

SOMERSET COUNCIL

Licensing Sub-Committee

Hearing Procedure

Procedure at Hearings before the Licensing Sub-Committee in relation to matters mainly under the Licensing Act 2003 as amended ("The 2003 Act") **except** Interim Hearings (Summary Review of Premises Licence) conducted pursuant to Section 53B of the Licensing Act 2003, as amended (Separate Procedure).

Hearings for Gambling Premises are dealt with under the Gambling Act 2005 as amended.

ADMINISTRATION IN RELATION TO A HEARING

1. Prior written notice of the Hearing will have been given to the interested/relevant Parties.
 - (a) Where a party has informed the Council that they will not be attending or represented, the Hearing may proceed in their absence.
 - (b) Where a party has not replied to the notice, does not attend and is not represented, the Sub-Committee may proceed with the Hearing in that party's absence or adjourn the Hearing if it is considered necessary in the public interest to do so.
 - (c) If a party has indicated they will attend but does not appear, that party must inform the Council of any delay, with reasons and in consideration the Sub-Committee may decide to proceed with the Hearing or adjourn to later that same day or another time. If a party is more than 15 minutes late and has not contacted the Council with details of any delay, the Sub-Committee can decide to proceed with the Hearing or adjourn to later that same day or to another time.

Appendix 4

If the Hearing is held in a party's absence, the Sub-Committee will consider the application, representation or notice made by that party.

2. The Hearing can be dispensed with if all parties give notice that they consider a Hearing unnecessary. If this is the case the application/notice will still be determined by the Sub-Committee in public, unless it is considered to be in the public interest that the determination should be in private, on the basis of advance papers provided, with the Licensing Officer introducing his/her report and answering any queries the Sub-Committee may have before it makes its' determination.
3. Representations can be withdrawn by prior notice up to 1 day before the Hearing or orally at the Hearing.
4. Hearings shall take place in public **except where** the Council considers that the public interest in excluding the public from all or part of the Hearing outweighs the public interest in it remaining public. The Council considers it to be in the public interest to exclude the press and public, including the parties, when the Sub-Committee is deliberating in order to reach its' decision. Where facilities permit, public hearings will be available to be viewed and participated in online using the Council's webcast service. Members of the public who wish to record, photograph, film and report on public hearings are asked to advise the Democratic Services Officers before the Hearing so that where possible all necessary practical arrangements can be made.
5. At the Hearing any party can be assisted or represented by any person whether or not that person is legally qualified.
6. The Hearing will be before the Licensing Sub-Committee which will be made up of three Members of the Council's Licensing and Regulatory Committee who will at the beginning of the Hearing agree and identify which of them is to act as the Chair for the Hearing. Each matter/application with dealt with individually and the three Members **must** be able to participate in relation to each application to be considered at the Hearing and remain until the application/notice is determined.
7. The Chair will address any issues relating to registerable interests under the Council's Member Code of Conduct at the Hearing after the introductions of persons in attendance have been made.

Appendix 4

8. Members of the Licensing Sub-Committee must consider beforehand if they need to declare any registerable interest in which case they will not be allowed to attend the Hearing. Members who have a Disclosable Pecuniary Interest will not be able to attend the Hearing either. Members should also consider beforehand if they have or would be considered to have predetermined the matter in which case, they should also distance themselves from determination of the matter and not attend the Hearing.
9. Members of the Licensing Sub-Committee will have received in advance (5 clear days) in relation to each application/notice to be considered, the Licensing Officer's Report and associated papers and will come to the Hearing having read those papers.
10. Account can be taken of documentary or other information produced by a party in support of their application, representation or notice (as applicable) either 1 working day before the Hearing or, with the consent of all other parties, at the Hearing, in which case sufficient copies are required to be provided for all relevant parties. Any party wishing to call another person (other than the person representing them) to make oral representations, must provide details of this to the Council within the time stated in the Notice of Hearing which the Council will serve on the Parties. At the beginning of the Hearing the Sub-Committee will consider any such requests and confirm whether permission is granted for that person to speak.
11. The Sub-Committee may disregard any information which is not considered relevant to the application/representation/notice and the promotion of the licensing objectives.
12. The purpose of the Hearing is to enable those with a right to appear to amplify their written application or representation and to contest the case of their opponents. It is also to assist the Sub-Committee to gather evidence and understand the relevant issues. The parties (including other persons on their behalf) will be allowed an equal reasonable period of time to address the Hearing and ask questions. The Chair may set such maximum period of time in the interests of the progress of the Hearing and in the public interest. Where representations made relate to the same or similar issues, a spokesperson should be appointed where possible to speak on behalf of any person who has made a written representation.

Appendix 4

13. The parties can ask questions of each other in accordance with the procedure below. The Chair can stop a party asking questions if they feel the questions are unnecessary. Parties are expected to treat other parties with respect and any form of harassment or excessive questioning will not be tolerated. In such cases the Chair will ask the party to discontinue that type of questioning. The Chair can require any person (including any of the parties) who is disrupting the proceedings to leave the Hearing.
14. The Decision of the Licensing Sub-Committee will be made after the close of the Hearing for that matter and confirmed in writing to the Applicant and all parties who submitted relevant representations together with details of the right to appeal, within the time limits set out in the legislation and regulations. The date of formal notification for the purpose of any appeal against the Licensing Sub-Committee's decision will either be the date of the letter or electronic communication from the Council enclosing the Decision Notice and confirming the rights of appeal and the timescales involved, is deemed to have been served on the parties.
15. The Sub-Committee may depart from this procedure (as varied/amended from time to time based on changes to law and practice) if it considers it necessary and/or equitable to do so.

AT THE HEARING

1. The Chair will open the Hearing and start the introduction of the Sub-Committee and Officers and ask each party to introduce themselves. The Chair will confirm that if a party is not present the representation/application will have been read and will be considered in reaching the decision.
2. The Chair will address any registerable interest arising under the Code of Conduct.
3. The Chair will consider any submitted requests from a party for permission for another person to appear at the Hearing. If necessary, the Sub-Committee will retire to deliberate before making a decision.
4. The Chair will confirm that the Hearing will take the form of a round-the-table discussion led by the Sub-Committee in accordance with the procedure. If all parties present confirm that they have seen and understood the procedure to be followed at the Hearing and agree that they are ready to proceed then the Hearing

shall commence as set out in accordance with paragraph 9 and subsequent paragraphs below.

5. The Chair will remind everyone that the purpose of the Hearing should be borne in mind at all times i.e.
 - to enable those with a right to appear to advance their point of view and concerns and to test the case of their opponents; and
 - to assist the Sub-Committee to gather evidence and to understand the relevant issues.
6. The Chair will confirm what advance papers have been received and that these have been read and therefore there is no need to repeat these matters.
7. The Chair will make clear that the parties should only address to Sub-Committee in relation to matters previously raised/submitted. Late evidence to be submitted at the Hearing will only be considered by the Licensing Sub-Committee with the consent of all parties present.
8. The Chair will then outline the procedure to be followed by reading out points 9-15 below and ask all parties present if they have seen and understood the procedure and are ready to proceed with the Hearing.
9. The Chair will ask the Applicant whether they wish to make any amendments to their application with a view to addressing any issues raised by the representations.
10. Order of Oral Presentation
 - a. The Licensing Officer will present their report outlining the details of the application/notice and representations received.
 - b. Any party may question the Licensing Officer.
 - c. The Members may question the Licensing Officer.
 - d. The Responsible Authorities will present their case and call their witnesses*.
 - e. Any other party may question the Responsible Authorities and their witnesses.
 - f. The Members may question the Responsible Authorities and their witnesses.
 - g. Each Interested Party will present their case in turn and call their witnesses*.

Appendix 4

- h. Any other party may question the Interested Party.
- i. The Members may question the Interested Parties.
- j. The Applicant/Licence Holder will present their case and call their witnesses*.
- k. The other parties may question the Applicant/Licence Holder and their witnesses.
- l. The Licensing Officer may question the Applicant/Licence Holder and their witnesses.
- m. The Members may question the Applicant/Licence Holder and their witnesses.

** If permission has been given to do so*

- 11. Before moving on to the next party, the Chair will check there are no further points the current party wishes to make or any further questions that need to be put to that party.
- 12. On a without prejudice basis, the Licensing Officer will present the schedule of proposed non-mandatory Conditions to be imposed on any Licence, if granted as set out in their Report. Each party will be asked to address/give their views on those proposed conditions and suggest any other appropriate conditions to assist the Sub-Committee. If possible, an agreed schedule of conditions will result. However, it will remain for the Sub-Committee to determine what conditions will apply should the application be successful.
- 13. Each party will be invited to make closing submissions in the following order –
 - a. Licensing Officer
 - b. Responsible Authorities
 - c. Interested Parties
 - d. The Applicant
- 14. The Chair will then close the Hearing and the Sub-Committee will retire together with the Committee Clerk and the Sub-Committee Legal Advisor for the matter to be determined.
- 15. The Sub-Committee will come to a decision which will be sent to the Applicant and all other parties who submitted relevant representations within the time limit set out in the Regulations together with details of the right of appeal.

NOTE:

IN PRODUCING THIS PROCEDURE THE FOLLOWING HAS BEEN CONSIDERED: -

- The Licensing Act 2003 *as amended* and *Explanatory Notes*
- *National Guidance*
- *The Licensing Act 2003 (Hearings) Regulations 2005, as amended*
- *The Local Government Act 1972*