

SOUTH DERBYSHIRE DISTRICT COUNCIL

LICENSING ACT 2003

HEARINGS PROCEDURE

HEARING TO DETERMINE OBJECTIONS/REPRESENTATIONS

PROCEDURE FOR DEALING WITH APPLICATIONS UNDER THE LICENSING ACT 2003

1. RIGHT TO DISPENSE WITH HEARING UNDER THE ACT

- 1.1 The Licensing Act 2003 (“the Act”) specifies various situations when a Licensing Authority (“the Council”) must hold a hearing to consider either relevant representations or police objections to an application. The Licensing Act 2003 (Hearing) Regulations 2005 (“the Regulations”) authorise the Council to dispense with holding a hearing if all relevant persons have notified the Council that they consider a hearing unnecessary. If the Council agrees that no hearing is necessary it must forthwith give notice to all Parties that the hearing has been dispensed with.
- 1.2 For the purposes of this document, the term ‘Party’ or ‘Parties’ refers to applicants, other persons, responsible authorities, and those who have made relevant representations.

2. TIMING OF HEARING UNDER THE ACT

- 2.1 In relation to applications received under the Act, the Council shall arrange for hearings to be held within the periods of time specified in the Annexe attached to this Procedure (at column C).

3. NOTICE OF HEARING

- 3.1 The Council shall give due notice (Column D) of any hearing held under the Act to those persons specified (Column E), together with any documents required (Columns F and G) in the Annexe to this Procedure.
- 3.2 In all cases the notice of hearing sent to the Party will include the following information:-
- the date, time and place of the hearing;
 - the right of the Party to be represented at the hearing by another person, whether that person is legally qualified or not;
 - the right of the Party at the hearing to call any witness in support of their application, representations or notice (as applicable); to question any other party or witness; and to address the hearing, subject to any maximum time-limit imposed by the Sub-Committee;
 - the consequences if the Party fails to attend or is not represented at the hearing;
 - the procedure to be followed at the hearing;

- any particular points on which the Council considers that it will want clarification from a Party at the hearing;
- any information the Council has received in support or opposition of the application (or a summary thereof, if appropriate).

3.3 In the notice of hearing, the Party will be asked if they have any special needs or requirements at the hearing and be requested to notify the Council of any difficulty in attending.

4. RESPONSE TO NOTICE OF HEARING

4.1 Following receipt of the notice of hearing the Party must give to the Council within the period of time specified in the Annexe attached to this Procedure (Column H) a notice stating:-

- whether she/he intends to attend or be represented at the hearing;
- whether she/he intends calling any witness at the hearing and, if so, the name of that witness;
- whether she/he considers a hearing to be unnecessary.

4.2 The Party must include with their notice any documentary or other evidence in support of their case. If the hearing proceeds in the Party's absence, the Sub-Committee will consider their written representations and evidence.

5. POWER TO EXTEND TIME

5.1 The Council may extend time-limits specified in the Regulations for a specified period where it considers this necessary in the public interest. Notice of any extension must be given to the Parties forthwith stating the reasons.

5.2 The Council may adjourn a hearing to a specified date, or arrange for it to be held on specified additional dates, where it considers this necessary for its consideration of any representations or notice made by a Party. Notice of the date, time and place to which the hearing has been adjourned, or specified additional date on which and time and place at which the hearing is to be held, must be given to the Parties forthwith.

6. PUBLIC ACCESS TO HEARINGS

6.1 The Sub-Committee will hear all matters in public except:-

- 6.1.1 where it considers the public interest in excluding the public outweighs the public interest in the hearing (or part of it) taking place in public, and/or
- 6.1.2 to the extent that the public may be excluded under Section 100A of the Local Government Act 1972, and/or
- 6.1.3 that it 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
 - 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 Council in writing any information which they would have been entitled to give orally had they not been required to leave.

7. PROCEDURE AT HEARING

- 7.1 The three Members of the Sub-Committee will be drawn by the Legal and Democratic Services Department from the 15 Members of the Licensing and Appeals Committee. The first item of business will be the election of a Chairman for the hearing. Upon election, the Chairman will remind Members of the Sub-Committee of their obligation to declare any interests.
- 7.2 The Chairman will identify the Legal Adviser and the Democratic Services Officer for the benefit of those attending the hearing. The Chairman will explain that the Democratic Services Officer's role is to record the minutes of the hearing and the Legal Adviser's role is to provide legal advice to the Sub-Committee.
- 7.3 The Chairman will explain the procedure to be followed at the hearing and ensure that all present understand the proceedings.
- 7.4 Each matter to be dealt with by the Sub-Committee will 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.
- 7.5 As each matter is called, the Chairman will ask the Parties in the case to identify themselves and consider any requests made by them to be assisted or represented by any person whether or not that person is legally qualified and such permission shall not be unreasonably withheld.
- 7.6 If a Party has informed the Council that she/he will not be attending or be represented at the hearing, it may proceed in their absence. If a Party who has not informed the Council that she/he will not be attending or represented fails to attend or be represented, the Sub-Committee will decide if, in the interests of justice, the hearing of the matter should be adjourned until a specified date. The hearing may proceed in their absence. The Party will be informed of the decision.
- 7.7 Where the Sub-Committee holds the hearing in the absence of a Party, the Sub-Committee shall consider at the hearing the application, together with any representations made or notice given by that Party.
- 7.8 The Chairman will ask the Licensing Officer ("the Officer") who is presenting the case to identify him/herself. If the case is being held in private, the Chairman will direct all members of the public and all other officers, apart from the presenting officer, Democratic Services Officer and Legal Adviser, to leave the room.
- 7.9 The case will be opened with an outline of the relevant facts by the Officer. The Sub-Committee may impose a maximum time-limit on the Officer's representations.
- 7.10 The Members of the Sub-Committee and the Parties may ask questions of the Officer and any witnesses called by the Officer.
- 7.11 Any witness called by any Party will provide appropriate identification to the Sub-Committee i.e. name, capacity, etc.
- 7.12 The Chairman will invite Responsible Authorities who are present, and have given proper notice to the Council of their intention to make representations at the hearing, to present their case, in the order determined by the Chairman, including any evidence and/or the calling of witnesses in support of their case. The Sub-Committee may impose a maximum time limit on the Responsible Authorities' representations.

- 7.13 The Members of the Sub-Committee, the Officer and the Parties may ask questions of clarification of the Responsible Authorities and any witnesses called by them.
- 7.14 The Chairman will invite any other persons who are present, and have given proper notice to the Council of their intention to make representations at the hearing, to present their case, in the order determined by the Chairman, including any evidence and/or the calling of witnesses in support of their case. The Sub-Committee may impose a maximum time limit on the other persons' representations.
- 7.15 The Members of the Sub-Committee, the Officer and the Parties may ask questions of clarification of the other persons and any witnesses called by them.
- 7.16 The Chairman will ask the applicant to present their case, including any evidence and/or the calling of witnesses in support of their application. The Sub-Committee may impose a maximum time-limit on the applicant's representations.
- 7.17 The Members of the Sub-Committee, the Officer and the Parties may ask questions of clarification of the applicant and any witnesses called by the applicant.
- 7.18 The hearing shall take the form of a discussion led by the Sub-Committee and cross-examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the cases put by the Officer and the Parties.
- 7.19 Where another person has made written representations to the Sub-Committee, it will consider these.
- 7.20 Where the Sub-Committee sets a maximum time-limit for each Party to present their case, this time-limit must be equal for all Parties.
- 7.21 The content of any representations and/or evidence should have been disclosed to all Parties prior to the hearing within the periods of time specified in the Annexe attached to this Procedure (Column H). Additional representations and/or evidence, of which proper notice has not been given, may only be made or submitted at the hearing with the consent of the Sub-Committee and all other parties.
- 7.22 The Sub-Committee shall disregard any information given or evidence produced by the Officer, a Party or a witness which is not relevant to:-
- (1) their application, representations or notice (as applicable); and
 - (2) the promotion of the Licensing Objectives.
- 7.23 The Chairman will invite any final comments to be made by the Officer and any of the Parties.
- 7.24 The Chairman will invite the applicant (or his/her representative) to exercise a final right of reply.

8. EVIDENCE

- 8.1 The strict legal rules of evidence will not apply and evidence will not be taken on oath.

9. LEGAL ADVICE

- 9.1 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 formulating the reasons for its decision.

9.2 The Legal Adviser may ask questions of the Officer, the Parties and witnesses in order to clarify the evidence and any issues in the case.

9.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

10. DETERMINATION OF APPLICATIONS

10.1 When all the representations have been heard, the Sub-Committee will withdraw to make their deliberations. The Democratic Services Officer and the Legal Adviser may remain with the Sub-Committee to give legal or procedural advice, but the Members will make the decision.

10.2 If the Sub-Committee needs to ask any further questions of either the Officer or of the Parties, all present will be asked to return before the Sub-Committee.

10.3 In the case of hearings held under the following sections of the Act, the Sub-Committee must make its determination at the conclusion of the hearing:-

- Hearing to consider Chief Officer of Police and/or Environmental Protection objection to temporary event notice [s.105(2)(a)]
- Hearing to consider review of premises licence following closure order [s.167(5)(a)]

In any other case, the Sub-Committee must make its determination within the period of 5 working days beginning with the day or the last day on which the hearing was held.

10.4 The determination will be confirmed in writing, giving reason(s) for the determination and details of the right of appeal to the Magistrates' Court within 21 days from the date of the decision. The determination notice/letter will be sent out within 5 working days of the end of the meeting.

10.5 Where a hearing has been dispensed with [under paragraph 1.2 above], the Council must make its decision within the period of 10 working days beginning with the day on which it gives notice to the Parties, considering all the written representations submitted by the Parties.

11. QUORUM

11.1 The quorum for any hearing of a Sub-Committee shall be three (3) Members.

11.2 Decisions shall be that of the Licensing Authority. (i.e. not individual Members).

12. RECORD OF PROCEEDINGS

- 12.1 The Council shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for 6 years from the date of the decision or, where an appeal is brought against the decision of the Council, the disposal of that appeal. This shall be the responsibility of the Democratic Services Officer.

13. IRREGULARITIES

- 13.1 Any irregularity resulting from any failure to comply with any provision of the Regulations before the Council has made a decision shall not of itself render the proceedings void.
- 13.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the Council shall take such steps as it thinks fit to remedy the irregularity before reaching its decision.
- 13.3 The Council may correct clerical mistakes in any document recording a decision of the Council or errors arising in such a document from an accidental slip or omission.

14. FORM OF NOTICES

- 14.1 Any notices required to be given under this Procedure must be given in writing to the Democratic Services Department and should be sent by first class post or hand delivered to:-

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 OAH

- 14.2 The requirement that any notice must be given in writing is satisfied where:-
- (a) the text of the notice
 - (i) is transmitted by electronic means
 - (ii) is received in legible form, and
 - (iii) is capable of being reproduced in written form and used for subsequent reference,
 - (b) the person to whom the notice is to be given has agreed that such a notice may be given to them by those electronic means, and
 - (c) forthwith on sending the text of the notice by electronic means the notice is given to the recipient in writing.
- 14.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the text of the notice is received by the recipient in accordance with paragraph 14.2(a).