

## 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 Home Office under section 182 of the Act (latest version issued April 2018) and the Council's Licencing Policy.

##### 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 under section 182 of the Act
  - (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 email the notice to any of the parties who have provided an email address for contact.
- 3.4 The notice of hearing will be sent out to relevant individuals and an agenda containing the report will be sent separately which shall set out the details of the case.

**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.

**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 Each party 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 the opportunity to make their representations and present their evidence. During the presentation of each case, each party category is allocated fifteen minutes to make their case. The time allocation can be altered at the chair's discretion according to the circumstances of each individual panel meeting.
- 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 agenda.
- 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 as soon as practicable.
- 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 chair 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 chair for the hearing (if not previously appointed) in the presence of the parties.
- 6.2 Welcome and introductions - the chair 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 chair 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 chair will invite the respective parties to present their cases in the following order:

- (a) the applicant
- (b) each responsible authority
- (c) any other person who has made a representation
- (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
- (b) members can then ask relevant questions
- (c) the licensing officer may also ask relevant questions
- (d) although there is no intention to allow parties to cross-examine others, they may ask relevant questions.

6.6 Final submissions/summary – each party will be given the opportunity by the chair to summarise their respective cases if they wish. Final submission shall be made in the following order:

- (a) any other person who has made a representation
- (b) each responsible authority
- (c) the applicant
- (d) the licence holder if not the applicant.

6.7 Chair'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 chair will report the decision of the panel to those present.

7.4 The chair 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 chair 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.

**9.0 Remote hearings**

9.1 Wherever possible, all hearings held under the Licensing Act 2003 will be streamed on the Council's YouTube channel, although this is subject to the same provision as above in respect of the exclusion of the public and press if the panel considers that it is in the public interest to do so.

9.2 Hearings may be held remotely, on a virtual platform such as Microsoft Teams. This may be appropriate for non-complex matters, or where a party is unwell and it is not possible for the hearing to be adjourned, and all parties are agreeable.

9.3 Where the hearing is entirely 'remote' (i.e. all parties attending remotely) the members of the panel shall ensure, wherever possible, that their video is working so that they can be seen by those watching the hearing.

9.4 Where the hearing is 'hybrid' (i.e. a mix of attendees in person and remote), the councillors, licensing officer, legal advisor and democratic services officer will attend the hearing in person.

9.5 The same procedure shall apply as detailed above, and those attending remotely shall have the same right to speak as anyone attending in person. This includes the right for the chair to exclude any person disrupting the hearing as detailed above.

9.6 For decision making at fully remote hearings, it will be normal practice for the councillors to deliberate in a separate 'room' on the virtual platform and persons shall reconvene for the decision as directed by the panel. If any of the parties is unable to reconvene, they will receive notification in writing of the decision within the timeframes set out in the regulations.

9.7 Where there are technical issues during the hearing which prevent the attendance or participation of any of the parties, the hearing will be adjourned until such issues are resolved. Where the application to be determined relates to an event close to the date of the hearing, it may be the case that an adjournment will not be possible, and in such circumstances it is recommended that all parties attend such hearings in person where they intend to speak.