

West Wiltshire District Council

Licensing Committee

Procedural Rules for the Hearing of Licensing Act 2003 Applications

1 Purpose

- 1.1 These rules have been prepared to facilitate proper consideration of licence applications, made under the Licensing Act 2003, by the Licensing Committee and its Sub Committees.
- 1.2 The rules set out a framework for how applications are to be heard and explain the role of the participants at the Hearing.

2 Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Hearing: -
- 2.2 “**Applicant**” means the person who has submitted an Application for consideration by the Committee.
- 2.3 “**Applicant’s Premises**” means the premises the subject of the Application.
- 2.4 “**Applicant’s Representative**” means a person attending a Hearing to assist or represent an Applicant including a lawyer.
- 2.5 “**Application**” means an application for the grant / variation / transfer / review and any other decision to be made by the Committee/Sub-Committee in respect of a Licence.
- 2.6 “**Chairperson**” means the Member who is the Chairperson of the Committee for the particular Hearing.
- 2.7 “**Committee**” means the Council’s Licensing Committee and includes any Sub Committee of the Licensing Committee.
- 2.8 “**Committee Lawyer**” means the Council’s lawyer (including an external lawyer instructed by the Council’s Legal & Democratic Services Manager) who is present at a Hearing to advise the Chairperson and the Members.
- 2.9 “**Committee Manager**” means the Council’s officer who is present at a Hearing to take minutes.
- 2.10 “**Committee Report**” means the Licensing Officer’s written report to the Committee concerning an Application a copy of which has been previously made available to the Applicant or their Representative, a Responsible

Authority or their Representative or an Interested Party or their Representative.

- 2.11 “**Hearing**” means a meeting of the Committee at which an Application is considered.
- 2.12 “**Licence**” means a licence which the Committee has the power or duty inter alia to grant, transfer, suspend or revoke.
- 2.13 “**Licensing Officer**” means the Council’s Licensing Officer(s) who is / are present at a Hearing to present reports in respect of an Application and to give technical advice in respect of an Application to the Committee when requested.
- 2.14 “**Licensing Authority**” the Council in whose geographical area the subject matter of the Application relates to, and includes the Council’s Licensing Committee, any Sub Committee of the Licensing Committee and a Licensing Officer.
- 2.15 “**Member**” means a Member who is a member of the Committee that is considering an Application.
- 2.16 “**Responsible Authority**” means a person who is present at a Hearing to make representations in respect of an Application in their capacity as Responsible Authority and includes any person who is present to assist or make representations on behalf of the Responsible Authority including a lawyer.
- 2.17 “**Interested Party**” means a person who is present at a Hearing to make representations in respect of an Application in their capacity as an Interested Party and includes any person who is present to assist or make representations on behalf of the Interested Party including a lawyer.

3 Key Principles

- 3.1 The principles of ‘natural justice’, and Article 6 ‘Right to a Fair Trial’, which is one of the Convention Rights in the Human Rights Act 1998, require that there is a fair Hearing of Applications.
- 3.2 Natural justice is an umbrella term for the legal standards of basic fairness. This will include that: -
- 3.2.1 the Applicant has an opportunity to make representations before a decision is made;
- 3.2.2 those making representations have an opportunity to voice their representations before a decision is made;
- 3.2.3 the Applicant has an adequate opportunity to consider and respond to any submissions made by a Responsible Authority(ies) and/or an Interested Party(ies);

- 3.2.4 the Committee does not exclude an Applicant from a Hearing in order to consider submissions from a Responsible Authority(ies) and/or an Interested Party(ies).
- 3.3 It is also fundamental that there is an orderly presentation of submissions at a Hearing so that the relevant issues are properly understood, evidence is tested, and that oral statements made at the Hearing are accurately recorded.
- 3.4 Ultimately the Chairperson determines the application of these rules, having regard to any submissions being made by those present and in particular the Committee Lawyer.

4 The Hearing

- 4.1 The Hearing shall take place in public.
 - 4.1.1 The Committee may exclude the public from all or part of the Hearing where it considers it to be in the public interest to do so and, in accordance with the Local Government (Access to Information) Act 1985, as amended. Public includes a party and any person assisting or representing a party.
 - 4.1.2 The Committee may require any person attending the Hearing who, in its opinion, is behaving in a disruptive manner, to leave the Hearing and may:
 - a refuse to permit him/her to return; or
 - b permit him/her to return only on such conditions as the Committee may specify;
 - c in the event that a person is required to leave a Hearing that person may, before the end of the Hearing, submit to the Committee, in writing, any information which they would have given orally.
- 4.2 Prior to the Hearing commencing the Chairperson shall advise the parties of the procedure it proposes to follow at the Hearing.
- 4.3 Where a party has previously requested permission for a person(s), other than their representative, to appear at the Hearing then the Committee shall consider whether to permit that request(s).
- 4.4 The Committee will allow the parties an equal maximum period of time in which to exercise their rights.
- 4.5 This equal maximum time may have been notified in advance of the Hearing;
- 4.6 Where there is a multiple of Interested Parties who have attended the Hearing to make the same representation then the Committee would normally require that a spokesperson shall be appointed by them to make the representations on behalf of all of those Interested Parties.

5 Presentation of Submissions

- 5.1 The Chairperson will introduce the application.
- 5.2 In the event that the Licensing Authority has given notice to a party requiring clarification on a point(s) then that party shall respond to the points raised by the Licensing Authority.
- 5.3 Submissions shall be made in the following order unless the Chairperson directs otherwise:-
- 5.4 The Licensing Officer will orally present the Committee Report and will in particular advise the Committee as to:-
 - 5.4.1 the options available to it;
 - 5.4.2 the considerations that are relevant in reaching its decision.
- 5.5 The Applicant (or the Applicant's Representative) may orally present its submission which may include:-
 - 5.5.1 presenting their case in accordance with the papers, which will have been circulated with Agenda papers;
 - 5.5.2 confirming key information and answer pertinent questions; and
 - 5.5.3 calling witnesses in support of the Application (see paragraph 4.3).
- 5.6 A Responsible Authority(ies) and/or an Interested Party(ies) will orally present his / her / their representations in turn which shall include:-
 - 5.6.1 the grounds of the representation to the Application; and
 - 5.6.2 any condition (s) that the Responsible Authority(ies) and/or an Interested Party(ies) would be happy to have the Application granted subject to which would cause the representation to be withdrawn.

6 Questioning of Submissions

- 6.1 The Chairperson will regulate the order in which questions are asked by Members.
- 6.2 The Chairperson and Members (voiced through the Chairperson) may question any party following the completion of their submission.
- 6.3 The Chairperson will normally permit the Applicant, a Responsible Authority(ies) or an Interested Party(ies) to ask questions, through him/her, of the other parties
- 6.4 The Chairperson may direct that questions which are not relevant to the Application or one of the four Licensing Objectives are not formally put or answered.

7 Documentation

- 7.1 No party shall present new documentation to the Committee at the Hearing other than with the consent of all of the other parties. This does not preclude the Licensing Officer from correcting errors, providing updated information or an extract from a local map showing the Applicant's Premises in the context of the surrounding premises and any Interested Party's premises. If any party is granted permission to present supplementary papers at the Hearing they shall provide at least 10 copies at the start of their submission.

8 Intervention

The Chairperson shall permit the following interventions at any point in the Hearing:-

- 8.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require the Committee, the Committee Lawyer and the Committee Manager to leave the Hearing so that advice can be given.
- 8.2 The Committee Manager to advise the Committee on procedure generally, or to request that statements made are repeated for reasons of clarity and so that they can be properly recorded.
- 8.3 The Licensing Officer to seek to clarify statements that have been made in light of information held on their file.

9 Failure of Parties to Attend Hearing

- 9.1 If a party has informed the Licensing Authority that it does not intend to attend or be represented at a Hearing, the Hearing may proceed in its absence.
- 9.2 If a party has not indicated that it does not intend to attend or be represented at a Hearing and fails to attend or be represented at the Hearing then the Licensing Authority may:
- 9.2.1 where it considers it be necessary in the public interest, adjourn the Hearing to a specified date; or
- 9.2.2 hold the Hearing in the party's absence.
- 9.3 Where the Licensing Authority holds a Hearing in the absence of a party, it shall consider at the Hearing the application, representations or notice made by that party.

10 Closing Submissions

- 10.1 The Chairperson shall allow first, the Responsible Authority(ies) and the Interested Party(ies) to make a closing oral submission(s) and secondly invite

the Applicant or the Applicant's Representative an opportunity to make an oral closing submission in support of the Application

11 Decision

- 11.1 The Committee, the Committee Lawyer and the Committee Manager, shall retire so that the decision may be considered, in private, and to consider any legal issues raised by the Members.
- 11.2 The decision, and reasons for the decision, of the Committee shall be communicated orally by the Chairperson to the parties, after the Committee has deliberated, in private, on the Application.
- 11.3 Written reasons shall be provided soon after the deliberations of the Application and in any event within the statutory time limits.

Hearing Procedure Summary

1. The Chairperson will welcome all those present and introduce the Application
2. The Chairperson will then introduce the Applicant, Responsible Authority(ies) and/or Interested Party(ies)
3. The Chairperson will outline the Hearing Procedure
4. The Licensing Officer will present the Committee Report
5. The Applicant to address the Committee
6. Questions to the Applicant by Responsible Authority(ies) and/or Interested Party(ies)
7. Questions to the Applicant by Members of the Committee
8. Comments by Responsible Authority(ies) and/or Interested Party(ies)
9. Questions by Applicant
10. Questions to Responsible Authority(ies) and/or Interested Party(ies) by Members of the Committee
11. Summing up by parties who have made representations
12. Summing up by Applicant
13. Committee shall retire with the Committee Lawyer and Committee Manager to consider its decision
14. Committee will return and the Lawyer gives a summary of any legal advice that may have been given to the Committee and invites the parties present to make any comments on that advice
15. The Chairperson either gives the decision with reasons or advises that it will be released in writing with reasons within the statutory time limits