

## **MID DEVON DISTRICT COUNCIL – LICENSING COMMITTEE**

### **Protocol and Procedure for Licensing Sub-Committee Hearings**

#### **1.0 Introduction**

1.1 The role of the Sub-Committee is to determine Applications / Notices in an impartial manner in accordance with the relevant provisions of the Licensing Act 2003, national guidance and the Council’s Policies.

#### **2.0 Composition of Sub-Committee**

2.1 The Sub-Committee shall usually consist of three Councillors drawn on a “panel” basis from the membership of the Licensing Committee.

2.2 In forming the Membership of the Licensing Sub-Committee for a hearing, and where Councillors availability permits, Members Services shall try to ensure that:

- There are at least two experienced Members in attendance
- Rotation of Membership

‘Experienced’ is defined as having previously taken part in two separate hearings.

2.3 Members may sit on a Hearing which relates to their own Ward as long as there is no conflict of interest ’and any relevant declarations are made at the beginning of the meeting.

2.4 The Chairman for a Hearing shall be selected from the Members that form the Sub-Committee.

2.5 When unforeseen circumstances require, or an urgent matter has arisen, the Sub-Committee may be made up of two Councillors as opposed to three.

#### **3.0 Hearings to be held in public**

3.1 Licensing Hearings shall take place in public. However, the Sub-Committee may exclude the public (including a party to the hearing) from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

3.2 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may:

- a) refuse to permit that person to return, or

- b) permit him/her to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

#### **4.0 Time of Hearings**

- 4.1 Hearings of the Licensing Sub-Committee shall usually be held at the Council Offices during the day.

#### **5.0 Notice of Hearing**

- 5.1 The Licensing Authority shall give parties to the Hearing a notice stating the date, time and place where the Hearing is to be held. This is the 'Notice of Hearing' and must be given in accordance with the provisions of the regulations.

- 5.2 The Notice of Hearing shall be accompanied by information regarding the following:

- a) the rights of a party provided for in regulations 15 and 16 of the Licensing Act 2003 (Hearings) Regulations 2005
- b) the consequences if a party does not attend or is not represented at the Hearing
- c) the procedure to be followed at the hearing; and
- d) any particular points on which the Licensing Authority considers that it will want clarification from a party at the hearing.

- 5.3 Each party shall respond to the Notice of Hearing within the time prescribed by regulations which shall be stated on the Notice itself. The response must state:

- a) whether he/she intends to attend or be represented at the hearing;
- b) whether he/she considers a hearing to be unnecessary

#### **6.0 Right of Attendance, Assistance and Representation**

- 6.1 Subject to paragraphs 3.1 and 3.2, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. A party may be assisted or represented by their Ward Councillor. Any Councillor undertaking such a role would not take part in the determination of the matter before the Sub-Committee.

## **7.0 Hearings held on more than one day**

7.1 When a hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.

## **8.0 Right to dispense with a hearing**

8.1 If all parties agree that a hearing is unnecessary, then with the agreement of the Licensing Authority, the hearing may be dispensed with.

## **9.0 Right to postpone or adjourn a hearing**

9.1 The Sub-Committee may postpone or adjourn a hearing where it considers this to be necessary for its consideration of any representations or notice made by a party.

## **10.0 Report**

10.1 A report prepared by the Licensing Authority will be put before the Sub-Committee.

10.2 A copy of the report will be made available to all parties in advance of the hearing.

## **11.0 Detailed Procedural notes**

11.1 Detailed procedural notes for the most regularly heard hearings are available and will be circulated in advance of the relevant hearing. These procedural notes cover the following applications / notices:

- New Premises Licence / Variation of existing Premises Licence (or Club Premises Certificate)
- Temporary Event Notices
- Review of a Premises Licence or Club Premises Certificate

## **12.0 Procedure at hearing - General**

12.1 At the beginning of the hearing, the Chairman and members of the Sub-Committee will introduce themselves, invite parties to identify / introduce themselves and then explain the procedure that the Sub-Committee intends to follow.

12.2 If applicable, the Sub-Committee will then consider any request made by a party for any other person to appear at the hearing. Permission shall not be unreasonably withheld.

12.3 Where the written evidence or information provided by the applicant or any other party has raised legal issues or submissions, the Chairman may request that any legal

representatives present at the hearing and the legal representative of the authority address the Sub-Committee on the legal points raised.

- 12.4 The hearing shall take the form of a discussion led by the Sub-Committee on any matter that is relevant to the application, notice or review.
- 12.5 The Chairman should indicate that members of the Sub-Committee have read the circulated papers; therefore there is no need for parties to repeat points that have already been made in representations.
- 12.6 In circumstances where there are a number of parties who wish to make the same or similar representations the nomination of a single spokesperson will usually be encouraged, and would normally be expected. This does not prevent those who have made representations from speaking during the hearing.
- 12.7 Applicants and other parties will not usually be given a time limit to present their application / representations but the Sub-Committee may stop them should they begin to repeat themselves or straying from what is considered to be relevant matters.
- 12.8 In considering any representations or notice made by a party the Sub-Committee may take into account documentary or other information produced by a party either before the hearing or, with the consent of all other parties, at the hearing. A party introducing documentary evidence at a hearing should bring sufficient copies for all other parties and the Sub-Committee.
- 12.9 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 12.10 The Sub-Committee will disregard any information given by a party that is not relevant to the application, notice or representations made.
- 12.11 Parties may question any other party if permission is given by the Sub-Committee. Cross examination will not be allowed unless the Sub-Committee considers that it is required for it to consider the representations, application or notice as the case may require.
- 12.12 Hearsay evidence is admissible but consideration will always be given to the weight, if any, to be attached to such evidence, depending on the circumstances in which it arises.

### **13.0 Roles of Officers**

#### Representative of Legal Services

- 13.1 The role of the representative of Legal Services will be to deal with any questions of law, matters of practice and procedure and where appropriate assist the Sub-Committee in formulating the reasons for its decision. They may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.

#### Representative of Member Services

- 13.2 The role of the representative of Member Services will be to make a record of the proceedings both by way of notes of the evidence / information given and a minute of the decision reached, inclusive of the reasons for the decision.

#### Licensing Officer

- 13.3 The role of the Licensing Officer will be to introduce the application / notice, outline the relevant facts and any issues involved through the presentation of their report.

### **14.0 Determination of Applications / Notices**

- 14.1 Unless the matter being considered by the Sub-Committee falls within one of the categories listed in point 14.2, the Sub-Committee has five working days to make their determination beginning with the day, or the last day, on which the hearing was held.

- 14.2 In relation to the following matters, the Sub-Committee must make its decision at the conclusion of the hearing:

- a) A counter notice following an objection to a temporary event notice
- b) Review of a premises licence following closure order

### **15.0 Record of proceedings**

- 15.1 A record of the hearing shall be made by authority and kept for six years from the date of the determination or, where an appeal is brought against the determination of the authority, the record must be kept for six years from the date of disposal of the appeal. The authority may also record the proceeding through audio tape.

### **16.0 Appeals**

- 16.1 Either those who have made an application or those who have made a representation on an application may have the right to appeal the authorities decision to the Magistrates Court.

16.2 An appeal must be commenced within twenty one days beginning with the day on which the appellant was notified by the licensing authority of their decision.

### **17.0 Irregularities**

17.1 Proceedings will not be rendered void only as a result of failure to comply with any provision of the Hearing Regulations.

17.2 Where the authority considers that any person may have been prejudiced as the result of an irregularity relating to the Hearing Regulations, it will take such steps, as it thinks fit to cure the irregularity, before reaching its determination.

17.3 Clerical mistakes in any document recording a determination of the authority, or errors arising in such a document as the result of an accidental slip or omission, may be corrected by the authority.

## **The following information and procedures are associated with this document**

### **Legislation**

- The Licensing Act 2003 (Hearings) Regulations 2005:
  - [http://www.legislation.gov.uk/uksi/2005/44/pdfs/uksi\\_20050044\\_en.pdf](http://www.legislation.gov.uk/uksi/2005/44/pdfs/uksi_20050044_en.pdf)

### **Hearing Procedures**

- New premises licence application (attached)

### **Hearing Guidance**

- General guidance to attendees (attached)

## **HEARING PROCEDURE: NEW PREMISES LICENCE APPLICATION**

### **Introduction and Preliminary remarks**

1. The following parties will introduce themselves:
  - The Chairman of the Sub-Committee
  - Members of the Sub-Committee
  - Council Officers (legal advisor, member services officer and licensing officer)
2. The Chairman will ask for any declarations of interest.
3. The Chairman will announce if the hearing is to be held in public or private session.
4. The Chairman will ask those present to introduce themselves. This will be the order in which they present their case and is as follows:
  - Applicant and any person representing or assisting them
  - Responsible Authorities that have made a relevant representation
  - Other Parties who have made a relevant representation. If a spokesperson has been appointed / nominated for a group they should be identified.
5. The Sub-Committee will consider any requests by a party for any other person to appear at the hearing. Such permission shall not be unreasonably withheld provided proper notice has been given in response to the Notice of Hearing.
6. The Chairman will confirm that members of the Sub-Committee have received and read the paperwork and as such, parties will not need to repeat verbatim what they have already submitted.
7. The Chairman will state that time limits will not be set for speakers but if it is felt that matters are being repeated or are irrelevant, they or the legal advisor may move the discussion on.

### **Statement by the licensing officer**

8. The Chairman will ask the officer to summarise the matter under consideration and present the salient points of the report.

9. Each other party (if permitted by, and via the Chairman) may then ask questions of the licensing officer based on what they have heard. This will be in the following order:
  - Applicant
  - Responsible Authorities
  - Other Parties
  - Sub-Committee
10. The licensing officer may respond to any new issues raised.

**Case for the applicant**

11. The applicant (or their representative) to present case in support of the application.
12. Each other party (if permitted by, and via the Chairman) may then ask questions of the applicant (or their representative) based on what they have heard. This will be in the following order:
  - Responsible Authorities
  - Other Parties
  - Sub-Committee
13. The applicant (or their representative) may then respond to any new issues raised

**Case for responsible authorities (i.e. Police, Environmental Health)**

14. The representative of each responsible authority will be invited in turn to present the views of their organisation.
15. Each other party (if permitted by, and via the Chairman) may then ask questions of the representative based on what they have heard. This will be in the following order:
  - Applicant
  - Other Parties
  - Sub-Committee
16. The representative may then respond to any new issues raised.



### **Case for the 'other parties'**

17. Those who have made representations will be invited to present their views.
18. If a spokesperson has agreed to speak on behalf of a several people, all of those he/she represents may add any further points after.
19. Each other party (if permitted by, and via the Chairman) may then ask questions of the other party based on what they have heard. This will be in the following order:
  - Applicant
  - Responsible Authorities
  - Other Parties
  - Sub-Committee
20. The other party may then respond to any new issues raised.

### **Discussion about conditions**

21. If it appears to any party that one or more of the issues raised during the hearing could be dealt with by means of a condition attached to the licence, that person may put forward the suggestion(s) to the Chairman at this stage. All other parties are to be given an opportunity to comment and express a view on any proposed condition.

### **Summary**

22. Any party wishing to summarise his or her views may do so, in the order in which they presented their case. This will usually be as follows:
  - Applicant
  - Responsible Authorities
  - Other Parties

### **The decision**

23. The Sub-Committee will retire to reach a decision in private, accompanied by the Council's representatives from legal and members services.
24. Members of the Sub-Committee return. Any legal advice given in the absence of the parties will be repeated in public and all parties given an opportunity to respond before a decision is announced.

25. The Chairman to announce the Sub-Committee's decision if one has been made. This can include giving reasons (if finalised). If the Sub-Committee is minded to grant with the addition of conditions they may give the generals of the condition and the intention of them. Specific wording in line with the Sub-Committees direction may then be delegated to the Licensing Officer to prepare and send out in the decision notice.
26. The Council's legal officer will then outline the rights of appeal.
27. The decision and rights of appeal will be confirmed in writing by the licensing officer.

## **General guidance to attendees**

### **RIGHTS OF A PARTY**

As a party to the hearing, you are entitled to:

- Attend the hearing
- Be assisted or represented at the hearing by another person, whether or not that person is legally qualified
- Give further information in support of your application or representation in circumstances where the Licensing Authority has given you notice that clarification on a point is required
- Question any other party if given permission to do so by the Licensing Authority
- Address the Licensing Authority

### **FAILURE TO ATTEND THE HEARING**

- If you or your representative are unable to attend the hearing, the hearing may proceed in your absence (in which case the Licensing Authority will consider the application, representation or notice made by you)
- Alternatively, the Licensing Authority may, where it is in the public interest, adjourn the hearing to another date and notify all parties

### **HEARING PROCEDURE**

- The procedure to be followed at the hearing is contained in the document 'Protocol and Procedure for Licensing Sub-Committee Hearings'.

### **ADDITIONAL INFORMATION**

#### **Documents**

- You may produce documents or other information in support of your application, representation or notice (as applicable) either before the hearing, or with the consent of all the other parties, at the hearing
- In considering the representations or notice made by you, the Licensing Authority may take into account any documents produced in accordance with this provision.

### Submissions

- You must confine your submission at the hearing to the representations you have made within the statutory prescribed period. You may not raise new representations at the hearing.

### Time

- There is no set time limit for verbal submissions at the hearing. The Chairman or Councils legal advisor may move the discussion on if you begin to repeat yourself or introduce points that are not relevant.
- Where a number of parties attending a hearing wish to make the same or similar points, the Chairman may invite parties to appoint a spokesperson (if they have not done so already). You will then be entitled to add anything you consider the spokesperson has omitted.

### Disruptive behaviour

- Any person attending the hearing who is deemed by the Licensing Authority to be behaving in a disruptive manner will be required to leave the hearing.

### **DETERMINATION AND NOTIFICATION OF DECISION**

- The Licensing Authority will try to make its decision on the same day as the hearing whenever possible
- The Licensing Authority will notify each party in writing of its determination and the rights of appeal

### **ADDITIONAL INFORMATION**

Should you require any further information about the hearing process please contact the Licensing Authority on 01884 255255