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## LICENSING COMMITTEE PROCEDURE RULES

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### 1.0 GENERAL

- 1.1 These Procedure Rules are subject to the provisions of the *Licensing Act 2003 (Hearings) Regulations 2005* as amended (the “Regulations”). Where appropriate, the provisions of the Regulations have been incorporated into these rules.
- 1.2 Adur District Council is the 'licensing authority' for the purposes of the Licensing Act 2003 within the District of Adur.

### 2.0 COMPOSITION OF THE LICENSING COMMITTEE

- 2.1 The Composition of the Licensing Committee and its Sub-Committee are set out in Part 3 of the Constitution.
- 2.2 Licensing Committee Members are bound by the Council's Rules of Procedure and the Members' Code of Conduct. Members must not predetermine or show bias in any matter and must declare any interests at the start of every committee meeting.
- 2.3 The Licensing Committee comprises Members who have been trained in the preceding two years and do not have interests in licensing matters which are likely to debar them from consideration of, or voting on, any particular issue.
- 2.4 Members are selected for Sub-Committees subject to availability in an alphabetical order and in consultation with the Chairperson of the Licensing Committee. Sub-Committees are chaired by the Chairperson or Vice-Chairperson of the Committee. In the absence of the Chairperson or Vice-Chairperson, a Chairperson will be selected from amongst the Sub-Committee Members by simple majority vote.

### **3.0 NOTICE OF HEARING**

- 3.1 The Council shall notify the parties involved of the date, time and place at which the hearing is to be held (the 'Notice of Hearing') in accordance with the provisions of the Regulations.
- 3.2 The Notice of Hearing shall be accompanied by information regarding the following: -
- (a) the rights of a party provided for in paragraphs 4.1 and 8.5 below;
  - (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;
  - (d) any particular points on which the Licensing Committee will want clarification from a party at the hearing.

### **4.0 RIGHTS OF ATTENDANCE, ASSISTANCE AND REPRESENTATION**

- 4.1 Subject to paragraphs 6.2 and 6.4 below, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- 4.2 For the avoidance of doubt a party may be assisted or represented by their Ward Councillor. Any Councillor undertaking such a role would take no part in the determination of the matter before the Committee.
- 4.3 Upon receipt of the Notice of Hearing and within the period of time prescribed by the Regulations, and specified in the Notice of Hearing, each party shall advise the Council in writing:-
- (a) whether he/she intends to attend and/or be represented at the hearing, giving the name and contact details of the representative if applicable;
  - (b) whether he/she considers a hearing to be unnecessary.
- 4.4 In a case where a party wishes any person (other than the person he/she intends to represent him/her at the hearing) to appear at the hearing, they shall submit a written request for permission for such other person to attend at the hearing, giving their name and a brief description of the point or points on which they may be able to assist the Licensing Committee, in relation to the application.

4.5 A party who wishes to withdraw any representations they have made may do so:

- (a) by giving notice to the Licensing Section; or
- (b) orally at the hearing.

## **5.0 RIGHT TO DISPENSE WITH A HEARING IF ALL PARTIES AGREE**

5.1 This section does not apply to Review Hearings.

5.2 Subject to paragraph 5.1 above, the Licensing Committee may dispense with holding a hearing if all persons (as required by the Act) agree that such a hearing is unnecessary, other than the Licensing Authority itself.

5.3 If the Licensing Authority agrees that a hearing is unnecessary, it shall forthwith give notice to the parties that the hearing has been dispensed with.

## **6.0 HEARING TO BE HELD IN PUBLIC**

6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.

6.2 The Licensing Committee may exclude the public from all or part of a 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.

6.3 For the purposes of paragraph 6.2 a party and any person assisting or representing a party, may be treated as a member of the public.

6.4 The Licensing 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 Licensing Committee may specify;

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

## **7.0 REPORT**

- 7.1 A report will be put before the Licensing Committee, prepared by the Director for Communities, and all parties to the hearing will be sent a copy of the report in advance of the hearing.
- 7.2 The report will also be published on the Councils' website, in accordance with the Council's Access to Information Procedure Rules.

## **8.0 PROCEDURE AT THE HEARING**

- 8.1 The Licensing Committee will seek to focus the hearing on the steps needed to promote the particular Licensing Objective(s) which has given rise to the specific representation(s) and will avoid straying into undisputed areas.
- 8.2 The order of business shall be at the discretion of the Chairperson of the Licensing Committee, but will normally proceed in accordance with procedures put before the meeting and sent to the applicant prior to the meeting. The procedure will be explained at commencement of the hearing.
- 8.3 Each Party will be given a maximum of 20 minutes to make their representations; all comments should be focused, relevant and avoid repetition.
- 8.4 Cross examination shall not be permitted unless the Licensing Committee considers that cross examination is necessary for it to consider the representations, application or notice as the case may require.
- 8.5 Where there is more than one representation raising the same or similar grounds, the Licensing Committee may request that only one party addresses them on behalf of the parties who have made the representations in question.
- 8.6 In considering any representations made by a party the Licensing Committee may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
- 8.7 The Licensing Committee shall disregard any information given or evidence produced by a party which is not relevant to:
- (a) their application, representations or notice (as applicable); and
  - (b) the promotion of the Licensing Objectives or, in relation to a

hearing to consider a notice given by a Chief Officer of Police, the crime prevention objective.

- 8.8 At the Hearing, a party may choose to amplify and to rely upon written representations or documents which form part of the published papers. Parties may not produce or rely upon further representations or documents without the permission of the Chairperson of the Licensing Committee. The Licensing Committee will not normally allow representations or documents which are produced for the first time at the hearing or at short notice.
- 8.9 Hearsay evidence may be admitted before the Licensing Committee, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.

## **9.0 ROLE OF THE LEGAL ADVISOR**

- 9.1 The Licensing Committee may seek advice or clarification of any procedural, technical or legal matter from the Legal Advisor at any time during the course of the hearing.
- 9.2 The Legal Advisor will provide the Licensing Committee with any advice it requires properly to perform its functions, whether or not the Committee requested that advice, on:
- (a) questions of law;
  - (b) questions of mixed fact and law;
  - (c) matters of practice and procedure;
  - (d) the range of options available to the Committee;
  - (e) any relevant decisions of higher Courts;
  - (f) relevant national guidance or policy;
  - (g) other issues relevant to the matter before the Sub-Committee;
  - (h) the appropriate decision-making structure to be applied in any given case.
- 9.3 The Legal Advisor will assist the Licensing Committee, where appropriate, as to the formulation of reasons and the recording of those reasons.
- 9.4 The Legal Advisor will play no part in making findings of fact but may assist the Licensing Committee by reminding them of the evidence taken from his/her own, or the Committee Clerk's, notes.

- 9.5 The Legal Advisor may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case.
- 9.6 The Legal Advisor is under a duty to ensure that every case is conducted fairly.
- 9.7 When advising the Licensing Committee the Legal Advisor should:
- (a) ensure that he/she is aware of the relevant facts;
  - (b) invite representations from the parties on the advice;
  - (c) provide the parties with the information necessary to enable them to make such representations.
- 9.8 The Legal Advisor may assist Members during the course of their deliberations, either when asked to do so, or if he/she realises there is a point of law on which they may need assistance but on which he/ she omitted to advise them in open session.

## **10.0 ROLE OF THE DEMOCRATIC SERVICES OFFICER**

- 10.1 The role of the Democratic Services Officer shall be to undertake the procedural arrangements to hold the meeting according to the Council's Procedure Rules, make a record of the proceedings, summarise and record decisions and to provide help and assistance to members of the public attending hearings.
- 10.2 The Democratic Services Officer will not ordinarily remain with the Members of the Licensing Committee when they retire to make their deliberations but may do so at the request of the Licensing Committee Chairperson or the Legal Advisor.

## **11.0 DETERMINATION OF APPLICATIONS**

- 11.1 The Committee will give appropriate weight to:
- (a) the representations (including supporting information) presented by all the parties;
  - (b) national guidance;
  - (c) the Adur District Council Licensing Policy;
  - (d) the steps that are necessary to promote the Licensing Objectives.

- 11.2 The Licensing Committee shall normally make its determination in any case at the conclusion of the hearing, or within 5 working days thereafter.
- 11.3 Where a hearing has been dispensed with in accordance with paragraph 5 of these Procedure Rules, the Licensing Committee will make its determination within the period of ten working days beginning with the day Notice is given to the parties.
- 11.4 The determination shall be sent to all parties within 5 working days of a decision being made by the Committee.

## **12.0 FAILURE OF PARTIES TO ATTEND THE HEARING**

- 12.1 If a party has informed the Licensing Authority that he/she does not intend to attend, nor be represented at the hearing, the hearing may proceed in his/her absence.
- 12.2 If a party who has not so indicated fails to attend or be represented at a hearing the Licensing Committee may:
- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date; or
  - (b) hold the hearing in the party's absence.
- 12.3 Where the Licensing Committee holds the hearing in the absence of a party, the Committee shall consider at the hearing of the application, representations or notice made by that party.

## **13.0 ADJOURNMENTS**

- 13.1 Subject to the provisions of the Regulations, the Licensing Committee may:
- (a) adjourn the hearing to a specified date;
  - (b) arrange for a hearing to be held on specified additional dates

where it considers it necessary for its consideration of any representations or notice made by a party.

- 13.2 Where the Licensing Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

- 13.3 Similarly, when the Licensing Committee arranges for the hearing to be held on a specified additional date it shall notify the parties of the additional date, time and place at which the hearing is to be held.

#### **14.0 RECORD OF PROCEEDINGS**

- 14.1 A record of the hearing ('the Minutes') shall be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.
- 14.2 An audio recording will be made of the open part of the hearing and will be placed on the Council's website.

#### **15.0 WAIVER OF PROCEDURE RULES**

- 15.1 Except where prescribed by the Regulations, the Chairperson of the Licensing Committee may in any particular case dispense with or modify these Rules.
- 15.2 In particular, the Chairperson may extend a time limit provided for in the Regulations for a specified period where it considers this to be necessary and/or in the public interest.
- 15.3 Where the Chairperson has extended a time limit it shall forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

#### **16.0 QUALIFIED PRIVILEGE**

- 16.1 Statements made in Licensing Committee meetings are subject to the general principles of the law of defamation. However, the Licensing Committee's proceedings are regarded in law as a 'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in the Committee's proceedings (quasi-judicial in nature) providing the following criteria are met:
- (a) any opinions expressed are honestly held;
  - (b) opinions/statements are based on the facts of the matter;
  - (c) opinions/statements are on a matter of public interest;
  - (d) a clear distinction is made between what is fact and what is opinion;
  - (e) there is no malice.



## **17.0 HUMAN RIGHTS**

17.1 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a Local Authority to act in a way which is incompatible with a Convention right. The Licensing Committee will have regard to the Human Rights Act when exercising its licensing functions, and in particular to the following provisions:

Article 1: Every person is entitled to the peaceful enjoyment of his/her possessions;

Article 6: In the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;

Article 8: Everyone has the right to respect for his/her home and private and family life.

## **18.0 EQUALITIES**

18.1 All decisions will be made in accordance with the Council's equalities duty pursuant to the Equalities Act 2010, and other legislation.

## **19.0 RIGHT OF APPEAL**

### **19.1 The Applicant**

The Applicant has a right of appeal against a decision, to the Magistrates' Court, within 21 days, beginning with the day on which the applicant was notified of the decision of the Licensing Authority:

- (a) to reject the Application for a premises licence; or
- (b) to impose conditions on the premises licence; or
- (c) to exclude a licensable activity; or
- (d) to refuse to specify a person as a Premises Supervisor.

## **19.2 Person making relevant representations and Chief Officer of Police**

A person who made relevant representations and the Chief Officer of Police has a right of appeal to the Magistrates' Court, against a decision, within 21 days, beginning with the day on which the person was notified of the decision of the Licensing Authority:

- (a) to grant a premises licence; or
- (b) in relation to the conditions imposed; or
- (c) in relation to the licensable activities authorised; or
- (d) the person specified as Premises Supervisor.

19.3 The Chairperson of the Licensing Committee, or in their absence the Vice-Chairperson of the Committee, will be expected to attend the appeal at the Magistrates Court.