

Licensing Act 2003

PROCEDURE AT LICENSING SUB-COMMITTEE HEARINGS INFORMATION FOR PARTIES

References in these notes to "the Act" are to the Licensing Act 2003 and references to "the Regulations" are to The Licensing Act 2003 (Hearings) Regulations 2005.

1. Right of attendance, assistance and representation

You may attend the hearing and be assisted or represented by any person whether or not that person is legally qualified. This right is subject to the licensing authority's right to exclude any person from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public.

2. Representations and supporting information

At the hearing you will be entitled:-

- a) to address the sub-committee;
- b) to give further information in support of your application, representations or notice (as applicable) in response to any point(s) upon which the licensing authority has advised that you will be required to provide clarification (see page 2 above); and
- c) if given permission by the sub-committee, to question any other party. This authority generally will allow all parties to ask questions of another party present, but this decision will be taken on a case by case basis and in some exceptional circumstances (a reason will be given) cross examination may be prohibited.

3. Consequences if you fail to attend or be represented

- 3.1 If you inform the licensing authority that you do not intend to attend or be represented at the hearing, the hearing may proceed in your absence.
- 3.2 If you do not so inform the licensing authority and then fail to attend or be represented at the hearing, the hearing may either be adjourned to a specified date or be held in your absence.
- 3.3 Where the hearing is held in your absence, the sub-committee will consider your application, representations or notice (as applicable).
- 3.4 Where the hearing is adjourned to a specified date you will be notified of the date, time and place to which the hearing has been adjourned.

4. The hearing – general matters

- 4.1 Each matter to be dealt with by the sub-committee shall be called in turn, usually in the order listed on the sub-committee agenda. However, the Chairman may change the order at his/her discretion.

- 4.2 If appropriate, the sub-committee may make a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the hearing of a particular matter. Alternatively the sub-committee may make a resolution to exclude the public from the hearing of a particular matter where it considers this to be in the public interest. If the matter is being heard in private, the Member Services Officer will direct everyone except the Members, officers and parties to leave the room.
- 4.3 The Chairman shall identify the elected Members, the Legal Advisor, the Member Services Officer (and the Licensing Officer, if present) for the benefit of those attending the hearing. The Chair shall explain the officers' respective roles.
- 4.4 Parties may be assisted or represented by any person whether or not that person is legally qualified, except that the sub-committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return, or permit them to return only on such conditions as the sub-committee may specify; but such a person may, before the end of the hearing, submit to the sub-committee in writing any information which they would have been entitled to give orally had they not been required to leave.
- 4.5 If a party has informed the authority that they will not be attending or be represented at the hearing, it may proceed in his absence. If a party who has not informed the authority that they will not be attending or represented fails to attend or be represented, the sub-committee may hold the hearing in that party's absence or, if it considers it to be necessary in the public interest, adjourn the hearing to a specified date.
- 4.6 Where the authority holds a hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 4.7 Where the authority adjourns a hearing to a specified date, it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 4.8 Applications, relevant representations and/or notices shall have been sent to the authority and to the other parties entitled to receive them prior to the hearing within the statutory time-limits. The sub-committee may, at its discretion take into account additional documentary or other information produced by a party in support of its application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. Any party seeking to produce additional documentary information shall provide sufficient copies for the Members, officers and other parties attending the hearing.
- 4.9.1 The sub-committee shall disregard any information given or evidence produced by a party or a witness which is not relevant to:-
- (1) its application, representations or notice (as applicable), and
 - (2) 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.
- 4.10 The four licensing objectives, as given by the Licensing Act 2003, are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention public nuisance; and
 - the protection of children from harm

4.11 Each application that comes before this committee will be treated on its own merits, and this licensing authority will take its decision based upon:

- The merits of the application
- The promotion of the four licensing objectives
- The policy of the licensing authority, a copy of which can be obtained from Teignbridge District Council's Licensing Section or on the Council's website at www.teignbridge.gov.uk
- The guidance issued by the Secretary of State for Culture, Media and Sport on 7th July 2004 under section 182 of the Licensing Act 2003.

5. The Hearing – procedure

The procedure of the sub-committee is as follows:

- 5.1 The Chairman will open the meeting, introducing Members of the sub-committee (advising of any substitute members) and officers present to those attending the meeting and explaining the nature of the decision to be taken
- 5.2 The legal advisor will explain the procedure to be followed and ask the parties if they understand the procedure
- 5.3 The sub-committee will consider any request(s) previously made by any party(ies) (in its Response to Notice of Hearing) for permission for another person to appear, and such permission shall not be unreasonably withheld
- 5.4 The licensing officer will outline the application, any relevant representations and relevancies to the local authority licensing policy statement and statutory guidance (optional). This may be done by reference to the report circulated with the Agenda.
- 5.5 Members may ask any relevant questions of the Licensing officer.
- 5.6 The legal advisor will introduce the applicant (if present) and invite him or her, or person representing them, to clarify any information arising from the licensing officer's outline, if necessary. (*See note (a) below).
- 5.7 The legal advisor will invite those parties making representations to address the sub-committee in the following order: (*See note (a) below).
 - (1) Responsible authorities
 - Police authority
 - Environmental Health
 - Fire Authority
 - Local Planning Authority
 - Health & Safety enforcing authority
 - Body responsible for protecting children from harm
 - Other licensing authority
 - Other
 - (2) Interested parties (*See note (b) below).
- 5.8 Members to ask any relevant questions of those parties making representations.
- 5.9 Applicant or person representing them to ask any relevant questions of those parties making representations.

- 5.10 Applicant or person representing them addresses the committee. (*See note (a) below).
- 5.11 Members may ask any relevant questions of the applicant or person representing them.
- 5.12 Parties that made representations to ask any relevant questions of the applicant or person representing them in the same order as set out in 5.7 above. (*See note (a) and (d) below).
- 5.13 The Chairman will invite any parties making representations (in the order set out in 5.7 above), followed by the applicant or those representing them, to briefly summarise their points if they wish. (*See note (a) below).
- 5.14 Members of the committee discuss and make their decision (See notes 8.1 and 8.2 below), and may move into private session to do so.
- 5.15 The Chairman relays the decision and the reasons given for the decision, and any conditions placed upon the licence (if granted) and the licensing objective(s) that they relate to. (*See notes 8.3, 8.4 and 8.5 below).

Notes

- (a) This licensing authority grants a maximum 15 minutes per party in total to make all relevant statements, but respectfully request that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.
- (b) Where there is more than one interested party speaking either in objection to, or in support of the application, a spokesperson should be agreed to speak on behalf of the objectors/supporters.
- (c) Applicants and persons who have made relevant representations have a right to appeal in various circumstances, details of which can be obtained from the licensing officer.
- (d) It is expected that this will consist of a summary of matters that have already been presented to the Sub-committee. New information will not be accepted at this stage.

6. Evidence

The strict legal rules of evidence shall not apply and evidence shall not be given on oath.

7. Legal Advice

- 7.1 The role of the sub-committee's Legal Adviser is to provide the Members with advice on:-
- questions of law;
 - matters of practice and procedure;
 - the options available to the sub-committee in making their decision;
 - any relevant decisions of superior courts, or other guidelines (eg. - Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
 - other issues relevant to the matter before the sub-committee (eg. any consultation currently in progress through Council etc.)
 - where appropriate to assist the sub-committee in recording the reasons for its determination.
- 7.2 The Legal Adviser may ask questions of parties and persons appearing on their behalf in order to clarify the evidence and any issues in the case.
- 7.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

8. Determination of applications

- 8.1 When all the evidence has been heard, the Members may move into private session and withdraw to make their deliberations. The Legal Advisor may accompany the sub-committee to give legal or procedural advice, but the Members will make the determination.
- 8.2 If the sub-committee needs to ask any further questions of any party, all parties will be asked to return before the sub-committee.
- 8.3 In the case of hearings held under the following sections of the Act, the sub-committee shall make its determination at the conclusion of the hearing:
- Hearing to consider police objection to temporary event notice [s.105(2)(a)]
 - Hearing to consider review of premises licence following closure order [s.167(5)(a)]
 - Hearing to determine application for conversion of existing licence to a new premises licence [Schedule 8, para 4(3)(a)]
 - Hearing to determine application to vary a premises licence which is made at the same time as an application to convert an existing licence [s. 35 or s.39]
 - Hearing to determine application for conversion of existing club certificate to a new club premises certificate [Schedule 8, para 16(3)(a)]
 - Hearing to determine application to vary club premises certificate which is made at the same time as an application to convert an existing club registration certificate [s.85]
 - Hearing to determine application for grant of personal licence to existing justices' licence holder [Schedule 8, para 26(3)(a)]
- 8.4 In any other case the authority shall make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.
- 8.5 Where all the parties have agreed that no hearing is required, the authority shall make its determination within the period of 10 working days beginning with the day on which it gives notice to the parties.

9. Quorum

- 9.1 The quorum for any hearing of a licensing sub-committee shall be two (2) Members but every effort will be made to ensure that wherever practicable the decision shall be taken by 3 members.
- 9.2 Determinations shall be made by a majority vote with the Chair having a casting vote in the event of an inconclusive result.