

## SOUTH OXFORDSHIRE DISTRICT COUNCIL

### LICENSING ACT 2003

#### LICENSING ACTS PANEL – PROTOCOL AND PROCEDURE

##### 1.0 **Introduction**

- 1.1 This protocol and procedure has been adopted by the council's Licensing Acts Committee in order to ensure that all meetings are carried out in accordance with the law and all parties receive a fair hearing.
- 1.2 For the purposes of this protocol and procedure the following terms have the meanings assigned to them:-
- (a) "the Act" means the Licensing Act 2003.
  - (b) "the parties" means all persons to whom a notice of hearing has been given.
  - (c) "the regulations" means the Licensing Act 2003 (Hearings) Regulations 2005 as amended.
  - (d) "exempt information" means those categories of information set out in Schedule 12A to the Local Government Act 1972 as amended.
- 1.3 This document has been prepared having regard to the statutory provisions contained in the Act, the Regulations, the Guidance issued by the Secretary of State for Culture, Media and Sport (latest version issued June 2013) and the LACORS Guidance for Local Authorities dated March 2005.

##### 2.0 **The licensing objectives and statement of policy**

- 2.1 The Act sets out four licensing objectives which are fundamental to the decision making of the panel. The licensing objectives are follows:-
- (a) The prevention of crime and disorder.
  - (b) Public safety.
  - (c) The prevention of public nuisance.
  - (d) The protection of children from harm.
- 2.2 Any application or licensing matter which comes before a panel will be treated on its own merits having regard to the following issues:-
- (a) The promotion of the four licensing objectives.
  - (b) The council's statement of licensing policy.
  - (c) The most recent guidance issued by the Secretary of State for Culture, Media and Sport.
  - (d) The merits of the application and the representations received from the parties.

**3.0 Before the hearing**

- 3.1 The council has a duty to hold a hearing within a timescale specified in the regulations. In most cases the timescale is 20 working days calculated from the end of the relevant representation period. However, there are other cases where the timescale is shorter ranging from between 5 and 10 working days depending on the nature of the case in question. The council will ensure adequate notice is given to the parties involved.
- 3.2 The council will send all parties a notice of hearing giving details of the date, time and venue for the panel meeting. This notice will normally be sent giving at least 10 working days' notice of the hearing, although in some cases a shorter notice period is required.
- 3.3 The council will use its reasonable endeavours to email the notice to any of the parties who consent to that approach.
- 3.4 The notice of hearing will normally be accompanied by an agenda, together with a report from the licensing officer which shall set out the details of the case.
- 3.5 The sub-committee will take into account the party response forms when considering the procedure to be adopted at the hearing.

**4.0 The panel**

- 4.1 The membership of the panel has been determined as set out in the decision of the Licensing Acts Committee.
- 4.2 Members will only be permitted to take part in determining a case if they have been present throughout the whole hearing and have no conflict of interest in the matter.
- 4.3 The quorum is 3 members who shall determine any issue by a simple majority of votes. If the votes are tied the chairman of the panel will have a second or casting vote.

**5.0 Hearing - general principles**

- 5.1 The parties have the right to attend the hearing and to be assisted or represented by any person (whether legally qualified or not) such as a relative, friend, their solicitor or counsel.
- 5.2 The parties will be entitled to address the members of the panel at the hearing and question any other party if given permission to do so by the panel. They will also be able to provide further information in support of their case on any points upon which the council has sought further clarification or explanation.
- 5.3 Each party will have a maximum of 20 minutes to make their representations and present their evidence unless there are some exceptional reasons to justify a longer period.
- 5.4 There is a presumption that any hearing will take place in public so that the sub-committee's decisions can be made in an accountable and transparent way, but on occasions it may be necessary to exclude the public and members of the press if the sub-committee considers that it is in the public interest to do so. Members will consider

that matter having regard to any exempt information which may need to be disclosed by any of the parties during the hearing.

- 5.5 If any party does not attend or are not represented at the hearing then the panel may take the following action:
- (a) When a party informs the council that they do not intend to attend or be represented at the hearing the panel will proceed in their absence unless it is in the public interest to adjourn the hearing to a new date. For example, if the council is informed a person cannot attend due to unforeseen personal circumstances such as illness, then the panel may adjourn the hearing to a new date.
  - (b) If any party fails to inform the council whether they intend to attend or be represented at a hearing then it is likely the panel will proceed in their absence unless there are exceptional circumstances making it necessary in the public interest to adjourn the hearing to a new date.
  - (c) Where the hearing proceeds in the absence of any party the panel will consider their representations or documentation contained in the list of documents.
- 5.6 If for any reason the hearing is adjourned to a new date the council will notify all parties of the new date, time and place of the adjourned hearing.
- 5.7 Late representations and evidence will only be considered by the panel with the agreement of all the parties present at the hearing.
- 5.8 The panel has the right to exclude any parties disrupting the hearing but will allow any excluded party to submit any information in writing which they would have given to the panel had they not been required to leave.
- 5.9 The panel will be assisted and advised by one of the council's solicitors or legal advisers and a democratic services officer will also be present to assist the members in providing a record of proceedings.
- 5.10 The licensing officer from the council will also be at the hearing to present a report and to offer advice and expertise based upon their professional knowledge of the application but without making any recommendations.

6.0 **Hearing procedure**

- 6.1 Election of chair - the panel will elect a chairman for the hearing (if not previously appointed) in the presence of the parties.
- 6.2 Welcome and introductions - the chairman will open the meeting, introducing the members of the panel and officers to the parties and then invite the parties or their respective representatives to introduce themselves.
- 6.3 Outlining the procedure – the chairman will then outline the nature of the application, the decisions to be taken and the procedure to be followed. If there are any preliminary issues made in any of the party response forms, those issues will be addressed and determined at this stage.
- 6.4 Licensing officer's report – the hearing will begin with a presentation by the council's licensing officer who will outline the application, any relevant representations received and deal with all policy and statutory guidance matters by reference to their report. members of the panel may then ask any relevant questions of the licensing officer.
- 6.5 The parties' cases – the chairman will invite the respective parties to present their cases in the following order:

- (a) the applicant
- (b) each responsible authority
- (c) each interested party
- (d) the licence holder if not the applicant

and on each occasion the cases will be dealt with in the following way:

- (a) the relevant party shall address the panel and present any witnesses within the time limit allowed by the panel
- (b) members can then ask relevant questions
- (c) the licensing officer may also ask relevant questions through the chairman of the panel
- (d) although there is no intention to allow parties to cross-examine others, they may ask relevant questions through the chairman.

- 6.6 Final submissions – each party will be given the opportunity by the chairman to summarise their respective cases if they wish for a maximum period of 5 minutes each. Final submission shall be made in the following order:

- (a) interested parties

- (b) each responsible authority
- (c) the applicant
- (d) the licence holder if not the applicant

6.7 Chairman's final comments – the chair will invite the parties to state they have had a fair opportunity to put their respective cases. The panel will deal with any issues arising prior to retiring to make their decision.

7.0 **After the hearing**

7.1 At the end of the hearing, the panel will retire or ask everyone apart from its legal adviser and democratic services officer to leave the room while the panel considers its decision. The panel may call upon its solicitor or legal adviser, and the democratic services officer, if it needs legal or procedural advice.

7.2 If the panel wishes to clarify any point which arose during the hearing, it will recall all parties even if only one is asked for further explanation.

7.3 When the panel has made its decision, members will return to the room or invite the parties back into the room and the chairman will report the decision of the panel to those present.

7.4 The chairman will also inform them that a written decision notice explaining the reasons behind their decision will be sent to all parties.

8.0 **Record of proceedings**

8.1 The democratic services officer shall prepare a record of the panel's proceedings which shall be signed by the chairman of the panel.

8.2 The record of the proceedings shall be retained by the council for a period of at least 6 years from the date of determination or the disposal of any appeal.

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