

LICENSING SUB-COMMITTEE RULES OF PROCEDURE (including hearings held 'virtually')

1. General

- 1.1 These rules of procedure are subject to the Statement of Licensing Policy, the Gambling Policy Statement and the provisions of the Licensing Act 2003 (Hearings) Regulations 2005, Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, Licensing Act 2003 (Premises licences and club premises certificates)(Amendment) Regulations 2012 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) Regulations 2007 (the 'Regulations'). Where appropriate, the provisions of the Regulations have been incorporated into these rules.
- 1.2 The Licensing Authority is The Dartford Borough Council.
- 1.3 'Affected Person' means in relation to the Affected Premises, the holder of a premises licence or club premises certificate or club gaming/club machine permit or other permit issued under the Gambling Act 2005, the premises user in relation to a temporary event notice or temporary use notice, the applicant for a premises licence or club premises certificate or club gaming/club machine permit or other permit issued under the Gambling Act 2005 (where the application has not been determined), a person in receipt of a provisional statement and an applicant for the grant or renewal of a personal licence.
- 1.4 'Affected Premises' means the premises the subject of the Application.
- 1.5 'Application' means:
- (a) for the purposes of the Licensing Act 2003, the application for the grant, variation or review of a premises licence or club premises certificate, the application for a temporary event notice or the application for the grant or renewal of a personal licence.
 - (b) for the purposes of the Gambling Act 2005, the application for the grant, variation or review of premises licences or the grant or cancellation of permits or the consideration of a temporary use notices.
- 1.6 'Interest' means a disclosable pecuniary interest or prejudicial interest as defined in Annex 2 to these rules of procedure.
- 1.7 'Interested Person' means:
- (a) for the purposes of the Licensing Act 2003, any persons making Relevant Representations;
 - (b) for the purposes of the Gambling Act 2005, any persons living in the vicinity of the Affected Premises that are likely to be affected by the Application, or those persons who are involved in a business in the vicinity of the Affected Premises that might be affected by the Application;

or

any person who is representing such persons.

- 1.8 'Parties to the Hearing' means Affected Person, Interested Person and Responsible Authorities.
- 1.9 'Relevant Representations' means representations that relate to one or more of the licensing objectives made by an Affected Person, Interested Person or Responsible Authority.
- 1.10 'Responsible Authority' means the bodies that must be fully notified of the Application and that are entitled to make Relevant Representations to the Licensing Authority on the Application and include the chief officer of police, the fire & rescue authority, the local planning authority, environmental health, primary care trusts and public health boards for the area in which the Affected Premises are situated.

2. Composition of Sub-Committee and declaration of Interests

- 2.1 The Sub-Committee will ordinarily comprise three (3) Councillors of the Licensing Authority's Licensing Committee of whom, one will be appointed Chairman. The quorum will be three (3) for the duration of the meeting. In addition, for meetings held virtually a fourth Member will attend as an 'Alternate Member' as outlined in paragraph 2.2 below.
- 2.2 Substitution (subject to relevant training) is not permitted once a hearing has commenced, unless the hearing is being held virtually, in which case, a fourth Member (the Alternate Member) will be present throughout the hearing as an observer. Where the quorum is lost (for whatever reason), the Alternate Member will take the place of the ordinary Member for whom they are the substitute and will have all the powers and duties of an ordinary Member of the Sub-Committee. Once a Member is substituted, they will no longer participate in the hearing.
- 2.3 Councillors will declare any Interest and explain the nature of the Interest at the beginning of the Sub-Committee meeting, or when the Interest becomes apparent and unless they have been granted a dispensation, will not participate in any discussion of, or have their vote taken on, the matter in which they have an Interest and will withdraw from the meeting in accordance with Standing Order 19.
- 2.4 Where a Sub-Committee meeting becomes inquorate during the course of the meeting, then the meeting will be adjourned to such time, place and date as may be determined by the Councillors present. Decisions taken by the Sub-Committee before the meeting becomes inquorate, will not be invalidated by a later lack of quorum. Where a meeting of the Sub-Committee is being held virtually and one of the original members of the Sub-committee is no longer able to act (for whatever reason, which may be, but is not limited to, a failure of technology) the Alternate Member will replace them and the quorum will be maintained (unless another Member subsequently becomes unable to act).
- 2.5 Sub-Committee Councillors will have regard to the Probity in Licensing Guide.

3. Notice of hearing

- 3.1 The Licensing Authority will give a notice to the Party to the Hearing, stating the date and time and place at which the hearing is to be held (the 'notice of hearing') in accordance with the provisions of the Regulations.

3.2 The notice of hearing will be accompanied by information regarding the following: -

- (a) the rights of the Party to the Hearing as provided for in paragraphs 4.1 and 8.5 to these rules of procedure;
- (b) the consequences of not attending or not being represented at the hearing;
- (c) the procedure to be followed at the hearing;
- (d) any particular points on which the Licensing Authority considers that it will want clarified at the hearing.

4. Right of attendance, assistance and representation

4.1 Subject to paragraph 6.5 of these rules of procedure, a Party to the Hearing may attend the hearing to make Relevant Representations and be assisted or represented by any person whether or not that person is legally qualified. Where a hearing is held 'virtually', the procedure detailed in paragraph 18 below will apply.

If a disability or illness prevents you or makes it difficult for you to comply with these rules of procedure, please contact the Licensing Manager at least 72 hours in advance of the meeting or as soon as it becomes apparent.

4.2 Upon receipt of the notice of hearing and within the period of time prescribed by the Regulations, each Party to the Hearing will give to the Licensing Authority, a notice stating:-

- (a) whether he/she intends to attend or be represented at the hearing;
- (b) whether he/she considers a hearing to be unnecessary.

4.3 In a case where a Party to the Hearing wishes any other person (other than his/her representative) to appear at the hearing, the notice referred to in paragraph 4.2 above, will contain a request for permission for such other person to attend at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Licensing Authority in relation to the application.

4.4 A Party to the Hearing who wishes to withdraw any Relevant Representations they have made may do so:

- (a) by giving notice to the licensing manager no later than 24 hours before the day on which the hearing is to be held; or
- (b) orally at the hearing.

5. Right to dispense with a hearing if all parties agree

Where all Parties to the Hearing agree that a Sub-Committee hearing is unnecessary and have given notice to the Licensing Authority, and if the Licensing Authority agree that a hearing is unnecessary, it may dispense with holding a hearing and will forthwith give notice to the Parties to the Hearing, that the hearing has been dispensed with.

6. Hearing to be in public

6.1 Subject to paragraphs 6.2 – 6.4 below, the hearing will take place in public. The press and members of the public are able to observe the hearing (held in open session), but not participate. Where the hearing is held virtually, it will be live streamed for members of the

public and press, on YouTube.

- 6.2 The Sub-Committee will exclude the public and press from that part of the hearing where confidential information is likely to be revealed i.e. information that has been provided by a government department under the condition that it must not be revealed as well as information that cannot be revealed under any legislation or by a court order.
- 6.3 The Sub-Committee will have the discretion to decide whether or not to exclude the public and press from that part of the hearing, where exempt information i.e. information contained in Annex 1 to these procedure rules is likely to be revealed.
- 6.4 When considering whether confidential or exempt information is likely to be revealed, the Sub-Committee will consider whether any Parties to the Hearing should be excluded from that part of the hearing, which is likely to disclose confidential and/or exempt information.

6.5 Disruptive behaviour

The Sub-Committee may require any person who is acting or behaving in a disruptive manner, to leave the hearing and may –

- (a) refuse to permit that person to return; or
- (b) permit him/her to return only on such conditions as the Sub-Committee may specify;

but subject to the person being provided with the opportunity to submit to the Sub-Committee in writing, before the end of the hearing, any information which they would have been entitled to give orally, had they not been required to leave.

7. Report

- 7.1 The Sub-Committee will receive a report prepared by the licensing officer.
- 7.2 The licensing officer will comply with the access to information rules in Standing Orders and submit a copy of the report to the Parties to the Hearing in advance of the hearing.

8. Procedure at hearing

As a matter of practice, the Sub-Committee will seek to focus the hearing on the steps needed to promote the particular licensing objective(s), which has given rise to the specific representation(s) and will avoid straying into undisputed areas.

- 8.1 The order of business will be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs.
- 8.2 The Chairman will at the beginning of the hearing, introduce the Sub-Committee members, invite the Parties to the Hearing and any Councillor representative to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow. Where a meeting is being held 'virtually', the procedure detailed in paragraph 18 below will apply.
- 8.3 The Sub-Committee will then proceed to consider any request made by a Party to the Hearing for permission for another person to appear at the hearing. Permission will not be unreasonably withheld.

8.4 The Chairman may ask a representative of the Licensing Authority to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.

8.5 Parties to the Hearing will be entitled to: -

- (a) give further information in support of their application, Relevant Representations or notice (as applicable) in response to a point upon which the Licensing Authority has given notice that it requires clarification;
- (b) question any other party* if given permission by the Sub-Committee,
- (c) address the Sub-Committee.

**cross examination will not be permitted unless the Sub-Committee considers that cross examination is required for it to consider the Relevant Representations, application or notice as the case may require*

8.6 The Parties to the Hearing will normally be invited to address the Sub-Committee in the following order: -

- (a) Affected Person
- (b) Responsible Authority
- (c) Interested Person

8.7 Members of the Sub-Committee may ask any question of any party to the hearing or other person appearing at the hearing.

8.8 Where there is more than one Relevant Representation raising the same or similar grounds, the Sub-Committee will request that only one party address them on behalf of the parties who have made the Relevant Representations in question.

8.9 Subject to paragraph 8.10 below, in considering any Relevant Representations or notice made by a Party to the Hearing, the Sub-Committee may take into account additional documentary or other information produced by such a Party in support of their application, Relevant Representations or notice (as applicable) either before the hearing date or, with the consent of *all* the other parties and the Chairman, at the hearing. Where all the other parties consent, the Sub-Committee has discretion as to whether to admit additional documentary evidence or other information at the hearing, but will generally allow this to be presented, if it is relevant and material to the application, the Relevant Representations or notice submitted and the licensing objectives.

As a matter of good practice, any additional documentation or other information produced in advance of the hearing date, should be submitted to the licensing officer no later than two working days before the hearing.

8.10 The Sub-Committee will disregard any information given or evidence produced by a party or any person to whom permission is given to appear at the hearing, which is not relevant to:

- (a) their application, Relevant Representations or notice (as applicable) or in the case of another person, the application, Relevant Representations or notice of the party requesting their appearance, and
- (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

- 8.11 Hearsay evidence may be admitted before the Sub-Committee, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.
- 8.12 CCTV and/or audio evidence (no longer than three minutes in length) in addition to a description of how, when and where the CCTV/audio was recorded and what it contains, may be submitted in evidence, at least 72 hours before the hearing is due to start. The Chairman, exercising his/her discretion, will decide if it is necessary in the interests of justice, for the CCTV/and/or audio evidence to be presented.
- 8.13 Video evidence must be submitted in MP4 format (no longer than three minutes in length). The recording must be edited down to the highlights, containing only relevant matters, which relate to the Relevant Representations. In addition, a description of how, when and where the video was recorded and what it contains must be submitted in evidence, at least 72 hours before the hearing is due to start. The Chairman, exercising his/her discretion, will decide if it is necessary in the interests of justice for the video evidence to be presented.
- 8.14 Subject to paragraph 8.15 below, the Parties to the Hearing will be entitled to make closing submissions (not introducing any new evidence). The closing submissions of the Affected Person will normally follow the closing submissions of any Responsible Authority and/or Interested Person.
- 8.15 Should any Parties to the Hearing wish to rely on any points of law, specific references in the s.182 Guidance¹, Licensing Authority policy or any other external sources, submissions must be submitted by email, to the Licensing Authority, at least three days before the date of the hearing.
- 8.16 Unless stipulated by law, the Sub-Committee may vary the time limits specified in these rules or set realistic time limits for constituent elements of the hearing and for the hearing overall. All Parties to the Hearing will be allowed an equal maximum period of time overall for the presentation of their case and will be allowed an equal maximum period for the testing of their opponent's case.
- 8.17 The Sub-Committee may, after hearing the Relevant Representations of the Parties to the Hearing, withdraw from the room to make their deliberations, in closed session. Alternatively, the Sub-Committee may ask all Parties to the Hearing and the public and press, to leave the room. Where a meeting is being held 'virtually', the procedure detailed in paragraph 18 below will apply to the deliberations of the Sub-committee in closed session.
- 8.18 The Committee Co-ordinator will accompany the Sub-Committee when they retire to make their deliberations.

9. Role of Legal Adviser

- 9.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 9.2 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:

- (a) questions/points of law;

¹ April 2018
Date: 15 May 2020
Licensing/Procedure/Licensing Subcommittee Hearing Procedure

- (b) questions of mixed fact and law;
 - (c) matters of practice and procedure;
 - (d) the range of options available to the Sub-Committee;
 - (e) any relevant decisions of courts;
 - (f) relevant national guidance or policy;
 - (g) other issues relevant to the matter before the Sub-Committee;
 - (h) the appropriate decision-making structure to be applied in any given case.
- 9.3 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.
- 9.4 The legal adviser will play no part in making findings of fact, but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the Committee Co-ordinator's notes.
- 9.5 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.
- 9.6 When advising the Sub-Committee, the legal adviser should:
- (a) ensure that he/she is aware of the relevant facts;
 - (b) invite Relevant Representations from the parties on the advice;
 - (c) provide the parties with the information necessary to enable them to make their Relevant Representation.
- 9.7 The legal adviser may join the Sub-Committee during the course of their deliberations either when asked to do so or if he/she realises there is a point of law on which they may need assistance, but on which he/she omitted to advise them in open session.
- 9.8 Any advice given by the legal adviser to the Sub-Committee will be provisional until the substance of that advice has been repeated in open session and the Parties to the Hearing have had an opportunity to comment on it. The legal adviser will then state in open session, whether the advice is confirmed or varied (and if it is varied, in what way) before the Sub-Committee act upon it.

10. Role of Committee Co-ordinator

- 10.1 The Committee Co-ordinator's role will be to make a record of the proceedings, summarise and record decisions and to provide help and assistance to members of the public attending hearings.
- 10.2 The Committee Co-ordinator will remain with the Sub-Committee when it retires to make its deliberations.

11. Determination of applications

- 11.1 The Sub-Committee will give appropriate weight to:
- (a) the Relevant Representations (including supporting information) presented by all the parties;
 - (b) national guidance;
 - (c) the Licensing Authority's Licensing/Gambling Policy;
 - (d) the steps that are necessary to promote the licensing objectives.

11.2 The Sub-Committee will make its determination:

- (a) at the conclusion of the hearing; or
- (b) within five working days of the date of the hearing.

11.3 The determination will be issued by the Strategic Director (External Services) under delegated authority. The licensing manager will append the licence and a summary to the determination.

12. Failure of parties to attend the hearing

12.1 If a Party to the Hearing has informed the Licensing Authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

12.2 If a Party to the Hearing fails to provide notification in accordance with paragraph 12.1 above, and fails to attend or be represented at a hearing, the Sub-Committee may:

- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date; or
- (b) hold the hearing in the party's absence and will consider at the hearing, the application, Relevant Representations or notice made or submitted by that party.

13. Adjournments

13.1 Subject to the provisions of the Regulations, the Sub-Committee may, where necessary for its consideration of any Relevant Representations or notice made by a party to the hearing, adjourn the hearing to a specified date.

13.2 Where the Sub-Committee adjourns the hearing to a specified date, it will forthwith notify the Parties to the Hearing of the date, time and place.

14. Record of proceedings

14.1 A record/minute of the hearing will be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.

15. Waiver of rules

15.1 Except where prescribed by the Regulations, the Sub-Committee may in any particular case, dispense with or modify these rules of procedure.

15.2 The Licensing Authority may extend the time limit provided for in the Regulations for a specified period, where it considers this to be necessary in the public interest.

15.3 Where the Licensing Authority has extended the time limit, it will forthwith give a notice to the Parties to the Hearing, stating the period of time of the extension and the reasons for it.

16. Qualified Privilege

16.1 Statements made in Sub-Committee meetings are subject to the general principles of the law of defamation. However, the Sub-Committee's proceedings are regarded in law as a

'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in its proceedings (quasi-judicial in nature), providing the following criteria are met:

- a. any opinions expressed are honestly held;
- b. opinions/statements are based on the facts of the matter;
- c. opinions/ statements are on a matter of public interest;
- d. a clear distinction is made between what is fact and what is opinion;
- e. no malice.

17. Licensing Committee Hearings

17.1 These rules of procedure will apply to hearings before the Licensing Committee except to the extent that the Member composition of the Committee will comprise no less than 5 members.

18. Remote/Virtual Licensing Sub-Committee Hearings

18.1 Licensing Sub-Committee hearings may be held 'remotely' using a virtual platform. Although held in a virtual format, Sub-Committee hearings will follow the standard procedures referred to above (including the Annexes) unless otherwise varied by these rules of procedure.

18.2 The 'Procedure for Holding Remote Meetings and Etiquette' at Annex 3 to these rules of procedure will apply.

18.3 If the access methods to the virtual platform as referred to in the 'Procedure for Holding Remote Meetings and Etiquette' are not available to a Party to the Hearing, the Sub-committee will apply the rules outlined in paragraphs 12 and 13 above, to consider whether the hearing can proceed or consider an adjournment to another date/time to enable attendance to be facilitated or for additional Relevant Representations to be made where virtual attendance is not possible.

18.4 Before a remote hearing, Parties to the Hearing must submit by email, their Relevant Representations (no longer than one side of A4 sized paper (equating to approximately 500 words single spaced)), at least 72 hours before the hearing is due to start, summarising the points they wish to make at the hearing and the outstanding issues. Early submission of Relevant Representations will assist in the conduct of the remote hearing and the decision-making process.

18.5 At the conclusion of the hearing, the Sub-Committee will go into a separate, closed virtual session, in order for it to deliberate on its decision. This may be achieved through:

18.5.1 Confidential 'breakout room' in the existing video hearing – where legal advice is sought

- (a) if enabled by the video conferencing platform, the Host will establish a confidential second 'sub' video-hearing room and invite the Councillors, Committee Co-ordinator and, if requested by the Councillors, the legal adviser, to join the confidential hearing;
- (b) Parties to the Hearing will be advised by the Host to leave the original virtual hearing session and return within a time to be specified by the Host, to hear the Sub-Committee's decision;
- (c) once a decision is made, the Chairman will contact the Host to be returned to the original virtual hearing session;
- (d) the legal adviser will follow the procedure detailed in paragraph 9.8 above;
- (e) the Chairman will announce the Sub-Committee's decision.

Or

18.5.2 Where legal advice is not sought and the legal adviser notified that he/she may stand down

- (a) the Host will terminate the original virtual hearing;
- (b) Parties to the Hearing will leave the original virtual hearing;
- (c) the Host will establish a second virtual session for Councillors to deliberate, assisted by the Committee- Co-ordinator;
- (d) the Sub-committee will issue its decision, supported by reasons, within five working days of the date of the hearing.

HUMAN RIGHTS

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way, which is incompatible with a convention right. The Sub-Committee will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following provisions: -

- Article 1 of the first protocol – every person is entitled to the peaceful enjoyment of his/her possessions
- Article 6 - in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law
- Article 8 – everyone has the right to respect for his/her home and private and family life

RIGHT OF APPEAL

THE APPLICANT

The applicant has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the applicant was notified of the decision of the Licensing Authority] against a decision.

PERSON MAKING RELEVANT REPRESENTATIONS AND CHIEF OFFICER OF POLICE

A person who made Relevant Representations and the Chief Officer of Police has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the person was notified of the decision of the Licensing Authority] against a decision.

Adopted by the Licensing Committee on 29 March 2010 [Min.No.17]
Amended by authority of the GAC [16 July 2012 [Min.No.35]]
Adopted by the Licensing Committee 19.12.2012 [Min.No.11]
Prejudicial Interest definition reviewed and adopted by the GAC – 16.12.2013 [Min.No.72]

**ANNEX 1
LOCAL GOVERNMENT ACT 1972
SCHEDULE 12A: PARTS 1-3
STANDING ORDER 46
ACCESS TO INFORMATION: CATEGORIES OF EXEMPT INFORMATION**

Category	Qualification
<p>1. Information relating to an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> (a) where disclosure is prohibited by statute; or (b) where disclosure might involve providing personal information about individuals; or (c) where disclosure might breach a duty of confidentiality; and (d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>2. Information which is likely to reveal the identity of an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> (a) where disclosure is prohibited by statute; or (b) where disclosure might involve providing personal information about individuals; or (c) where disclosure might breach a duty of confidentiality; and (d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding the information)</p> <p>'financial or business affairs' includes contemplated, as well as past or current, activities</p> <p>This category will include commercial and contractual interests</p>	<p>Information is not exempt information if it is required to be registered by law e.g. Companies Act 1985, the Charities Act 1993 etc.</p> <p>Information is only exempt if and for so long as:</p> <ul style="list-style-type: none"> (a) disclosure of the amount involved would be likely to give advantage to a person entering into or seeking to enter into a contract with the Council in respect of property, goods or services whether the advantage would arise as against the Council or as against other persons; or (b) disclosure would prejudice the efficiency and effectiveness of the use of Council resources; or (c) disclosure of trade secrets and other information would, or would likely, prejudice the commercial interests of any person, including the Council; and (d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>4. Information relating to any consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a minister of the crown and employees of, or office- holders under, the authority</p> <p>'Labour relations matters' are as specified in paragraphs (a) to (g) of Section 29(1) of the Trade Unions and Labour Relations Act 1974 i.e. matters which may be the subject of a trade dispute</p>	<p>Information is only exempt if and for so long as its disclosure to the public:</p> <ul style="list-style-type: none"> (a) would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter; and (b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.

Category	Qualification
<p>'employee' means a person employed under a contract of service</p> <p>'office-holder' means the holder of any paid office appointments which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority</p>	
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is only exempt:</p> <p>(a) where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council's Legal Services and its client; and</p> <p>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>6. Information which reveals that the authority proposes –</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person, or</p> <p>(b) to make an order or direction under any enactment</p>	<p>Information is exempt only if and so long as:</p> <p>(a) disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice order or direction is to be given or made; and</p> <p>(b) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is only exempt if its disclosure would, or would be likely to, prejudice-</p> <p>(a) criminal investigations and proceedings; or</p> <p>(b) the apprehension or prosecution of offenders; or</p> <p>(c) the administration of justice; or</p> <p>(d) the assessment or collection of any tax or duty or of any imposition of a similar nature; or</p> <p>(e) regulatory enforcement; or</p> <p>(f) any civil proceedings; or</p> <p>(g) Health and safety; or</p> <p>(h) information obtained from confidential sources; and</p> <p>(i) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>

ANNEX 2

INTERESTS

Disclosable Pecuniary Interests as prescribed by the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012 are as follows and subject to the following definitions:

“**the Act**” means the Localism Act 2011

“**body in which the relevant person has a beneficial interest**” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

“**director**” includes a member of the committee of management of an industrial and provident society

“**land**” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

“**M**” means a member of the relevant authority

“**member**” includes a co-opted member

“**relevant authority**” means the authority of which M is a member

“**relevant period**” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

“**relevant person**” means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners)

“**securities**” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M’s knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either
	(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Prejudicial Interests (as prescribed by Dartford Borough Council)

A prejudicial interest means an interest (other than a Disclosable Pecuniary Interest) in any matter under consideration at any meeting which may reasonably be regarded as affecting your financial position or the financial position of a person or body you are associated with:-

18.2.1 to a greater extent than other council tax payers, ratepayers or inhabitants of the Council's area; and

18.2.2 where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment.

You will not normally have a prejudicial interest if:

- (a) you are a tenant of the Council provided that the matter under consideration does not relate particularly to your tenancy or lease; or
- (b) you are a parent or guardian of a child in full time education, unless the matter under consideration relates particularly to the school which your child attends; or
- (c) you are in receipt of, or are entitled to the receipt of, statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992; or
- (d) as a member of the Council, you are given a payment or indemnity; or
- (e) as a member of the Council, you are being/have been bestowed a ceremonial honour by the Council; or
- (f) the Council is setting the council tax or a precept under the Local Government Finance Act 1992; or
- (g) you serve as a member of a body exercising functions of a public nature (e.g. other government agencies, other councils, public health bodies, school governing bodies), unless the matter under consideration relates particularly to the body.

Amended by the GAC - 27.02.17- Min.No.75(4)

Dartford Borough Council - Procedure for Holding Remote Meetings and Etiquette

1. Section 78(2) of the Coronavirus Act 2020 provides for local authority meetings to be held remotely, from 4 April 2020 until 7 May 2021, to facilitate the transaction of business during the COVID-19 pandemic crisis and to comply with the Government's measures to combat the disease, which includes social distancing measures.

Schedule 12 of the Local Government Act 1972, requires Councillors to be physically (in-person) present at a meeting. Reg.6 of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the 2020 Regulations), provides that being present at a meeting, includes being present through remote attendance.

2. Social distancing aims, through a variety of means, to minimise physical contact between individuals and thereby to reduce the possibility for new infections. This includes the curtailing of social contact through the holding of physical in-person meetings.
3. The Council has made arrangements for meetings to be held 'virtually' from remote locations, where it is necessary to consider matters which are, by their nature, essential for the proper conduct of the Council's business (including complying with statutory requirements, legal or contractual obligations, or to meet the needs of public health and well-being) and which are time-critical.
4. The Council has adopted a new Standing Order 64 (attached as an Appendix to this procedure) to provide for and to regulate the meetings held remotely, by electronic means, including by telephone conference, video conference, live web casts and live interactive streaming or by any other appropriate channel of communication chosen by the Council, which meets the requirements of the 2020 Regulations.
5. The Council's procedural Standing Orders regarding voting, the casting vote of the chairman, quorum, declarations of interest and substitution will apply to remote meetings.
6. Remote meetings are meetings in public and as such, the public and press must, as a minimum requirement, be able to hear the proceedings, but the Council will strive to ensure that they can see and hear proceedings where this is practicable, when meetings are held in open session. This will generally be achieved through the live streaming of meetings on YouTube.

Unless public participation in a meeting is provided for in the Council's constitutional arrangements (see section 11 below), the press and members of

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the public only have a right to observe meetings, which are held in open session.

7. The Council has the discretion as to which of the various video-conferencing platforms to use for its video-hearings. The Council will indicate on its website, the video-conferencing platform being used with instructions on how to join the remote hearing, including who to contact in the event of technological difficulties.

An officer will act as 'Host' and will have the technical conduct of the meeting only. **Remote access** may be through:

- (a) a computer, lap top or other smart device with an internet connection, with participation by video link (access credentials/instructions to the virtual platform will be provided by the Host); or
- (b) by telephone (access credentials/instructions to the virtual platform will be provided by the Host);

Or

- (c) if the access methods referred to above are not available, through a written statement to be read to the Chairman (or nominee) during the relevant part of the meeting.

8. The meeting will be recorded to assist with the production of the minutes of the meeting. The recording will be retained until the minutes have been agreed (not necessarily signed by the Chairman), at the next remote or in-person physical meeting, at which point, the recording will be erased.
9. Meetings held in open session will be live streamed on YouTube, details of which will be publicised on the Council's website. Live streams will be retained until the minutes have been agreed in accordance with section 8 above and thereafter deleted.

10. Process

- (1) At least 5 clear working days' before the meeting, the Democratic Services team will ensure that the **agenda** for the meeting:
 - (a) is posted or emailed to Councillors and any members of the public who are attending remotely to exercise a right to speak at the meeting in accordance with constitutionally adopted procedures (see section 11 below); and
 - (b) is published electronically on the Council's website in a common format (e.g. PDF) and common pagination, to permit ease of reference during the remote hearing.

The process referred to in (a) and (b) above, will be apply to any additional or late items, including any items to be 'tabled' as soon as they become available.

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- (2) If a Councillor is being **substituted**, they must at least three hours before the meeting start time, notify the name of their substitute to the Democratic Services team.
- (3) Where considered appropriate, the Democratic Services team will prepare an **informal briefing note** for the Chairman and relevant officers before each meeting. The briefing note will be emailed to them, in advance of the meeting.
- (4) The Chairman and relevant officers will **sign in to the virtual platform** at least fifteen (15) minutes before the start time for the meeting, to ensure that connectivity is secure and to identify any other technological issues.

Councillors, officers and any members of the public who are attending remotely to exercise a right to speak at the meeting, should sign in to the meeting at least ten (10) minutes before the start time.

- (5) Before the start of the meeting, the Host will confirm that the meeting:
 - (a) is available in real time (audibly as a minimum requirement);
 - (b) is being recorded; and
 - (c) is being live streamed for members of the public and press, on the Council's YouTube channel.
- (6) The Democratic Services Officer and the Chairman will ensure that they are able to clearly see all Councillors and any members of the public who are attending remotely to exercise a right to speak at the meeting, or otherwise to identify them, at the start of the meeting. In the case of any uncertainty, the Democratic Services Officer will take a roll call and record the names of those in attendance, including officers, for inclusion in the minutes. The Chairman will also establish at the start of the meeting, that Councillors and any members of the public who are attending remotely to exercise a right to speak at the meeting and officers, are able to hear or to hear and see the proceedings.
- (7) The Chairman will proceed with the business on the agenda and establish whether any Councillor needs to declare an interest in any item on the agenda, which may require them to leave the meeting. Any such items will stand deferred until the end of the agenda, to enable the Councillor concerned to leave the meeting at that point. Should any Councillor become aware that they have an interest during the discussion of an item, they must declare the interest and discussion of that item will immediately end and be deferred to the end of the agenda.

Where more than one item stands deferred to the end of the agenda, the items will be discussed in the order in which they appear on the agenda, unless the

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order is changed by the Chairman, with the consensus of the Councillors present at the meeting.

- (8) The Host will ensure that a Councillor who has declared an interest in an item has 'left' that part of the meeting during the consideration of the item. At the end of the consideration of that item, the Host will contact the Councillor concerned to advise them that they can re-join the meeting. The Democratic Services Officer will note in the minutes, the point at which they 'leave' and/or re-join the meeting.
- (9) Any confidential or exempt items will be taken at the end of the meeting (following consideration of any items in which Councillors have declared an interest). The Chairman will ask any members of the public who have attended remotely to exercise a right to speak at the meeting to 'leave' the meeting. The Host will confirm that the meeting is now in confidential session or that a confidential 'breakout room' in the existing video hearing has been established.
- (10) Before discussing any confidential or exempt items, the Chairman will ask all Councillors and officers to confirm, by affirmation, that they are in a secure location and that no one else is able to see or hear the discussion. Where any Councillor or officer is not in a secure location and cannot make it secure by asking others to leave the room, they must leave the meeting during consideration of the item(s). The Democratic Services Officer will note in the minutes, the point at which they 'leave' and/or re-join the meeting.
- (11) The Chairman will use their best endeavours to ensure that Councillors do not 'drift' in and out of open session and that any discussion of exempt/confidential information only takes place in 'closed' session at the end of the meeting.

If, having commenced the proceedings, the meeting becomes inquorate for any reason, this will be drawn to the attention of the Chairman. The procedures detailed in Standing Order 6 and Standing Order 64 will apply.

- (12) Voting will generally be by affirmation where the Councillors present at the meeting are clearly visible and/or audible and there is no doubt over how they wish to vote. Where there is any doubt over the outcome of a vote, or where not all Councillors are clearly visible and/or audible, the Chairman will ask for a vote to be taken by roll call. The Democratic Services Officer will read out the names of the Councillors in alphabetical order and ask each Councillor to clearly state their voting intention, including the Chairman at the end (bearing in mind that in the case of an equality of votes, the Chairman has a second or casting vote). The Democratic Services Officer will advise the Chairman of the outcome of the vote and the Chairman will advise the meeting accordingly.
- (13) At the end of the meeting, all Councillors, officers and any members of the public who have attended remotely to exercise a right to speak at the meeting

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will exit/leave the virtual platform. The Host will ensure that the meeting has ended and will make the recording of the meeting available to the Democratic Services Team to assist with the post-meeting administration.

- (14) Following the meeting, the Democratic Services Officer will draft minutes of the meeting for agreement with the Chairman, at which point, the minutes will be published as 'draft minutes' on the Council's website. Once the minutes have been confirmed at the next meeting of the body concerned, whether that be a remote or physical meeting, the recording of the meeting will be erased. If agreed at a remote meeting, the minutes will retrospectively be 'wet-ink' signed by the Chairman, as soon as reasonably practicable thereafter.

11. Public Speaking - Quasi-Judicial/Regulatory/Overview and Scrutiny Meetings

- (1) In accordance with the Council's constitution, the public have certain rights to address meetings of the Development Control Board and Licensing Sub-committee hearings. External participants may also be invited to attend overview and scrutiny committee meetings. These rights are set out in the protocols of the bodies concerned.
- (2) The Protocol for Public Speaking at Development Control Board and the Licensing Sub-committee Rules of Procedure apply to meetings held remotely.
- (3) To protect against disruptive participants and ensure the smooth running of the meeting, the Council is entitled to strike a balance between a hearing being public and the smooth running of the meeting. The Council reserves the right to password protect a meeting, 'lock' the meeting once it has begun, screen those joining the meeting etc. Muting disruptive participants will be the Council's default position.

- 12. General Etiquette:** The following applies to Councillors, officers and members of the public who exercise their right to address meetings in accordance with section 11. above.

Virtual meetings are formal meetings of the Council, viewed by the public and press. The following rules must be adhered to and etiquette observed:

- (a) log onto the virtual platform at least 10 minutes before the meeting is due to start. A telephone number of an officer will be provided in case of technical difficulties on the day;
- (b) limit distractions - consider where IT equipment is placed in your home – to avoid disturbance from other members of the household, pets or other distractions;
- (c) give the meeting your full attention - avoid multi-tasking e.g. taking phone calls, dealing with emails, texts and social media during the meeting;

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- (d) pick a location with plenty of light and a neutral background - try to ensure that your camera is placed to give a clear, front-on view of your face and avoid sitting in front of a window or other light source that may put your face into shade;
- (e) use headphones or a headset to improve sound quality and avoid 'echoes';
- (f) to improve broadband performance, consider whether other use of the broadband connection in your household can be reduced during the meeting;
- (g) dress appropriately, remembering that this is a public meeting, and present yourself in a business-like manner;
- (h) if you experience technical difficulties during the meeting, you should inform the Chairman and the Host if possible, and avoid disrupting the meeting;
- (i) you will be invited by the Chairman to speak at appropriate points. Your microphone will be muted by the Host, until you are invited by the Chairman to speak;
- (j) speak clearly - you will make your statement, or the statement will be made on your behalf and wait until invited to speak again, if considered necessary by the Chairman;
- (k) act professionally and courteously - you should not speak over or interrupt another speaker;
- (l) be prepared for technical difficulties - if there are intermittent faults during the virtual hearing, repeat from the point of disruption. Whilst intermittent disruption is frustrating, it is important that you remain professional and courteous at all times;
- (m) check that there is nothing in the background that would be inappropriate, or show something you would not want others to see. For example, pictures of children or other family members, posters etc. Virtual video backgrounds can be used to avoid distractions and preserve your privacy, if you are joining the virtual meeting from your home.

Etiquette specifically for Councillors:

- only participate in formal votes where you have been able to hear all the debate on an item;
- the chat facility is useful, but you should be careful not to broadcast inappropriate comments during the meeting.
- the chat facility may be used for the following:
 - (a) to indicate to the Chairman that you wish to speak;

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- (b) to seek clarification or ask questions;
- (c) to attempt to resolve minor technical issues.

- it is inappropriate to use the chat facility to:

- (a) carry out a parallel conversation about the issues being considered;
- (b) carry out superfluous chitchat or make party political comments.

13. Drawing matters to the Chairman's attention

The Host will make available a secure tool e.g. 'chat' facility and 'hand raise function', to enable:

- (a) officers attending the meeting to offer confidential and procedural advice to the Chairman;
- (b) Councillors or participants wishing to raise matters during the meeting.

The Host will, through a secure tool, draw the matter to the Chairman's attention.

14. Data Protection

The Council's data processing activities are as set out in its [Privacy Notice for Virtual-Remote Access Meetings](#).

STANDING ORDER 64 – HOLDING MEETINGS REMOTELY

- (1) The Coronavirus Act 2020 (section 78(2)) makes provision for ‘persons to attend, speak at, vote in, or otherwise participate in, local authority meetings without all of the persons, or without any of the persons, being together in the same place’.
- (2) This Standing Order 64 applies to meetings of the General Assembly of the Council, Cabinet, Committees, Boards and Panels and the Annual Meeting, that are required to be held or held, before 7 May 2021, or earlier, in accordance with secondary legislation.
- (3) The Council shall hold its meetings at such hour and on such days, and alter the frequency, move or cancel such meetings as it may determine, without requirement for further notice¹.
- (4) This Standing Order 64 shall apply notwithstanding any standing orders or rules to the contrary.
- (5) For the purposes of this Standing Order 64:
 - (a) **‘remote access’** means attendance, participation in or observance of a meeting by electronic means, including by telephone conference, video conference, live webcasts and live interactive streaming;
 - (b) **‘attendance’** means both attendance in person and participation in the meeting by Councillors and observance of the meeting, by the public and press using one of the methods of remote access described above in real time when the meeting is in open session;
 - (c) **‘place’** means more than one location, including the Civic Centre, an electronic or a digital or virtual location, a web address or a conference call telephone number.
- (6) **Quorum**
 The rules set out in Standing Order 6 (Quorum for Meeting of the Council) and Standing Order 29 (Quorum of the Cabinet, Committees, Sub-Committees, Boards and Panels), shall apply.
- (7) **Remote Attendance**
 - (a) A person, whether a Councillor or member of the public or press, may attend a meeting by remote access.
 - (b) Meetings shall be held at a place, to suit the Council's needs and capacity.
 - (c) Remote attendance of Councillors at meetings shall only be permitted where the conditions of section 5(3) of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 are met². A Councillor will be in remote

¹ Where notice of a meeting is required and has been given, but the meeting is subsequently cancelled, altered or moved, further notice does not need to be given in respect of that change

² These conditions allow Councillors to join via a video link system or by telephone so long as every Councillor can be heard by every other Councillor and the public and press

attendance where they are able to hear and where practicable see, and be similarly heard or seen by:

- (i) other Councillors whether attending in person or in remote attendance; and
 - (ii) any members of the public who are attending remotely to exercise a right to speak at the meeting in accordance with constitutionally adopted procedures; and
 - (iii) any other members of the public and press attending the meeting remotely to observe.
- (d) A Councillor who has **declared an interest** in an item shall pause/exit their remote access whilst the item is being considered. The Interim Transformation Manager (or nominee) shall inform/re-invite the Councillor (whether by email or otherwise) when to re-start the remote access and resume their participation in the meeting. Where practicable, discussion in an item in which a Member has declared an interest, or where they become aware during discussion of an item that they need to declare an interest, shall be moved to the end of the agenda.
- (e) Where the **public and press are excluded** (either for the whole or part of the meeting) in accordance with Standing Order 46 (Admission of Public to Meetings), before Councillors can participate in the consideration of any confidential and/or exempt item of business, they shall confirm to the Chairman, that they are in a secure and private location, and that no-one else is able to hear or view the proceedings from their device.
- (f) The Mayor or Chairman may call for a short adjournment of the meeting to enable the rectification of any **failure in technological provision or the loss of a quorum arising from technical failure, or loss of a quorum for any other reason**.
- (g) The failure of any technological provision, including lack of network coverage for the public and the press, whether that leads to a partial or complete loss of contact between the remote attendees shall not invalidate any part of the deliberations or any vote taken at the meeting, providing a quorum is maintained. If a quorum is lost, the matters in question shall be reaffirmed once a quorum has been restored.

(8) **Voting**

- (a) Votes shall be taken by role call or affirmation e.g. 'is that agreed?' providing that this is clear and apparent.
- (b) Votes may be recorded in accordance with Standing Order Order 13(3) (Voting in Council) and Standing Order 30(2) (Voting in Cabinet, Committees, Sub-Committees, Boards or Panels).
- (c) If there is an equality of votes (whether or not the voting includes a vote by the Mayor or Chairman), the Mayor or Chairman shall have a second or casting vote.

(9) **Minutes**

Minutes shall be drawn up and recorded in accordance with Standing Order 15 (Minutes) and shall be submitted for confirmation to the next succeeding meeting of the body concerned, whether this is held remotely or in a physical location. Where minutes are agreed at a remote meeting, they shall be retrospectively signed by the Mayor or Chairman, at the next physical meeting of the body concerned.

(10) Access to meeting documents

For the purposes of this Standing Order 64, notices, agendas, reports, background papers, minutes etc. shall be deemed to be 'open to inspection' and supplied³, by publication on the Council's website only and not by physical display at the Civic Centre or Dartford Library.

³Local Government Act 1972, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014