE GAMBLING ACT 2005

The Gambling Act 2005 was enacted in order to regulate the provision of facilities for gambling and the use of premises for gambling.

The aim of the Act is to ensure gambling is crime free, fair and open and to protect children and vulnerable people from harm.

The Council, through the licensing committee its sub committees and officers, is required to deal with licences for premises where gambling activities are to take place and permits for gaming, prize gaming and gaming machines in family entertainment centres, clubs and premises licensed under the Licensing Act 2003

SUMMARY

The quasi judicial role of Members at licensing sub committees considering matters under the Licensing Act and Gambling Act will involve balancing the multiple needs and interests of the local community and the applicant. Accordingly Members must maintain their impartiality as public perception of probity is critical during the decision making process. The perception of impartiality is particularly important to licensing sub committees as there are only three Members deciding upon a matter.

This protocol is intended to give Members of licensing sub committees practical advice in respect of the rules of probity, the decision making process and the conduct of hearings.

This protocol is subject to the Licensing Act and Gambling Act, any amendments made to the said Acts and any subordinate legislation made under them.

CHAPTER 2 **SUB COMMITTEE FUNCTIONS**

THE LICENSING ACT 2003

On the 7 February 2005, the full licensing committee delegated the following functions under the Licensing Act to its licensing sub committees:

1. Applications, variations and transfers of premises licences / club premises certificates / provisional statements where representations have been received.
2. Reviews
3. Determination of Temporary Event Notices if the police make representations
4. Applications for personal licences if the police make representations or there are unspent convictions.
5. Applications to vary a Designated Premises Supervisor if the police make representations

THE GAMBLING ACT 2005

On the 23 April 2007, the full licensing committee delegated the following functions under the Gambling Act to its licensing sub committees:

1. Applications, variations and transfers of premises licences and applications for Provisional Statements where representations have been received
2. Reviews of premises licences
3. Consideration of Temporary Use Notices where representations have been received
4. Consideration of Family Entertainment Centre Permits
5. Consideration of Club Gaming and Club Machine Permits where representations have been received
6. Cancellation of Club Gaming and Club Machine Permits where a hearing is requested by the Permit Holder
7. Cancellation or variation of Licensed Premises Gaming Machine Permits where a hearing is requested by the Permit Holder
8. Removal of the automatic entitlement for licensed premises under the Licensing Act 2003 to have up to two gaming machines.

CHAPTER 3 **DECISION MAKING**

INTRODUCTION

This part of the Protocol intends to outline the rules on decision making, the relevant factors the sub committee should take into account before making its decision and the options available to it.

RULES

Generally for any decision, the committee must be able to show the following.

1. The decision is reasonable in that the decision must not be one that no reasonable authority could have reached given the same set of circumstances
2. There was no bias or predetermination.
3. The parties have all had a fair hearing in that they
 - knew their opposing case
 - were able to put their case
 - were able to hear and put questions to the parties present.
4. The decision is proportionate to its aim, in that the committee has considered the rights of the individual against the rights of the community.
5. All the options have been considered
6. There are sufficient and relevant reasons for the decision supported by evidence.

CONSIDERATIONS AND OPTIONS

Table 1 and Table 2 attached show the factors Members should take into consideration before reaching a decision in respect of each of the sub committee's functions and the specific decisions that can be made under the Licensing Act and the Gambling Act respectively.

CHAPTER 4 **ROLE OF MEMBERS AT SUB COMMITTEE HEARINGS**

INTRODUCTION

This section gives guidance on the rules of bias, pre – determination and personal and prejudicial interests, particularly in relation to licensing sub committee functions.

It gives practical advice on whether Members should sit on a sub committee, site visits and Members making their own personal applications under the Act.

BIAS AND PREDETERMINATION

Bias is an attitude of mind which prevents the decision maker from making an objective determination of the issues that he has to resolve.

Bias also includes the situation where it is felt that the decision maker has predetermined the case based upon his own prejudices.

There is no need to prove actual bias it is enough that an individual at the committee considers there to be a perception of bias.

The consequence of a committee decision made with the appearance of bias would make that decision unsafe which could be overturned on appeal resulting in cost consequences to the Council. Additionally the Member who appears to be bias could be reported to the Standards Board or the Council's Standards Committee and have sanctions made against him.

PERSONAL AND PREJUDICIAL INTERESTS

The Local Authorities (Model Code of Conduct) Order 2007 effective from the 3 May 2007 introduced new rules regarding personal and prejudicial interests.

1. What is a Personal Interest

A personal interest will arise where the business of the sub committee affects:

- 1.1 a Member or his family or associates more than it would the majority of other people in the ward where the premises are situated.
- 1.2 a Member's business, employment, investments or land, and gifts or hospitality received in excess of £25.00.
- 1.3 a person who has made a payment to a Member in respect of election expenses or any other expenses incurred in carrying out his duties.
- 1.4 a body (public or charitable) or a body whose principal purposes includes the influence of public opinion or policy and a Member at the sub committee is also a member of the body which is affected.

2. When should a Personal Interest be Declared

- 2.1 Generally, the existence and nature of the personal interest should be declared by a Member attending a sub committee in any capacity at the commencement of the meeting, or when it becomes apparent.
- 2.2 If a member has received a gift or hospitality of £25 or more he need only disclose this personal interest if the interest was registered within the last three years. However, to avoid a presumption of bias a Member should not sit on a licensing sub committee if he has received a gift from any party at the committee.
- 2.3 The declaration of a personal interest does not prevent a Member from sitting on a sub committee or making representations to it.

3. What is a Prejudicial Interest

- 3.1 A Member who has a personal interest in the business of the sub committee will also have prejudicial interest if a party at the committee could consider it to affect the Member's impartial judgement. Therefore a prejudicial interest could arise, for example, if a member frequently visits a premises or lives in close proximity to it.
- 3.2 The new Code of Conduct provides that an interest is not prejudicial if it does not affect the financial position of a Member or his associates. However, this does not apply to Members attending a licensing sub committee (in any capacity) as the business of the committee involves the determination of consents permissions or licences.

4. What Action can a Member take if he has a Prejudicial Interest

- 4.1 A Member must not sit on the sub committee determining the matter.
- 4.2 A Member may attend the sub committee for the purposes of making representations, answering questions or giving evidence relating to the matter. Therefore, the member must only enter the meeting when called to make such representations etc and leave the meeting after such representations have been made.
- 4.3 In accordance with the Code of Conduct a Member must, prior to the start of the meeting, indicate they intend to rely on Regulation 12(2) of the Code which permits him to make representations to the committee.
- 4.4 Alternatively, a Member may submit written representations which will be considered by the committee if relevant.

PRACTICAL EXAMPLES FOR MEMBERS SITTING ON A SUB COMMITTEE

1. Previous Voting / Statements of Belief

Members should not sit on a licensing sub committee if previous voting or statements of belief made by him may alter the objectivity of the committee. Therefore, a Member should not sit on a sub committee if he has voted, campaigned or lobbied in some other capacity in relation to the application to be determined by the committee.

2. Ward Members

A Member should not sit on a licensing sub committee deciding upon an application relating to premises situated in his ward. For example, if residents object, the applicant may presume the ward Member's constituents have put pressure on him to vote in their favour. Even if this is not the case, the perception of bias will be sufficient to make the decision of the committee unsafe on appeal. Members would then be free to represent the views their constituents as interested parties.

3. Pre Decision Discussions

Members sitting on a licensing sub committee should avoid expressing personal opinions or having discussions regarding an application prior the committee decision. If an applicant, interested party, responsible authority or any other party approaches a Member about an application he should refer them to another Member not sitting on the sub committee or to an Officer.

Members should not pressurise Licensing Officers to make any particular decisions or recommendations regarding applications

4. Political Group Meetings

Political Group Meetings should not be used to decide how any Members on a licensing sub committee should vote. Members on a sub committee must be impartial.

5. Membership on other bodies

Members who are also members on other bodies affected by the application should not sit on the committee deciding upon the issue. For example, a member of a working men's club should not sit on a committee deciding upon the club's application for a gaming machine permit.

ADVICE REGARDING SITE VISITS

1. The decision on whether to organise a site visit to an application site rests with the Head of Community Protection. The reasons why a Site visit is considered necessary will be given to the applicant, interested parties and responsible authorities.
2. The site visit will take place at a date and time fixed by the Head of Community Protection. The three members of the sub committee hearing the application will attend accompanied by the Licensing Officer and Legal Officer.
3. Members will view the site from the nearest public place and only with the consent of the landowner obtained by the licensing officer will they go on any premises. They will keep together as a group and not engage individually with any applicant, interested parties or the responsible authorities.
4. For the avoidance of doubt no decision, or indication of a decision on the application will happen on the site visit, the site visit being a purely fact finding exercise to appreciate the physical context, or any other relevant matter felt necessary to assist the deliberation of the application. If present no representations will be made by either the applicant, interested parties or responsible authorities. However Members may ask questions seeking clarification of the facts that are relevant to the determination of the application through the Licensing Officer.
5. Site visits can put Members at risk of accusation of bias. Therefore a passing visit by a Member purely for the purpose of noting the location is not considered a site visit. However the Member must not enter the site or engage in discussions with anyone about the application. Members should not take part in an informal site visit with any party, any party making such a request should be referred to this guidance.

MEMBERS MAKING PERSONAL APPLICATIONS UNDER THE LICENSING ACT AND THE GAMBLING ACT

1. Members wishing to make an application should
 - Notify the Monitoring Officer of their intention
 - Appoint an agent to deal with all aspects of the case
 - Not take part in any direct discussions with the Licensing Officer, Members or other bodies involved in the application
 - Not to attend the sub committee hearing or site visits in respect of the matter
2. If representations are received the matter to be referred to the full licensing committee for determination, the report will state the

application is made on behalf of a Member and will include a note from the Monitoring Officer that, to the best of their knowledge, the application has been dealt with in accordance with this guidance.

3. Members of the full licensing committee considering the application may have a personal interest as, for example, the matter before the committee will affect one of their associates' business. Members will then have to consider whether that interest is prejudicial under the Code of Conduct. If in doubt a Member should seek advice from the Monitoring Officer.

CHAPTER 4 **PROCEDURE AT HEARINGS**

INTRODUCTION

The protocol follows:

- The Licensing Act (2003 (hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005.
- The Gambling Act (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.

LICENSING SUB COMMITTEE PROCEDURE

1. INTRODUCTION OF THE MATTER BEFORE COMMITTEE

- 1.1 The Chair welcomes the parties and introduces the Members and Officers
- 1.2 The Chair briefly explains the matter before the committee
- 1.3 The Chair deals with any Membership changes and interests

2. HEARING TO BE IN PUBLIC

- 2.1 The Chair confirms whether the hearing is to be a public meeting or held in private

Under the Licensing Act, a hearing must be in public unless the committee are satisfied the public interest in the meeting being open is outweighed by the public interest in holding the meeting in private.

Under the Gambling Act, a hearing must be in public unless the committee is satisfied that a private meeting is necessary after considering any unfairness to a party if the hearing was in public and the need to protect the commercial or other legitimate interests of a party.

3. CONFIRMATION OF PROCEDURE TO BE FOLLOWED

- 3.1 Chair confirms to procedure that will be followed at the hearing

All parties will have access to a laminated copy of the procedure

4. ABSENT PARTIES

- 4.1 The Legal advisor through the Chair confirms whether any parties are absent.

4.2 The Legal advisor asks for the views of the parties present on the hearing proceeding or being adjourned if a party is absent.

4.2 The Committee decide whether or not to proceed

If a party informed the licensing officer he intended to attend but fails to appear the committee may adjourn if it is in the public interest to do so, or proceed in the party's absence

5. WITNESSES

5.5 The Legal Advisor through the Chair confirms if any witnesses are present, if the party wishing to produce the witness has complied with formalities and the matters on which the party wishes the witness to give evidence.

5.6 The Committee decide whether to permit the witness to be heard.

6. EVIDENCE

6.1 The Legal Advisor through the Chair confirms the evidence before it and confirms that all parties have received copies.

6.2 The Legal Advisor through the Chair confirms whether there is any evidence to be produced at the hearing.

6.3 The Legal Advisor through the Chair will ensure copies are distributed and will summarise the evidence and its relevance for the committee and the parties in attendance

6.4 The Legal Advisor through the Chair will request the parties present to submit their comments on the evidence being admitted

6.5 The committee decide whether or not to

6.5.1 Permit the evidence

6.5.2 Postpone the hearing for the committee and other parties to consider the evidence

6.5.3 Reject the evidence

7. THE LICENSING OFFICER OUTLINES THE CASE

7.1 The Chair asks the Licensing Officer to summarise the case by reference to the report and any additional admitted evidence.

7.2 The Chair asks the parties whether they consider the report to be accurate

- 7.3 If the report is not accurate the committee can note the amendments if required.

7 THE APPLICANT PRESENTS HIS / HER CASE

- 8.1 The Chair asks the applicant to present his / her case
- 8.2 Chair and Members ask the applicant questions
- 8.3 The Chair gives permission for the other parties to ask the applicant questions
- 8.4 The Chair asks the applicant's witnesses to give evidence
- 8.5 The Chair and Members ask the witnesses questions
- 8.6 The Chair gives permission for the other parties to ask the witnesses questions.

9 THE RESPONSIBLE AUTHORITIES / INTERESTED PARTIES PRESENT THEIR CASE

- 9.1 The Chair asks the Responsible Authority / Interested Party to present his / her case
- 9.2 The Chair and Members ask the Responsible Authority / Interested Party questions
- 9.3 The Chair gives permission for the applicant to ask the Responsible Authority / Interested Party questions
- 9.4 The Chair asks the Responsible Authority / Interested Party's witnesses to give evidence
- 9.5 The Chair and Members ask the witnesses questions
- 9.6 The Chair gives permission for the applicant to ask the witnesses questions.

10. THE PARTIES SUM UP THEIR CASES

- 10.1 The parties should not introduce any new information in summing up, but if they do and it is relevant the other parties present should be given chance to comment upon it

11. CONCLUSION OF HEARING

- 11.1 Chair asks if the parties have said everything they want to so that is relevant

- 11.2 The Chair asks the parties to leave excluding the Governance Officer and Legal Advisor in order to deliberate the matter.

12 DECISION AND REASONS

- 12.1 The committee may determine the matter after the conclusion of the hearing and recall the parties to inform them of the decision, however, where deliberation may take some time, the decision and reasons in most cases can be given no later than five working days from the day after the hearing concludes.

13 MISCELLANEOUS ISSUES

- 13.1 The Committee has the power to rectify any non compliance with Regulations. If a party is prejudiced as a result then the committee should attempt to remedy this by for example giving the party time to consider evidence produced by the applicant or allowing questions to be asked of parties and their witnesses.

TABLE 1 CONSIDERATIONS AN OPTIONS UNDER THE LICENSING ACT

FUNCTIONS	CONSIDERATIONS	OPTIONS
Application for / Variation of a Premises Licence / Club Premises Certificates	<ol style="list-style-type: none"> 1. Objectives 2. Guidance 3. Policy 4. Representations 	<ol style="list-style-type: none"> 1. Grant the licence without modification 2. Add remove or amend a condition on the licence 3. Exclude a licensable activity from the licence 4. Refuse to permit the person specified to be the designated premises supervisor 5. Reject the application
Review of a Premises Licence	<ol style="list-style-type: none"> 1. Objectives 2. Guidance 3. Policy 4. Representations 	<ol style="list-style-type: none"> 1. Do nothing 2. Add remove or amend a condition on the licence 3. Exclude a licensable activity from the licence either permanently or for up to three months. 4. Remove the designated premises supervisor 5. Revoke the licence
Transfer of Premises Licences / Club Premises Certificate	<ol style="list-style-type: none"> 1. Representations from Applicant 2. Representations from Police 3. Promotion of prevention of crime and disorder objective only. 4. Guidance 5. Policy 	<ol style="list-style-type: none"> 1. Reject the application or 2. Grant the application
Application for a Provisional Statement	<ol style="list-style-type: none"> 1. Objectives 2. Guidance 3. Policy 4. Representations 	<ol style="list-style-type: none"> 1. Issue the statement in accordance with the application. 2. Issue the statement subject to the addition, removal or amendment of a condition on licence should it be granted 3. Issue the statement subject to the removal of a licensable activity on the licence should it be granted 4. Issue the statement subject to refusing to grant permission or the designated premises supervisor should the licence be granted 5. Refuse to issue the statement
Temporary Event Notices	<ol style="list-style-type: none"> 1. Representations from the Applicant 2. Representations from the Police 3. Promotion of the prevention of crime and disorder objective only 4. Guidance 5. Policy 	<ol style="list-style-type: none"> 1. Dismiss the objection 2. Counternotice that notice is not to have effect

Personal Licences	<ol style="list-style-type: none"> 1. Representations of the applicant 2. Representations from the Police 3. Promotion of the prevention of crime and disorder objective only 4. Guidance 5. Policy 	<ol style="list-style-type: none"> 1. Grant the Licence 2. Reject the Licence
Variation of Designated Premises Supervisor	<ol style="list-style-type: none"> 1. Representations of the applicant 2. Representations from the Police 3. Promotion of the prevention of crime and disorder objective only 4. Guidance 5. Policy 	<ol style="list-style-type: none"> 1. Grant the variation 2. Refuse the variation

TABLE 2 – CONSIDERATIONS AND OPTIONS UNDER THE GAMBLING ACT

FUNCTION	CONSIDERATIONS	OPTIONS
Application for / variation of a Premises Licence or Provisional Statement	<ol style="list-style-type: none"> 1. Aim to permit premises to be used for gambling 2. App is in accordance with the Code of Practice 3. App is in accordance with the Guidance 4. App is reasonably consistent with licensing objectives 5. App is in accordance with Middlesbrough Council's Statement of Principles 6. Representations 	<ol style="list-style-type: none"> 1. Grant it 2. Reject it 3. Exclude a default condition 4. Add remove or amend a condition
Application for Reinstatement or Transfer of Premises licence	<ol style="list-style-type: none"> 1. Aim to permit premises to be used for gambling 2. App is in accordance with the Code of Practice 3. App is in accordance with the Guidance 4. App is reasonably consistent with licensing objectives 5. App is in accordance with Middlesbrough Council's Statement of Principles 6. Representations 	<ol style="list-style-type: none"> 1. Grant the transfer 2. Reject the Transfer only if it would be wrong to Reinststate / Transfer after considering representations 3. Exclude a default condition 4. Add remove or amend a condition
Application for a Review of the Premises Licence	<ol style="list-style-type: none"> 1. Aim to permit premises to be used for gambling 2. App is in accordance with the Code of Practice 3. App is in accordance with the Guidance 4. App is reasonably consistent with licensing objectives 5. App is in accordance with Middlesbrough Council's Statement of Principles 6. All relevant written and oral representations 7. Whether or not the Licensee has used the premises 	<ol style="list-style-type: none"> 1. Do nothing 2. Revoke the Licence 3. Suspend the Licence up to 3 months 4. Exclude a default condition 5. Add, remove or amend a condition
Temporary Use Notices	<ol style="list-style-type: none"> 1. Aim to permit premises to be used for gambling 2. App is in accordance with the Code of Practice 3. App is in accordance with the Guidance 4. App is reasonably consistent with licensing objectives 5. App is in accordance with Middlesbrough Council's Statement of Principles 6. Representations from the Police or Gambling Commission 	<ol style="list-style-type: none"> 1. Dismiss objection 2. Notice is not to have effect 3. Notice is to have effect only in respect of a specific activity 4. Notice is to have effect only of a specific activity at specific times 5. Notice to have effect subject to conditions
Family Entertainment Centre Permits	<ol style="list-style-type: none"> 1. Middlesbrough Councils Statement of Principles re Family Entertainment Centre Permits 2. May consider the licensing objectives 3. Guidance by the Gambling Commission 	<ol style="list-style-type: none"> 1. Grant the Permit. 2. Refuse the Permit (No conditions permitted)
Renewal of Family Entertainment Centre Permit	<ol style="list-style-type: none"> 1. Whether an officer has been refused access to the Premises 2. Whether renewal would be reasonably consistent with licensing objectives 	<ol style="list-style-type: none"> 1. Grant renewal 2. Refuse Renewal only if satisfied officer has been refused access and not consistent with licensing objectives

Application for / Renewal of Club Gaming and Club Machine Permits	<ol style="list-style-type: none"> 1. Whether the applicant is members club miners welfare institution or commercial club 2. Whether premises used wholly or mainly by children 3. Whether an or breach of condition or offence has been committed by the permit holder 4. Whether the permit has been cancelled during the last ten years 5. Representations from the Police or Gambling Commission 6. Representations from applicant 7. Guidance by the Gambling Commission 8. The Licensing Objectives 	<ol style="list-style-type: none"> 1. Grant the permit 2. Refuse the Permit if 1 and 2 of the considerations are not satisfied 3. Refuse Permit on other grounds (No conditions permitted)
Cancellation of Club Gaming and Club Machine Permits	<ol style="list-style-type: none"> 1. Whether premises used wholly or mainly by children 2. Whether an or breach of condition or offence has been committed by the permit holder 3. Representations from the Permit Holder 	<ol style="list-style-type: none"> 1. Do nothing 2. Cancel the Permit
Cancellation of Licensed Premises Gaming Machine Permits	<ol style="list-style-type: none"> 1. would it be reasonably consistent with the licensing objectives for the permit to continue to have effect 2. whether gaming has taken place otherwise than in accordance with the permit 3. whether the premises are mainly used for making gaming machines available 4. Whether an offence under the act has been committed on the premises 5. Representations made by the Permit Holder 	<ol style="list-style-type: none"> 1. Do nothing 2. Cancel the permit in its entirety 3. Vary the number or category of gaming machines permitted
Removal of Automatic Entitlement under S282 and S279 of the Act	<ol style="list-style-type: none"> 1. Continued application of exemption is not reasonably consistent with the licensing objectives 2. Whether gaming has taken place otherwise than in accordance with the exemption 3. Whether the premises are mainly used for gaming 4. Whether an offence under the Act has been committed on the premises 5. Representations from the Licensee 	<ol style="list-style-type: none"> 1. Do nothing 2. Make an Order excluding the Automatic Entitlement

