

LICENSING ACT 2003 - HEARING PROTOCOL

The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)

This Protocol sets out the arrangements for how Three Rivers Licensing Authority will implement the above Regulations made under the Licensing Act 2003. It deals with the Hearing itself, the determination by the Licensing Sub-Committee (hereafter called the Sub-Committee) and action following the Hearing.

This Protocol is an interpretation of the Regulations, not a restatement of them.

This Protocol is subject to any changes that may be made to the Regulations.

For Data Protection purposes personal information (e.g. names and house numbers) will be withheld from public circulation or, if the information is requested by the Sub-Committee or interested parties it will only be circulated with the prior permission of those making representations.

Site Visits

A site visit should generally take place where the Licensing Sub-Committee decide it is essential for their consideration of the application bearing in mind the duty to promote the four licensing objectives.

The site visit will either take place after initial consideration by the Licensing Sub-Committee or, in exceptional circumstances, in advance of such consideration, where the need for a site visit is recognised at an early stage. In these circumstances, the decision as to whether to hold a site visit or not will be made by the Head of Development Management and Environmental Health and the Chair of the Licensing Committee.

A record of the decision for a site visit will be recorded on the reasons for an adjournment and on the Decision Notice. Details of the visit will be kept on the premises file.

Only Members of the Licensing Sub-Committee will be invited to attend the site visit. It will be necessary for an officer to attend such meetings.

The Hearing (Regulation 14)

The presumption is that all Hearings will take place in public and they may be tape recorded with the agreement of the parties.

However the Sub-Committee may exclude the public from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

Representations & Supporting Information (Regulations 16 - 19)

At the hearing a party may:-

- in response to a point on which the Committee has requested clarity, give further information in support of their application, representation or notice, as applicable.
- If given permission by the Sub-Committee question any other party; and
- Address the Sub-Committee.

Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.

In considering any representation or notice made by any party, the Sub-Committee may take into account documentary or other information produced by a party in support of their application representation or notice either before the hearing or with consent of all parties, at the hearing.

The Sub-Committee shall disregard any information given by a party or any person appearing in support of a party which is not relevant to-

- Their application, representation or notice (as applicable) or in the case of another person the application, representation or notice of the party requesting their appearance.
- The promotion of the licensing objectives.

Failure of Parties to attend hearing (Regulation 20)

If a party has informed the Committee that he does not intend to attend the hearing or be represented at the hearing, the hearing may proceed in their absence.

However, if a party who has indicated attendance, fails to attend, the Sub – Committee may-

- Where it is considered in the public interest, adjourn the hearing to another date, or
- Hold the hearing in the party's absence

Where the hearing is adjourned to another date, all parties concerned must be informed of the new date forthwith.

Procedure at hearing (Regulations 21 – 25)

At the beginning of the hearing the Sub-Committee shall explain to the parties the procedure it proposes to follow.

Consider any request made by a party for permission for another person to appear at the hearing. This should have been made by return of notice of hearing by the party and such permission should not unreasonably be withheld.

The hearing should take the form of a discussion, led by the Sub-Committee Chair and cross examination should not be permitted unless it is considered necessary by the Sub-Committee, in considering the application, representation or notice.

The Sub-Committee must allow the parties equal amounts of time in which to exercise their rights to address the Sub-Committee.

Any person who, in the opinion of the Sub-Committee, is behaving in a disruptive manner may be required to leave the hearing. A party ejected from a hearing can be barred from returning to the hearing or permitted to return on conditions set by the Sub-Committee. However such person can before the end of the hearing submit to the Sub-Committee, in writing, any information they would have been entitled to give orally, had they not been required to leave.

The procedure set out below will be followed at the Hearing:-

- Welcome and introduction by the Chair (see **Opening Remarks**)
- The Licensing Officer (LO) will outline the application and bring to your attention any further relevant information.
- The applicant will address the Sub-Committee – they will then be questioned by members of the Sub-Committee.
- All those who have registered to speak will then be requested to address the Sub Committee from the table.
- They will then be questioned by members of the Sub-Committee, and by the applicant.
- They may then ask any questions of the applicant that have not been answered in the applicants address or Member questioning.

- All parties will be asked if anyone has anything further to add.
- The representatives will be asked to summarise their case, preferably one person representing all the objectors, but allowing for all representations to be summarised.
- The applicant will then be given the opportunity to summarise their case.
- The Sub-Committee will then retire to make its decision. You may wait to hear the decision or alternatively you will be notified of the decision within 5 working days.

Opening Remarks

In his/her introduction the Chair will: -

- Introduce the Members of the Sub-Committee and officers, and ask for the persons attending the Hearing to introduce themselves.
- State that consideration of the application will be against the 4 Licensing Objectives which are:–
 - **The prevention of crime and disorder**
 - **Public safety**
 - **The prevention of public nuisance**
 - **The protection of children from harm.**
- Introduce the application to be considered and confirm that due regard shall be had to the Three Rivers Statement of Licensing Policy and The National Guidance. The reasons for any departure from these guidance documents will be recorded.
- Refer to the papers that have been circulated, specifically drawing attention to documents circulated by a party, who has indicated that they will not attend the Hearing.
- Advise the parties that any *additional evidence, not previously circulated to all parties, but referring to the licensing objective(s) on which the representations have been made, can be admitted.

**Evidence relating to a licensing objective(s), not previously notified, can only be admitted with the consent of all the parties.*
- Inform the parties that the Sub-Committee will disregard any information given or evidence produced by a party or witness that is not relevant to the application or the promotion of the licensing objectives.
- Outline the procedure to be followed at the Hearing (as detailed above) stating that equal time will be allowed for the applicant(s) and objectors to address the Sub-Committee.
- Where necessary, seek the agreement of the parties to the proceedings being tape-recorded, to assist in the production of a transcript of the Hearing.
- Ensure that a list circulated detailing the names of the applicant(s), objectors, other parties and any witnesses they propose to call, has been completed by all parties.

During the course of the Hearing, the Chair, under the guidance of the Legal Adviser, will ensure that the Hearing is conducted fairly, that only relevant matters are considered and that irrelevant matters are disregarded.

Members of the Sub-Committee shall direct questions to the concerned parties or officers only during the Hearing. They will not seek to question the parties or officers either before or after the Hearing.

If any party fails to attend the Hearing and no request for adjournment has been received, the Sub-Committee shall proceed in accordance with Regulation 20 above.

Members of the Sub-Committee will sit for the duration of the Hearing, even if the Hearing has to be adjourned and reconvened as part of the due process.

Determination of Application by the Sub-Committee (Regulations 26)

For a hearing with regards to a counter notice being served by Police in respect of a Temporary Event Notice, or the review of a premises licence following the issue of a closure order by Police, the Sub-Committee must make its determination at the end of the hearing.

In all other cases the Sub-Committee will endeavour to make all determinations immediately after the Hearing unless for whatever circumstances more time is needed, in which case the determination shall be made within 5 working days starting from the day of the hearing.

The Chair will inform the parties before retiring that they may wait to hear the decision or that alternatively, they will be notified of the decision as soon as possible.

The Sub-Committee shall retire with the Democratic Services Manager (DSM) to a separate room in order to deliberate. The role of the DSM will be to record the decision and will play no part in advising the Sub-Committee. Legal advice may be obtained from the Solicitor servicing the Hearing. All questions to The LO must be made in the public part of the Hearing. Should the Sub-Committee require a point of clarification from the LO (during their deliberations), full reasons shall be given, and a full record made of the matter and the response.

In making their determinations the Committee will have regard to the 4 Licensing Objectives. In addition the Sub-Committee will have regard to the following:-

- Statutory guidelines
- The Statement of Licensing Policy
- The principles of natural justice
- Officer advice given at the Hearing.

Decision Options (S.18 Licensing Act 2003)

The Sub-Committee may:-

- grant the application, or
- grant the application subject to:-
 1. Conditions, consistent with Operating Schedule, as considered necessary for the promotion of the Licensing Objectives.
 2. Exclusion of licensable activities from the licence.
 3. Refusal to specify a person as Premises Supervisor Approval of different part of the premises for different activities, or
- Refuse the application.

After the Hearing (Regulation 28 & 29)

Following the Hearing and/or determination, all parties will be notified in writing of the decision forthwith. The letter will contain:-

- The decision including any conditions.
- The reasons for reaching the decision.
- The rights of appeal

Note – any irregularity and/or clerical error will not render the decision void and the Licensing Authority will seek to make relevant corrections as quickly as possible.

Record of Proceedings (Regulation 30),

The DSM will produce a minute of the Hearing recording the decision and the reasons for reaching it. A record of proceedings will be kept in an intelligible form for six years from the date of the decision or disposal of an appeal. Where a verbatim record is kept, this would be disclosable under the Freedom of Information Act 2000.