

LICENSING COMMITTEE

PROCEDURAL RULES FOR THE HEARING OF LICENSING ACT 2003 APPLICATIONS (Objection Notices to a Temporary Event Notice – TEN)

1 Purpose

- 1.1 These rules have been prepared to facilitate proper consideration for Part 5 of the Licensing Act 2003 for the temporary carrying on of licensable activities which are not authorised by a premises licence or a club premises certificate.
- 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:

“**Application**” means an application for a Temporary Event Notice (TEN) .

“**Chairperson**” means the Member who is the Chairperson of the Committee for the particular Hearing.

“**Committee**” means the Council’s Licensing Committee and includes any Sub Committee of the Licensing Committee.

“**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.

“**Committee Manager**” means the Council’s Officer who is present at a Hearing to take minutes.

“**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 Premises User or their Representative, the Police representatives and the Environmental Health representative.

“**EHA**” means the local authority exercising environmental health functions (in this case Wiltshire Council Environmental Health Department) who may intervene to object to a Temporary Event Notice

“**Hearing**” means a meeting of the Committee at which an Application is considered.

“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.

“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.

“Member” means a Member who is a Member of the Committee that is considering an Application.

“Police Representative” means a person who is present at a Hearing to make representations on behalf of the Police.

“Premises” means the premises subject to the Application.

“Premises User” means the person who has submitted the application for consideration by the Committee.

“Premises User’s Representative” means a person attending a Hearing to assist or represent a Premises User 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 Premises User 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 Premises User has an adequate opportunity to consider and respond to any submissions made by Police representatives/EHA representatives;
 - 3.2.4 the Committee does not exclude a Premises User from a Hearing in order to consider submissions from Police representatives/EHA representatives .
- 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 them to return;
- B permit them 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.

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 are a number of people who have attended the Hearing to make the same representation then the Committee would normally require that a spokesperson be appointed by them to make the representations on behalf of all of those who have made Relevant Representations.

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:
- 5.3.1 The Licensing Officer will orally present the Committee Report and will in particular advise the Committee as to:
- A the options available to it;
 - B the considerations that are relevant in reaching its decision.
- 5.3.2 The Police representatives will orally present its submission which may include:
- A presenting their case in accordance with the papers, which will have been circulated with Agenda papers;
 - B confirming key information and answer pertinent questions; and
 - C calling witnesses in support of the Application (see paragraph 4.3).
- 5.3.3 The Environmental Health representatives will orally present its submission which may include:
- A presenting their case in accordance with the papers, which will have been circulated with the Agenda papers; and
 - B confirming key information and answer pertinent questions.
- 5.3.4 The Premises User and/or their representative will orally present their representations which shall include;
- A The response to the representations made by the Police representatives and the Environmental Health representatives ; and
 - B Whether they would be happy to accept any modifications to the application as suggested by the Police or Environmental Health representatives.

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 Premises User or the Police or Environmental Health representatives to ask questions through them 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 Premises in the context of the surrounding premises. If any party is granted permission to present supplementary papers at the Hearing they shall provide at least 5 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 Police/Environmental Health representatives to make a closing oral submission(s) and secondly invite the Premises User or their representative 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 If the Sub Committee resolves to issue a Counter Notice to the Temporary Events Notice (i.e. if the application for a TENs is refused) this will be issued to the Premises User following the hearing.

Hearing Procedure Summary for Temporary Event Notices (TENs)

This is a summary of the procedures to be followed at hearings of the Licensing Sub Committee in respect of Objection Notices to Temporary Event Notices.

1. The Democratic Services Officer will request nominations for a Chairman for the Hearing.
2. The Chairperson will welcome all those present and introduce the Application.
3. The Chairperson invites the Councillors/Officers/Police representatives/Environmental Health representatives/Premises User to introduce themselves.
4. The Chairperson outlines the Hearing Procedure.
5. The Licensing Officer presents the Committee Report.
6. The Police representatives will be invited to fully outline their objection to the TENs addressing the licensing objectives. Witnesses may be called.
7. Questions to the Police representatives by the Sub Committee Members/Environmental Health representative/Premises User to be directed through the Chairperson.
8. The Environmental Health representative will be invited to fully outline their objection to the TENs addressing the licensing objectives.
9. Questions to the Environmental Health representative by the Sub Committee Members/Police representatives/Premises User to be directed through the Chairperson.
10. The Premises User will fully outline their response and address the licensing objectives. Witnesses may be called.
11. Questions to the Premises User by the Sub Committee Members/Police representatives/Environmental Health representative to be directed through the Chairperson.
12. Closing statement from the Police representatives who should briefly summarise their key points.
13. Closing statement from the Environmental Health representative who should briefly summarise their key points.
14. Closing statement from the Premises User who should briefly summarise their key points.
15. Sub Committee retires with the Committee Lawyer and Committee Manager to consider its decision.
16. Sub Committee returns and the Lawyer gives a summary of any legal advice that may have been given to the Sub Committee, and invites the parties present to make any comments on that advice.
17. The outcome of the Sub Committee's consideration will be given by the Chairperson.

18. If the Sub Committee resolves to issue a Counter Notice to the Temporary Events Notice (i.e. if the application for a Temporary Event Notice is refused) this will be issued to the Premises User following the hearing.
19. The Premises User or the Chief Officer of Police may appeal against the Sub Committee's decision to the Magistrate's Court. Any appeal must be lodged within 21 days beginning with the day on which the appellant was notified of the decision. No appeal may be brought later than five working days before the day of the proposed temporary event.