

Licensing Hearing Procedures

This procedure note sets out how the Licensing Committee will manage its business in an efficient, fair and transparent way. It is specific to hearings under the Licensing Act 2003 (“the 2003 Act”) and references to a Committee are to be taken as the full Committee of fifteen or a Sub-Committee of three Members.

The Council has an approved Statement of Licensing Policy, which can be viewed on the Council's website.

How licensing applications will be dealt with:

The Council has established a Licensing Committee of 15 Members as required by section 6, of the 2003 Act. The prime purpose of the Committee is to exercise all the Council's functions under the 2003 Act (except those relating to the making of the statement of licensing policy) and review strategy and licensing policy and make appropriate recommendations to Council. Determination of applications and notices are delegated to the Licensing Sub-Committee consisting of three members of the Licensing Committee, as provided by section 9 of the 2003 Act.

The purpose of this procedure is to help ensure that licence applications are dealt with in accordance with the law, that probity is observed at all times, and that there is effective public participation in the process.

The Licensing Act 2003 (Hearings) Regulations 2005, as amended (“the Hearings Regulations”) make provision for the holding of hearings under the 2003 Act Subject to the provisions of the Hearings Regulations, each Committee or Sub-Committee may regulate its own procedure. The Licensing Act 2003 Premises licences and club premises certificates) Regulations 2005, as amended, (“the Premises Licence and Club Premises Certificate Regulations”) set out the arrangements to be followed in relation to, applications, notices and representations under the 2003 Act.

For the purposes of this document the term ‘party to the hearing’ or ‘party’ or ‘parties’ means applicants and other persons / responsible authorities who have made relevant representations.

Licensing applications to the Council will be dealt with in two ways:

1. By a Licensing Sub-Committee of three Members of the Licensing Committee. All three Members need to be present throughout the Licensing Sub-Committee meeting convened for a hearing *or*
2. By licensing officers within the delegations of the Licensing Committee or Sub-Committee as set out in the Council's Licensing Policy and this procedure.

Hearings may arise following a relevant representation being made (relates to one or more of the licensing objectives) in respect of the following applications:

- For premises licence
- To transfer, review or vary premises licence
- For provisional statement
- For club premises certificate
- To review or vary a club premises certificate
- For grant of personal licence.

Hearings can also arise due to:

- Cancellation of an interim authority notice following a police objection
- A police or environmental health (noise) objection to a temporary event notice
- Convictions coming to light after the grant of a personal licence.

Where there is a relevant representation to an application or a review has been issued, the Council must:

- Arrange a public hearing within the prescribed timescales for the type of application as laid down by the regulations
- Notify parties of forthcoming hearings within prescribed timescales as laid down by the regulations
- Ensure statutory compliance with the notice and application process
- Provide applicants with copies of the relevant representation(s) that have been made by responsible authorities and other persons
- Supply public information at each hearing
- Supply appropriate information to all parties to a hearing.

How Representations are dealt with:

Responsible Authorities and any other persons (including councillors and any individual, body or business) may make written representations about applications concerning a premises licence, for a provisional statement, or club premises certificate or about a review.

- Generally, these must be made at any time during a period of 28 consecutive days starting on the day after the day on which the application was received by the Council. Representations received after this date will not be accepted.

Anyone wishing to make representations about an application or review should write to or email the Council at the contact addresses given in the Licensing Policy or on its website within the specified time scales.

- A copy of all relevant representations will be provided, in full, to the applicant or premises licence holder
- Correspondence submitted anonymously will not be considered
- Representations that are found to be vexatious, frivolous or repetitive will not be taken into consideration and the writer will be notified of this decision. This may include representations that do not provide supporting evidence.
- In the case of an application for the review of a premises licence, the Council will consider an application to be '*repetitive*' where more than one review is made, in any 12 month period, relating to the same licensing objective or issue, as set out at section 51 of the 2003 Act.

If there are no relevant representations made to the Council, then a licence must be granted, subject to conditions consistent with the operating schedule associated with the application and those mandatory conditions required by legislation.

Committee Members will not enter into correspondence or discussion with applicants, their agents or representatives, other relevant persons or responsible authorities about the merits of the application(s) they may be called upon to decide.

- Members wishing to seek clarification of an application prior to the hearing of the Licensing Sub-Committee may in the first instance contact the author of the report, using the contact details given therein, or alternatively email the Licensing Team, licensing@sutton.gov.uk with their query.

Where an application is to be decided at a hearing by the Sub-Committee, applicants and those who have made relevant written representations in connection with the application will be invited to attend.

- The papers for the Sub-Committee hearing will be available to the press and public and the applicant or premises licence holder.

The Sub-Committee Meeting Agenda

The agenda containing the officer reports on the applications to be considered at the meeting will be circulated to Members of the Sub-Committee at least ten days ahead of the meeting. A copy is posted on the Council's website or can be obtained by contacting Committee Services on 020 8770 4990 / committeeservices@sutton.gov.uk.

The parties to the hearing will be notified in writing prior to the meeting, advising them that the application is to be considered by the Sub-Committee and of the arrangements made for the determination of the application. The Applicant receives copies of representations and any additional information sent to other parties.

The Authority may also give notice to a party that it requires clarification and further information in support of their application, representations or notice.

Notices to be Served by Parties to the Hearing

Parties to the hearing wishing to make representations to the Sub-Committee on A, B or C below must notify the Council (using the contact details listed at the end of this procedure note) within the timescales shown below as set out in the Hearings Regulations.

As far as Temporary Event Notices and the Emergency Interim Steps review procedures are concerned, these fall outside A-C below because only the applicant/premises licence holder and the police are involved (and Environmental Health Pollution Control in respect of Temporary Event Notices).

A. Cancellation of interim authority notice following police objections:

A minimum of one working day before the hearing or first day of the hearing, written notice must be given if a party: intends to attend and/or be represented at the hearing, or intends to call any witnesses (names of witnesses must be provided), or considers a hearing to be unnecessary.

B. Review of premises licence following closure order;

A minimum of two working days before the hearing or first day of the hearing, written notice must be given if a party: intends to attend and/or be represented at the hearing, or intends to call any witnesses (names of witnesses must be provided), or considers a hearing to be unnecessary.

C. For all other applications

A minimum of five working days before the hearing or first day of the hearing, written notice must be given if a party intends to attend and/or be represented at the hearing, or intends to call any witnesses (names of witnesses must be provided), or considers a hearing to be unnecessary.

Extension of Time Limits and Adjournment

The Council may extend any of the time limits set out in this procedure, unless otherwise specified and subject to restrictions that apply to review following a closure order and summary review, where it considers that such an extension is necessary in the public interest. Where a time limit is extended the Council must give a notice to the parties stating the period of the extension and the reasons for it.

The Sub-Committee may adjourn a hearing, subject to restrictions that apply to review following a closure order and summary review, to a specified date or specified additional dates, if it considers that it is necessary for its consideration of any representations or notice made by a party.

- In such a case, the Council will notify all relevant parties of the reasons for the adjournment, the date(s), time(s) and place(s) of the adjourned hearing as soon as the adjournment is agreed.

Dispensing with the Hearing and Withdrawal of Representations

The Council may dispense with holding a hearing where all the parties to the hearing, other than the Council itself, have given written notice that they consider a hearing to be unnecessary.

- Parties to the hearing may withdraw their representations by either giving notice to the Council no later than 24 hours before the day of the hearing or first day of the hearing, or orally at the hearing.
- This does not apply to review applications where no such mechanism is available to dispense with a hearing.

Petitions

If a petition is submitted, the organiser(s) should ensure that:

- The grounds of the representation are set out in detail on every page containing signatures
- Names and address are clearly legible and preferably written in black ink
- The date(s) on which the signatures are collected is stated
- The names and addresses of the organisers are clearly stated for the purpose of future correspondence.

The only signatures on petitions – whether on paper or through the e-petitions system – which can be taken into account are from persons who are likely to be affected by the application.

Petitions raised through the e-petitions system are processed in line with the guidance for the use of this system.

Only one representative of the petitioners will be permitted to speak at a hearing.

Other documents/information

The Council has the discretion to consider whether to take into account any documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing, or with the consent of all the other parties, at the hearing. A party may amplify and clarify their representation at a hearing. During the hearing no new matters may be raised without the express consent of the Chair and new matters cannot be raised where

they fall within a licensing objective not previously referred to in the written representation.

Members and Licensing Sub-Committees

Members must not sit on a Licensing Sub-Committee if:

- A. they have an interest which is a disclosable pecuniary interest
- B. they have another personal interest as defined in the Member Code of Conduct and, as a consequence, consider it inappropriate to participate in the matter
- C. they have expressed a view which will give the appearance of bias, or have previously been involved in a predetermination of an application in respect of, or any other matter relating to, the premises
- D. they are Ward Members.

Attendance

Where a Member, who has an interest which falls within (A) above, is the applicant or makes a valid representation, he/she may attend the meeting only for the purpose of addressing the Licensing Sub-Committee on the application or their representation and answering questions. They must declare their interest at the hearing.

Members who have an interest which falls within (B) above *can* attend a hearing of the Sub-Committee provided they have declared their interest at the hearing.

Officers' Report

The officers' report to the Sub-Committee will comprise the following:

- 1. A brief summary of the application
- 2. The relevant parts of the Council's Licensing Policy
- 3. Reference to the appropriate provisions in the National Guidance (if applicable).

Organisation of the Hearings

Prior to the hearing, Members will have received copies of all representations and relevant correspondence (including photographs and other evidence which supports the representation). Hearings will normally be held in public, but the public may be excluded for part or all of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public. For this purpose, a party and any person assisting or representing a party may be treated as a member of the public.

Parties to the hearing have the right to be assisted or represented by any person whether or not

that person is legally qualified.

The order of business at the meeting is at the discretion of the Chair. For most meetings, the order will usually be decided according to the number of parties to the hearing who are present for each item.

The following criteria are used in determining the order of agenda items:

1. Applications which are withdrawn or which officers recommend should be deferred;
2. Applications which have been deferred from a previous meeting
3. Applications regarded as a priority due to the large number of parties to the hearing who have given notice that they will attend, or be represented, or call witnesses, or address the hearing
4. Applications for which the applicant, other relevant persons or responsible authorities wish to speak
5. All other applications.

Organisation of the Sub-Committee Room

Tables will be set up for the following:

- Table 1 Responsible Authorities e.g. Police, Environmental Health, Trading Standards
- Table 2 Other persons who are making relevant representations
- Table 3 Applicants
- Table 4 Case Licensing Officer
- Table 5 The Sub-Committee, Committee Services Officer and Legal Advisor

Hearing Procedure

The Chair will be elected from the Sub-Committee for the duration of the meeting. They will introduce all those in attendance including Members, officers and all parties, asking the latter to confirm whether they are represented.

The Sub-Committee Members will be assisted, where necessary, by a

1. Legal Advisor
2. Committee Services Officer

These two officers attend to provide advice and procedural guidance to the Sub-Committee. They are the only officers who retire with the Sub-Committee.

A hearing shall take the form of a discussion led by the Sub-Committee and proceed as follows:

Introductions

1. The Chair is elected by the Sub-Committee for the duration of the meeting.
2. The Chair confirms that the notices, hearing procedure and agenda were received by all parties.
3. The Legal advisor informs those present that the Sub-Committee had a briefing prior to the hearing to confirm the procedure and for clarifications on any aspect of the application.

The Officer

4. The Officers present the report.
5. Sub-Committee Members ask questions of Officers.

The Applicant

6. The Applicant (includes applicant for review) or representative /agent speaks, (time allowed maximum 15 minutes, unless the Chair agrees a different period in the circumstances of a particular case). If the Applicant is unrepresented and is having difficulty presenting their case the Legal Advisor may ask questions so the relevant points are raised.
7. The Applicant's witnesses speak (with permission of Chair). This forms part of 15 minutes.
8. The Sub-Committee Members ask questions of applicants and their witnesses (only applies to witnesses who have been given permission to speak by the Chair).

The Responsible Authority

9. Each Responsible Authority who has made a representation speaks (time allowed maximum 15 minutes per Responsible Authority, unless the Chair agrees a different period in the circumstances of a particular case).
10. The Responsible Authority's witnesses speak (with permission of Chair). This forms part of 15 minutes.
11. Sub-Committee Members ask questions of the Responsible Authorities.

The Other Persons (people who have made a valid representation)

12. 'Other Persons' speak, time allowed maximum 15 minutes shared between unless the Chair agrees a different period in the circumstances of a particular case.
13. 'Other Persons' witnesses speak (with permission of Chair). This forms part of 15 minutes.
14. Sub-Committee Members ask questions of the other parties to the hearing and their witnesses (only applies to witnesses who have been given permission to speak).

Review Cases

15. In the case of a review hearing the above process applies, except that the applicant for review will go first and will be followed by any responsible authority, other persons and finish with the licence holder.

Questions and Closing statements

16. The Applicant (with exception and with permission of Chair) asks questions of the other parties to the hearing and their witnesses.
17. The Other parties to the hearing (with exception and with permission of Chair) ask questions of the applicant/other parties to the hearing and their witnesses.
18. The Chair, where they consider that it is appropriate to do so, invites a closing statement from the parties to the hearing. Such statements will be made in the following order: responsible authorities, others person and the applicant.
19. In the case of a review the order for summing up will be that the applicant for review will go first and will be followed by any responsible authority, other persons and finish with the licence holder.
20. The Chair makes any closing remarks.

Making and Reporting the Decision

21. The Chair will announce that the Sub-Committee will retire to private session to make their decision. The Legal Advisor and Committee Services Officer will be invited to join the closed session. During the private session the Sub-Committee will discuss the application, seek advice on legal or procedural matters, form a view on the application and make a decision by majority vote.
22. The Sub-Committee returns and reopens for public session.
23. The Legal Advisor informs the hearing of any advice that they have given to the Sub-Committee during the private session.
24. The Sub-Committee's decision will be given by the Chair or the Chair will invite the Legal advisor to do so. After the hearing and within 5 days, officers will write to all parties to confirm the Sub-Committee's decision, giving full reasons.
25. The Chair will close the meeting.

Failure to Attend

If a party has informed the Council that they do not intend to attend or be represented at the hearing, the hearing can proceed in their absence. If a party who has not so indicated fails to attend or be represented at a hearing the Sub-Committee may:

- Hear the case in the party's absence.
- Or
- Adjourn the hearing to specified date, where it considers this to be necessary in the public interest.

Where a hearing takes place in the absence of the party, the Sub-Committee must consider at the hearing the application, representations or notice made by that party.

Where an adjournment is made, the Council must notify the parties of the date, time and place to which the hearing has been adjourned.

Making the Decision

Having heard the representations and prior to retiring to make its decision, the Sub-Committee may, if it wishes, seek the guidance of the Legal Advisor regarding possible suitable conditions in respect of any particular application. The case-licensing officer will have included potential conditions extracted from the applicants operating schedule within their report.

The Sub-Committee has a duty to conduct its business impartially, not to predetermine the issue and not to discuss matters with the press or residents. In making its decision the Sub-Committee must give reasons to explain the decision. It must state, in respect of premises licenses, why refusal or attachment of conditions is appropriate in order to promote a particular licensing objective, and, in respect of all other applications, the reasons why applications are refused or revoked.

The Sub-Committee must disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations or notice, or not promoting the licensing objectives.

Notification of the Decision

The decision and reasons for the decision will be recorded in the minutes of the meeting. These will be circulated and made available on the website.

The Chair will inform those present that generally applicants will be sent a decision notice in writing within five working days of the day of the meeting outlining the decision and the reasons to support it. In certain specified cases the decision must be given immediately. Details of the appeal rights will also be sent with the decision notice.

Right to Appeal

Applicants and the other parties to the hearing have specified appeal rights. The appeal must be made to the relevant Magistrates' Court within 21 days of the date of receipt of notification of the decision by a party. Details of how to appeal and the grounds on which an appeal may be made

are sent out with the notification letter.

Minutes of the Meeting

The minutes of a meeting should be approved at either the next meeting of the Licensing Committee or the next meeting of the Sub-Committee where there is Member on the panel who was on the panel which relates to the minutes being signed, whichever is the sooner.

Contact details: licensing@sutton.gov.uk

This page is intentionally left blank