



THE NEWCASTLE CHARTER

Part 5.4D - Protocol – Regulatory and Appeals Committee

Notes:-

This constitutes a local protocol breach of which will constitute a breach of paragraph 6 of the Code of Conduct for Members at part 5.2A.

It also has to be read in conjunction with:

- Protocol - Member/Officer Relations. (Part 5.4A of the Newcastle Charter).

Authorisation

This amended protocol was approved by City Council on 25 May 2005, replacing the protocol approved by City Council on 2 July 2003, which was originally referred to as a "Licensing Protocol".

As a result of the decision of City Council to change the name of Licensing Committee to Regulatory Committee, the Protocol was amended to reflect that change. Minor changes were made in 2008 to reflect the revised Members' Code of Conduct.

Further changes were made in 2011 to reflect the decision of City Council to (i) change the name of Regulatory Committee to Regulatory and Appeals Committee and (ii) amend its terms of reference.

Further changes have been made in 2012 to reflect the new Members' Code of Conduct and up to date legislation.

CITY OF NEWCASTLE UPON TYNE

PROTOCOL- REGULATORY AND APPEALS COMMITTEE

This Protocol sets out principles to guide members and officers in determining licensing applications and making other decisions within the terms of reference of Regulatory and Appeals Committee (so far as they relate to licensing.)

Although it is of particular relevance to members of Regulatory and Appeals Committee, **it applies to all members of the Council who may become involved in licensing matters**. It will be distributed annually to all members of the Council.

Officers participating in the Regulatory and Appeals Committee process must comply with the Employees Code of Conduct (Part 5.2C of the Newcastle Charter)

Copies will be available for the public in the Regulatory Services and Public Protection Division, the Democratic Services Division and public libraries. A copy will also be available on the Council's internet site.

Note:

On 25 May 2011, the Council amended the Committee's terms of reference to include matters dealt with previously by various appeal panels and renamed the Committee "Regulatory and Appeals Committee"

This Protocol relates mainly to the Committee's licensing functions.

CITY OF NEWCASTLE UPON TYNE

PROTOCOL- REGULATORY AND APPEALS COMMITTEE

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CITY OF NEWCASTLE UPON TYNE
PROTOCOL- REGULATORY AND APPEALS COMMITTEE

1. INTRODUCTION

The Regulatory and Appeals Committee has a very important role to play in the life of the City. It determines licensing applications under many different statutory regimes - from taxi licences to street trading and many others. The decisions are very important to the applicants since they can affect their ability to earn their living and can have serious financial consequences. But the role is also important for the wider community because of the impact on health and safety, the local community and competing economic interests.

This protocol contains guidance for members of the Regulatory and Appeals Committee. If members are uncertain about the application of the Protocol, they should seek guidance from officers, preferably in advance of any meeting. (Appendix A contains a list of current contact officers).

2. INTERESTS OF THE WHOLE COMMUNITY

- Members of Regulatory and Appeals Committee should determine licensing matters in the interests of the whole community of the City.
- All applications should be determined with regard to the relevant legislation and guidance.
- Members of Regulatory and Appeals Committee should not prejudge licensing applications nor do anything that may reasonably be taken as giving an indication of having prejudged licensing applications.
- All other members should have regard to these principles when dealing with licensing matters and must avoid giving an impression that the Council may have prejudged the matter.

3. PARTICIPATION OF MEMBERS

- (i) Members must consider carefully whether it is right for them to participate in a matter before the Committee. There are two elements to this:
- (a) where they have personal and non-participatory interests
 - (b) where members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its own merits.

While this Protocol seeks to guide Members each situation will be different and Members should seek guidance from Officers.

Personal and non-participatory interests

- (ii) Members must comply with the provisions regarding personal interests and

non-participatory interests set out in Parts 2 - 4 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter).

In particular, members must be mindful that if they have a “non-participatory interest” as defined in the Members’ Code of Conduct, they must withdraw from the meeting and take no part in the matter.

(iii) Pre-judgment

Section 25 of the Localism Act 2011 provides that:

“A decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision because:

- a) the decision-maker had previously done anything that directly or individually indicated what view the decision maker took, or would or might take, in relation to a matter, and;
- b) the matter was relevant to the decision”.

The key point is that by the time the member considers the application they must have an open mind and appear to have an open mind when determining the application.

While the Code of Conduct for Members provides guidance as to personal and non-participatory interests which may affect a member's ability to take part in the decision-making process, members may have other interests which may influence their decision which will not amount to personal or non-participatory interests for the purposes of the Code. In order to maintain the integrity of the licensing system, members should be careful to ensure that such interests do not unduly influence their decisions. Examples of such interests are:-

- from ward concerns
- from membership of other Committees of the Council
- from membership of other public or community bodies
- from membership of voluntary associations and trusts (including where appointed by the Council)
- from a connection with a particular policy initiative of the Council.
- from membership of clubs, societies and groups
- from hobbies and other leisure interests
- from employment or professional concerns

Such interests may mean that a Member is involved with a licensing application before the matter comes before the Regulatory and Appeals Committee. Such involvement need not on its own debar a member from participating in making the licensing decision when the matter is considered by Regulatory and Appeals Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

As a minimum, the integrity of the licensing system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

4. POLITICAL GROUP MEETINGS

Members of Regulatory and Appeals Committee must not base their decision on any discussion that may have taken place in a political group meeting. To do so would mean that Members have not come to the Committee meeting with an open mind, and that they may have been influenced by group discipline rather than the merits of the case. The Ombudsman has found maladministration in cases where members have been influenced by political group decisions in deciding planning applications, and the same principles apply to licence applications.

5. ANNUAL RETURN

Members of Regulatory and Appeals Committee and officers who attend Regulatory and Appeals Committee regularly should complete the Annual Return in the form set out in Appendix B.

DEBATE

6. Only members of the Regulatory and Appeals Committee can take part in the decision making.
7. All members of the Council have the right to attend meetings of Regulatory and Appeals Committee under the Council Procedure Rules, and to speak at the meeting with the agreement of the Chair. The agreement of the Chair should normally be obtained before the meeting. Such members may not remain if the Regulatory and Appeals Committee goes into private session to consider their decision. Where a member wishes to speak in support or opposition to the application, they shall comply with any procedural rules about representations and ideally, in the interests of fairness to all the parties, should provide details of their representations in advance so that they can be included in the agenda. This is to enable them to be circulated to all parties.
8. Members of Regulatory and Appeals Committee must:-
- (a) listen to all arguments for and against an application and weigh them up carefully before deciding whether to support or oppose a particular application.
 - (b) make sure that they are not swayed by arguments which are not directly related to the merits of the application.

ATTENDANCE OF THE PUBLIC

9. The Committee shall decide whether to deal with matters in public, having regard to the Access to Information Procedure Rules (Part 4B of the Newcastle Charter) and the Human Rights Act 1998.

GENERAL PROCEDURES FOR HEARINGS

10. The following procedural requirements shall be followed at all times;
- (a) Any requests for hearings shall be made to the Director of Regulatory Services and Public Protection.

- (b) As a general rule, there shall be no firm recommendation from officers on the agenda.
- (c) A solicitor, counsel, professional adviser, friend or relative may represent a person who is allowed to attend and make representations.
- (d) The process and order of procedure shall be as follows:

ORDER OF SPEAKING FOR CONDUCT OF HEARINGS

11. The Order of speaking for hearings shall be as follows:
- a) Chair to open the meeting.
 - b) Chair to introduce persons as appropriate, to identify officers generally, and to ask applicants and representatives to identify themselves.
 - c) Advising Officer may introduce the matter.
 - d) The Applicant may present, with or without witnesses, and may be questioned through the Chair by Members, Objectors and Officers. ‡
 - e) Officers, the police, fire authority and other statutory objectors may present, with or without witnesses, and to be questioned through the Chair by members, the applicants, officers and objectors. ‡
 - f) Any Objectors may present, with or without witnesses, and to be questioned through the Chair by Members, Officers and the applicants. ‡
 - g) Applicant to have the right of final reply.
 - h) All evidence/statements to be made in the presence of all parties, unless a party voluntarily excuses themselves from the proceedings.
 - i) Regulatory and Appeals Committee Members shall restrict themselves to questions and not engage in discussion or comment until they are considering their decision.
 - j) The Regulatory and Appeals Committee may adjourn the hearing where it considers it necessary to ensure a fair hearing.
 - k) The Regulatory and Appeals Committee may resolve to decide in private session. If it becomes necessary to recall any party for additional information, all parties shall be invited to return to the room.
 - l) Decision, together with reasons, to be confirmed in writing as soon as possible thereafter.

‡Note: Applicants and objectors shall not be allowed to cross examine each other.

NATURAL JUSTICE

12. There are two elements to natural justice:

(a) Fairness

- (i) When Regulatory and Appeals Committee is considering an application, the applicant will be given an opportunity to put his/her case before the Regulatory and Appeals Committee. If the applicant or his/her representative does not attend, the Regulatory and Appeals Committee may in its discretion proceed in the applicant's absence taking into account all the circumstances.
- (ii) Any person who has duly objected may be allowed a hearing at the Chair's discretion.
- (iii) Where possible, all documentation to be considered by the Regulatory and Appeals Committee will be made available in advance in accordance with the Access to Information Procedure Rules (Part 4B of the Newcastle Charter).
- (iv) All Members of the Regulatory and Appeals Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of the matter has started, that Member shall play no part in the decision-making process for the particular application. Where an application is adjourned it shall be heard by the same Members only, and no others.

(b) Prevention of Bias

- (i) The rules about personal and non-participatory interests set out in Parts 2 – 4 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter) shall be firmly applied. Members are also referred to the guidance about prejudgement in paragraph 3.
- (ii) If the Regulatory and Appeals Committee moves into private session to consider its decision, it should be accompanied only by its Democratic Services Officer, legal adviser and advising officer, all of whom shall have taken no substantive part in the debate, and shall play no substantive part in the decision-making process.

N.B. There may be specific statutory rules and procedures that the Committee must follow in the case of particular applications.

LOBBYING

- 13. While recognising that lobbying of members has an important role in the local democratic process, this should not prejudice the licensing process. See Appendix C for guidance.

HOSPITALITY

- 14. Members should not accept gifts or hospitality from applicants or objectors in connection with their membership of the Regulatory and Appeals Committee as this might reasonably be interpreted as likely to influence a Member's judgement.

In addition, all Members must comply with paragraph 3 of Annex 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter).

If you have received within the previous 3 years the offer of a gift or hospitality with an estimated value of more than £50 (whether or not you accept the offer)

from any person, which is attributable to your position as an elected or co-opted member of the Council this will be a registerable personal interest.

All receipts or offers of gifts or hospitality of at least £50 in value must be notified to the Service Manager Democratic Services on behalf of the Monitoring Officer.

15. MEETINGS WITH INTERESTED PARTIES

The main role of Regulatory and Appeals Committee is to decide individual applications which is a quasi-judicial function. The Committee (in conjunction with the appropriate scrutiny committee) also has a role in deciding a policy framework.

The Committee will often find it useful to meet interested parties including members of the trade, resident groups, and the like and to visit premises in the city. While it is proper for the Committee to do this, care must be taken not to prejudice the integrity of the licensing process. The following ground rules will help to prevent this -

- Arrangements for meetings and visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should pass the person concerned on to officers.
- Members should not accept any gift or any hospitality other than light refreshments during such meetings or visits. Any such offer must be registered whether or not it is accepted (see paragraph 14 above). If it is necessary to provide more substantial hospitality, it should be provided for Members by the Council.
- There should be no discussion of individual applications - including those that have been determined, those that are pending and those that potentially could arise in the future.
- At such meetings, there should be no one-to-one discussions between Members and others.
- Officers should always be present at such meetings or visits.
- A note should be kept of who attended the meetings or visits, what occurred and an outline of any discussions. A copy should be placed on the relevant directorate file and open to public inspection.
- When dealing with applications, in the interest of openness and fairness, careful consideration should always be given to whether details of such meetings or visits should be given to the parties to the application and/or declared at the meeting. This should be done if a reasonable person might think that the Committee's decision could be affected by the meeting or visit.

16. STATUTORY DUTIES

The Council is subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the licensing function

except when such matters are clearly immaterial in the light of the particular statutory regime. Examples of these duties include:
EQUALITY ACT 2010 – section 149 provides that:

A council must, in the exercise of its functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (3) foster good relations between persons who share a protected characteristic and persons who do not share it.

The above powers relate to the following protected characteristics:

- (a) age
- (b) disability
- (c) gender reassignment
- (d) marriage and civil partnership
- (e) pregnancy and maternity
- (f) race (including colour, nationality and ethnic or national origins)
- (g) religion or belief
- (h) sex
- (i) sexual orientation

HUMAN RIGHTS - section 6(1) of the Human Rights Act 1998 provides that:

"It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right".

BEST VALUE - section 3(1) of the Local Government Act 1999 provides that:

"A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness"

CRIME AND DISORDER - section 17(1) of the Crime and Disorder Act 1998 provides that:

"Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area"

HEALTH AND SOCIAL CARE – section 116B(1) of the National Health Service Act 2006 provides that:-

"[The Council] and each of its clinical commissioning groups must, in exercising any functions, have regard to –

- (a) any assessment of relevant needs prepared by [the Council] and each of its clinical commissioning groups under section 116 [of the National Health Service Act 2006] which is relevant to the exercise of the functions; and
- (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant."

17. PRESS COMMENTS

- (i) All members should ensure that any contact which they may have with the press should accord with the principles of this Code and should not affect the integrity of the licensing system.

Members should also comply with paragraph 20 in the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter) which is set out in Appendix D.

- (ii) The principles of the code apply to press contact; in particular:-
- Members of Regulatory and Appeals Committee should ensure that they do not create the impression that they have prejudged the licensing application.
 - All other members should ensure that they do not create the impression that the Council has already pre-judged the licensing application.

SCRUTINY

18. The role of scrutiny committees is explained in the Scrutiny Committee Procedure Rules (Part 4E of the Newcastle Charter).

The "call-in" procedure allows scrutiny committees to ask executive decision-makers to reconsider decisions before they are implemented. Under the Local Government Act 2000, this does not apply to non-executive decisions such as those made by Regulatory and Appeals Committee.

Scrutiny committees may review and scrutinise the overall work of Regulatory and Appeals Committee, if it forms part of their agreed work programme. However, statutory guidance from the Secretary of State provides that scrutiny committees should not normally scrutinise individual decisions made by Regulatory and Appeals Committee. In particular, scrutiny committees should not become an alternative to normal appeals procedures. The power to review and scrutinise should normally be used as part of wider policy reviews.

PROTOCOLS

19. Regulatory and Appeals Committee will from time to time be free to devise its own protocols for dealing with different types of appeals, a copy of which will be held by, and available for inspection from, the Service Manager Democratic Services.

BREACHES

20. A breach of this Protocol will constitute a breach of paragraph 6 of the Code of Conduct for Members. Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer in accordance with the Protocol – Arrangements for dealing with complaints (Part 5.4G of the Newcastle Charter).

APPENDIX A - CONTACT OFFICERS

Division	Officer	Direct Telephone Numbers switchboard (0191) 278 7878)
Public Health and Environmental Protection	Stephen Savage - Director of Regulatory Services and Public Protection	211 6101
	Jonathan Bryce – Team Manager	278 3852
	Gerard Smith - Senior Licensing Officer	278 3853
Legal Services	Kerry Walker - Solicitor	211 5176
	Melanie Bulman - Solicitor	211 5156
	Nicola Sacco - Solicitor	211 5167
	Joanne Bagshaw - Solicitor	211 5125
Democratic Services	Linda Scott – Service Manager Democratic Services	211 5159

APPENDIX B

ANNUAL RETURN

REGULATORY AND APPEALS PROTOCOL

I confirm that I have made all appropriate declarations of interest over the municipal year [] to []

OR

I have not had to make any declarations of interest over the municipal year []
to
[]

..... (signature)

..... (date)

This form is to be returned to the Service Manager Democratic Services before the end of each municipal year. The forms will be held in the Service Manager Democratic Services' office and open to public inspection.

APPENDIX C

GUIDANCE ABOUT LOBBYING

(a) Lobbying of Regulatory and Appeals Committee Members:

(i) A Member of Regulatory and Appeals Committee who is lobbied before the meeting:-

- May listen to what is being said
- May give procedural advice e.g. the right to make representations
- May refer the lobbyist to a colleague who does not sit on the Committee.
- Should refer the lobbyist to the relevant Licensing Enforcement Officer so that their views can be recorded and included in the report to the meeting.
- Should not give details of voting intentions or otherwise enter into a commitment to oppose or support the application.
- Should report all instances of significant, substantial or persistent lobbying to the Director of Regulatory Services and Public Protection.

There is no problem about listening to a point of view. If members of Regulatory and Appeals Committee express an opinion, without hearing the alternative view, it may create the impression that members have pre-judged the matter and will not approach the matter with an open mind on its merits at the Committee.

- (ii) If the question arises of writing letters of objection (or support) to the Director of Regulatory Services and Public Protection it would be more appropriate for these to come from Ward colleagues who are not members of Regulatory and Appeals Committee.
- (iii) Members of Regulatory and Appeals Committee should avoid entering any premises or site in connection with an application unless part of an organised site visit. However, members may sometimes be asked by constituents to visit them in their homes, and on those visits the question of a licence application (or objection or support) may be raised. In such circumstances, members should not give any commitment.

(b) Lobbying of other members

While recognising that lobbying of members has an important role in the local democratic process, all other members should ensure that their response is not such as to give reasonable grounds for suggesting that the decision has already been made by the Council.

(c) Lobbying by Regulatory and Appeals Committee members:

- (i) Members of Regulatory and Appeals Committee should not directly or indirectly organise support or opposition, lobby other members, act as an advocate, or put pressure on officers for a particular recommendation or give instructions to officers about any application. Members are also reminded of their obligation under Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the

Newcastle Charter). An extract from the Code of Conduct for Members is included at Appendix D.

- (ii) If members of Regulatory and Appeals Committee engage in such conduct, it will be apparent that they have prejudged the application and are incapable of dealing with the matter with an open mind. If members find themselves in such a situation, they should withdraw from the Committee for that item.
- (d) Lobbying by other members:
 - (i) All other members should generally follow the principle set out in section (c) and do nothing to affect the integrity of the licensing system; in particular, they should not put pressure on officers for a particular recommendation or give instructions to officers about any application. Members are also reminded of their obligation under Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter). An extract from the Code of Conduct for Members is included at Appendix D.
 - (ii) Members should consider carefully what effect on the integrity of the licensing process any action they take may have (such as the circulation of correspondence to members). If members receive correspondence about an application, they should copy it to the Director of Regulatory Services and Public Protection rather than directly to members of Regulatory and Appeals Committee. This ensures that the information appears on the appropriate file.
 - (iii) Ward members have a number of important roles in licensing matters :-
 - informative - making sure that their constituents are aware of licensing matters in the Ward
 - representative - making sure that the views of their constituents are brought to the attention of the Council
 - advocacy - speaking for those who feel unable to speak on their own behalf.

Care must be taken to ensure that a member's actions are not misunderstood. A number of steps can prevent this:-

- information that is distributed should be factually correct
- where there are competing interests, all views should be represented
- an impression should not be created that the member is conducting a campaign in support or opposition to an application
- other members should not be lobbied.

APPENDIX D

EXTRACTS FROM OTHER CODES AND PROTOCOLS

GENERAL CONDUCT

Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter):

- “2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.”
- “3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.”

PRESS COMMENTS

Paragraph 20 of the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter):

- "20. PR Issues
- 20.1 The guiding principles about the publication of publicity material and the issuing of press releases by Officers are found in the Local Government Act 1986 and the revised Code of Recommended Practice on Local Authority Publicity. This prohibits Council from publishing any material which seems designed to affect public support for a political party.
- 20.2 Publicity should not be party political.
- 20.3 Official news releases and official press statements should only be sent out through the Press Office in the Communications and Marketing Unit.
- 20.4 Any interviews to be given by a Member (where he or she is to appear as a Council spokesperson) should be managed by the Press Office in the Communications and Marketing Unit”.