



**South
Derbyshire**
District Council

Licensing Act 2003

Guidance for Residents - Applying for a Review

Under the Licensing Act 2003, responsible authorities or other persons may apply for a review of a premises licence or club premises certificate if the premises is causing problems that can not be rectified by other methods. A review of a licence or certificate is a last resort and should not normally be contemplated unless all other methods have been exhausted. However, in exceptional circumstances, a review of a licence or certificate may be the first course of action.

This guidance describes how to apply for a review of a premises licence or club premises certificate under the Licensing Act 2003. It also contains information about the hearings process that follows.

In order to apply for a review of a premises licence or club premises certificate, an application form must be completed detailing the grounds for the review. Before an application form is submitted, it may be advisable to contact a member of the Licensing Department for some advice and guidance. You can contact the Licensing Department on the details below.

Only responsible authorities and other persons may apply for a review of a licence or certificate that is in force. A other person can include residents that are affected by the licence or certificate.

A Licensing Authority may reject the application for review if it is satisfied that the grounds for review are not relevant to one or more of the licensing objectives which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

The Licensing Authority can reject any ground for review if it considers it to be “frivolous”, “vexatious” or a “repetition”.

“Frivolous” or “vexatious” will bear their ordinary meaning. Whether representations are frivolous or vexatious will be for the Licensing Authority to determine. For example, the Licensing Authority might find the representations were vexatious if they arise because of disputes between rival businesses or frivolous if they clearly lacked seriousness.

A "repetitious" representation is one that is identical or substantially similar to:

- A ground for review in an earlier application which has already been determined;
- Representations considered by the Licensing Authority when the premises licence was first granted.
- Representations made when the application for the premises licence was first made and were excluded because of the prior issue of a provisional statement.
- In addition to the above grounds, a reasonable interval has not elapsed since any earlier review or the grant of the licence.

The review process is not intended to be used simply as a second bite of the cherry following the failure of representations to persuade the Licensing Authority on earlier occasions. It is for the Licensing Authority themselves to judge what should be regarded as a "reasonable interval" in these circumstances. This Licensing Authority suggests that more than one review should not be permitted within a period of twelve months on similar grounds, save in compelling circumstances (e.g. where new problems have arisen) or where it arises following a closure order.

A review cannot be applied anonymously; even if somebody else (e.g. a local MP or councillor) is applying for a review on their behalf. This is because, for example, the Licensing Authority needs to be satisfied that the person who wants the review is not being vexatious. Similarly, it is important that the licence holder is also able to respond to an application for a review. If there are concerns about possible intimidation, they could consider asking the police, or another appropriate responsible authority to apply for a review on their behalf.

Before applying for a review you may want to consider whether your concern(s) could be effectively dealt with outside of the formal review process. This could involve, for example:

- Talking to the licensee or certificate holder to determine whether there are any steps they may be willing to take to rectify the situation.
- Making a complaint to the licensing department for an investigation to be carried out which may include talking to the licensee on your behalf.
- Ask your local MP or Councillor to speak to the licensee or certificate holder on your behalf.
- Talking to the relevant "responsible authority" (e.g. environmental health in relation to noise nuisance, or the police in relation to crime and disorder) to determine whether there is other legislation that could help resolve the issue.

Things you may want to consider when seeking a review:

- It may be helpful to get the backing of other people living, or businesses operating near the premises, or other “responsible authorities”.
- Look at your Licensing Authority’s official records about the premises, kept in their “licensing register”. This will show you if other people have made representations, or asked for a review of a premises in the past
- If you want to ask another person such as an MP or local Councillor to represent you at the review. It is advisable to make such a request in writing so that the individual can demonstrate he or she was asked. It will be a matter for the MP or Councillor to decide whether they should agree to your request. They are not obliged to do so, however, most elected representatives are happy to help residents with this sort of issue. It should be noted that Councillors who are part of the licensing committee hearing the application will not be able to discuss the application with you outside the formal hearing, so it is suggested that you do not approach them to try to.
- There is no requirement for a resident to produce a recorded history at a premises to support their representations. However, it is important to be able to back up your claims. You could do this by keeping a diary over a period of time, for example. Sound or video recordings may be helpful. It may also be a while before any hearing, so it is good to keep a clear record.
- Try to get as much information as possible about any official response to any individual incidents (e.g. – police being called out)
- You may also be able to back up your application with data such as crime statistics. However, it should be noted that conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee’s direction when on his premises or in the immediate vicinity of the premises as they seek to enter or leave.
- If there is general noise nuisance on streets because of licensed premises, you will probably need to show how it relates to the specific premises.
- Residents or businesses applying for a review following a particular incident should be cautious, as a licensee may argue that this was a one off problem that can be rectified without a review.
- Have a good idea how you’d like the situation to be resolved.

Applying for a review

An application for the review of a premises licence or club premises certificate must be given in writing and be in the prescribed application form, which is available to print or download from the Council's website www.southderbyshire.gov.uk

Filling in the form

In the opening statement you should give the name of the person applying for the review – e.g. 'John Smith'. You should also indicate whether you are applying for the review of a "premises licence" or "club premises certificate" by deleting as applicable.

PART 1 – Premises or club premises details

This section asks for the address and some other details of the premises concerned in the review. If the premises has no postal address you should describe the location of the premises or give the ordnance survey map reference.

You are also asked to give the name and number of the premises licence holder or club. This information should be available on the "Summary" of the licence or certificate, which will be displayed at the premises or by contacting the Licensing Department.

PART 2 – Applicant Details

This section asks you to indicate in what capacity you are applying for a review. As an "other person" you must be able to tick at least one of the boxes under (1), then complete section (A) – Details of individual applicant, and if applicable, section (B)- Details of other applicant (e.g. – another resident).

An application for a review of a licence or certificate must be about the effect the licence is having on at least one of the four licensing objectives (see above). You should indicate which licensing objective(s) the application relates to.

You should state the ground(s) for review, and provide as much information as possible to support the application. You may use extra sheets of paper if necessary. Details may include, for example, dates that problems occurred and how the problem affected you.

You should state whether you have made an application for a review relating to this premises before, and give the further details of any representations you have made previously relating to this premises. This information will be used to determine whether the application for a review is "repetitious" (see above).

Checklist and declaration

The person or body requesting the review must notify the holder of the premises licence or club premises certificate and each "responsible authority"

of their request, by sending them a copy of the application, together with any accompanying documents, on the same day as the application is given to the Licensing Authority. Responsible authorities can then, if they wish, join or back up your application for review. The Licensing Authority also has to advertise the review to enable other persons to make a representation.

Responsible authorities include the following, for the area in which the premises are situated:

- The Licensing Authority
- The Chief Officer of Police
- The Fire Authority
- The Health and Safety Authority
- The local Planning Authority
- The Environmental Health Authority
- Trading Standards
- Health Authority
- Home Office

Addresses for the responsible authorities can be found on the Council's website.

By ticking the list you are making a declaration that you have carried out the listed actions.

Signatures

The application form must be signed. An applicant's agent (for example a solicitor) may sign the form on their behalf, provided they have authority to do so. Where there is more than one applicant, both applicants, and their respective agents, must sign the form.

What happens after a request for a review had been made?

The Licensing Authority must advertise requests for a review of a licence or certificate. They will do this by displaying a notice at the premises that is subject to review, and on the Council's website, for 28 consecutive days starting the day on which the application was received.

If the request for a review is not rejected then the Licensing Authority must hold a hearing to consider the application.

The Licensing Authority will write to you with the date and time of the hearing and will inform you of the procedure to be followed at the hearing.

As the person or body requesting the review, you are required to give notice to the Licensing Authority at least 5 working days before the start of the hearing, stating:

- Whether you will attend the hearing in person
- Whether you will be represented by someone else (e.g. councillor/MP/solicitor)
- Whether you think that a hearing is unnecessary (if, for example an agreement has been reached prior to the formal hearing)
- Any request for another person to attend the hearing , including how they may be able to assist the Licensing Authority in relation to the application.

You must let the Licensing Authority know as soon as possible (by written notice no later than 24 hours before the start of a hearing, or orally at the hearing) if you want to withdraw your application.

Hearings

Hearings will generally be held in public, unless the Licensing Authority decides it is in the public interest to hold all, or part of the hearing in private. The Licensing Authority shall ensure that a record is taken of the hearing.

Hearings will normally take the form of a discussion and will be led by the Licensing Authority, which will consist of three local authority elected Councillors (this will be the Licensing and Appeals Sub-Committee drawn from a full Licensing Committee of 15 Councillors). The Licensing Authority will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the hearing and can consider evidence produced by a party at the hearing, but only if all parties agree. Further evidence can also be produced if this was sought for clarification of an issue by the Licensing Authority before the hearing. Cross-examination of another party during a hearing is not allowed, unless the Licensing Authority thinks it necessary. The parties are entitled to address the Licensing Authority and will be allowed equal time to address the authority and, if they have been given permission by the authority to do so, they will be given equal time to ask any questions of any other party. The Licensing Authority will disregard and information it considers to be irrelevant.

It is important that you consider what you are going to say at the hearing, as the licence or certificate holder and the Licensing and Appeals Sub-Committee will have seen your application for review, and may get the chance to question what you are saying.

NB – A hearing can still go ahead in the absence of any party (e.g. – applicant or any person who has made a relevant representation).

What happens after a hearing?

If no decision is made at the hearing, the Licensing Sub-Committee has a maximum of 5 days from the day or the last day of the hearing to come to a decision. Following a review, a Licensing Authority may:

- Decide that no action is necessary to promote the licensing objectives;
- Modify or add conditions to the licence;
- Exclude a licensable activity from the licence;
- Remove the designated premises supervisor;
- Suspend the licence for a period(not exceeding 3 months);
- Revoke the licence.

If you have any queries about applying for a review, contact the Licensing Department on:

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Email: licensing@southderbyshire.gov.uk
Telephone: 01283 595 890/716/724