

# 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 of objections made under s.104 of the Licensing Act 2003 (“the Act”) against a Temporary Event Notice (TEN) that has been served under s.100 of the Act
- 1.2 The rules set out a framework for how objections 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:

“**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 Objection Notice, a copy of which has been previously made available to the Premises User or their Representative and the Relevant Persons who have made objections.

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

“**Hearing**” means a meeting of the Committee at which an Objection 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 Objection 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.

**“Objection Notice”** means a notice given by the police or EHA under s.104 Licensing Act 2003.

**“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 Temporary Event Notice.

**“Premises User”** means the person who has submitted the Temporary Event Notice that is the subject of the Objection Notice.

**“Premises User’s Representative”** means a person attending a Hearing to assist or represent a Premises User including a lawyer.

**“Relevant Person”** means the Police or EHA or any other persons so designated under s. 99A of the Act.

**“Temporary Event Notice”** means a notice given under s.100 Licensing Act 2003.

### **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 and Relevant Persons have an opportunity to make representations before a decision is made;
  - 3.2.2 the Premises User has an adequate opportunity to consider and respond to any submissions made by or on behalf of Relevant Persons;

- 3.2.3 the Committee does not exclude a Premises User from a Hearing in order to consider submissions from Relevant Persons 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. 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 report.
- 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 Relevant Persons will orally present their 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 Objection Notice (see paragraph 4.3).
  - 5.3.3 The Premises User and/or their representative will orally present their representations which shall include;
    - A The response to the representations made by the Relevant Persons and
    - B Whether they would be happy to accept any modifications to the application as suggested by the Relevant Persons. .

## **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 Relevant Persons' representatives to ask questions through them of the other parties.
- 6.4 The Chairperson may direct that questions which are not relevant to the Objection Notice 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 Relevant Persons' representatives to make a closing oral submission(s) and secondly invite the Premises User or their representative to make an oral closing submission.

## **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.