

TITLE	Sub-Committee Procedure
FOR CONSIDERATION BY	Licensing and Appeals Committee 27 June 2018
WARD	Non-specific
DIRECTOR	Sean Murphy - Public Protection Manager

OUTCOME / BENEFITS TO THE COMMUNITY

The Council's Licensing Sub-Committee procedure has not been reviewed in some time. A clear, consistent procedure is necessary to ensure the principles of a fair hearing are followed to reduce the risk of successful challenges against decisions, and to ensure that hearings proceed in an efficient manner.

RECOMMENDATION

That the Committee approves the Information and Procedure document at Annex A

SUMMARY OF REPORT

This report sets out a draft revised sub-committee information and procedure document for hearings of matters under the Licensing Act 2003, for discussion and approval.

Background

The Council's Licensing Sub-Committee will determine any applications made under the Licensing Act 2003 where relevant representations have been received or objection notices in respect of standard temporary event notices, in line with the delegations laid out in the Council's Licensing Policy.

The document at Annex A has been created using content from the existing Bracknell Forest and Wokingham procedures. Once approved, it will be taken to the Licensing Committees in Bracknell Forest and West Berkshire to consider adoption.

The document seeks to outline the requirements for the hearing, the procedure for the hearing itself, the roles of those present and the general information for licensing members at hearings. The plan is to develop a separate procedure for taxi and street trader hearings along the same lines.

Analysis of Issues

A clear, consistent procedure is necessary to ensure the principles of a fair hearing are followed to reduce the risk of successful challenges against decisions, and to ensure that hearings proceed in an efficient manner.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	No impact	N/A	N/A
Next Financial Year (Year 2)	No impact	N/A	N/A
Following Financial Year (Year 3)	No impact	N/A	N/A

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications

There are no implications arising from the recommendation in this report.

List of Background Papers

None

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Date 12 June 2018	Version No. 1.2

INFORMATION AND THE PROCEDURE FOR HEARINGS OF THE LICENSING SUB-COMMITTEE (LICENSING ACT 2003)

The following document provides information and outlines the procedure taken for hearings of the Licensing Sub-Committee in respect of matters under the Licensing Act 2003.

1. REQUIREMENTS FOR THE HEARING

- 1.1 The applicant will normally be required to attend the meeting in person. They will be entitled to be represented by a solicitor or counsel or by any other individual provided that the name of any such person is given to Democratic Services two clear working days in advance of the hearing.
- 1.2 The Sub-Committee will be selected by Democratic Services, taking into account the following criteria:
 - a) Current Member of the Licensing and Appeals Committee
 - b) Any identified mandatory training on licensing matters completed
 - c) Availability for the chosen meeting time and date
 - d) Premises should not be within Member's ward
 - e) Applicant should not reside within Member's ward
 - f) No other relevant conflict of interest
 - g) Cross-party representation
- 1.3 Written notification of the intended proceedings will be given to the applicant not less than ten clear working days before the meeting. This notification will give details of the procedure to be followed at the hearing and shall advise applicants of their right to be represented. Included with the written notification shall be the Agenda for the meeting.
- 1.4 Any documents to be produced at the hearing by any party shall be sent so as to reach all other parties by no later than two clear working days before the hearing. A copy of these documents shall at the same time be given to Democratic Services to distribute to members of the Sub-Committee.
- 1.5 At the discretion of the Sub-Committee any or all of the requirements set out in paragraphs 1.3 to 1.4 above may be waived, provided that the Sub-Committee is satisfied that the interests of the applicant or any party to the hearing have not been prejudiced.
- 1.6 Financial costs incurred by either party in the hearing must be met in full by those parties and no awards for costs will be made to either party regardless of the outcome of the hearing.
- 1.7 The public will be allowed access, except if "Confidential Information" as defined by Section 100A of the Local Government Act 1972 is likely to be disclosed (in which case the public must be excluded) or, if "Exempt Information" falling within Schedule 12A of the Local Government Act 1972 is likely to be disclosed in which case the Sub-Committee may decide to exclude the public.

1.8 References to 'applicant' within this document also include the licence holder in relevant cases, such as premises licence review hearings.

2. ORDER OF THE HEARING

2.1 Firstly, the three members of the Sub-Committee shall elect a Chairman for the hearing.

2.2 The hearing shall then be conducted as follows:

- a) The Chairman will open the proceedings by stating the nature of the matter which is to be considered and will welcome the parties, introduce them and confirm the roles of those present.
- b) The Chairman will ask the Sub-Committee if they have any interests to declare. The Chairman will then ask the officers to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with.
- c) The Chairman shall outline the procedure and reaffirm that only information relevant to representations can be considered and that such information must be relevant to the Licensing Objectives, namely:
 - The Prevention of Crime and Disorder;
 - Public Safety;
 - The Prevention of Public Nuisance; and
 - The Protection of Children from Harm.

Chairman to confirm that all parties understand this.

- d) The applicant will be asked if there is any reason for the case to be adjourned. An adjournment will only normally be granted if unforeseeable circumstances can be demonstrated which would be prejudicial to a fair hearing if it was heard at that time.
- e) The Chairman shall first call upon the Licensing Team representative to put forward their case. They will introduce the report and confirm any developments following publication of the report as required.
- f) The Sub-Committee may ask the Licensing Team representative for clarification of any points.
- g) The applicant shall have an opportunity to put questions to the Licensing Team representative.
- h) The Chairman will then invite any Responsible Authorities or other persons who have made representations to speak. In order to facilitate effective hearings, other persons making similar representations will be asked to nominate a spokesman to present their representations. At the conclusion of a spokesman's representation, the Chairman will ask the other persons if they have any other points to raise.

- i) The Sub-Committee may ask the Responsible Authorities or other persons questions and points of clarification.
- j) The applicant shall have an opportunity to put questions to those who have made representations if permitted to do so by the Sub-Committee, or they may respond to the comments made when summing up their case.
- k) Questions by the Sub-Committee and, when permitted, by the applicant, will be directed to the nominated spokesman in the first instance.
- l) The Chairman will then invite the applicant or licence holder to make any representations.
- m) The Chairman, members of the Sub-Committee and the Licensing Team representative may ask the applicant questions and points of clarification.
- n) Any Responsible Authorities or other persons who have made representations shall have an opportunity to put questions to the applicant if permitted to do so by the Sub-Committee, or they may respond to the comments made when summing up their case.
- o) An opportunity shall be given to all parties present to sum up their case (but not to add any new facts), in the same order as above.
- p) After hearing the application and all representations, the Sub-Committee will ask any further questions of any party that it may have.
- q) All parties other than the Sub-Committee and support staff from Wokingham Borough Council's Legal and Democratic Services team shall be asked to leave the hearing. Officers present do not take part in the decision making but will provide legal and procedural advice and record the decision.

2.3 The Sub-Committee shall determine the application. The decision will be notified in writing within 5 working days to all parties after the Sub-Committee has reached its decision.

3. ROLES OF THOSE AT THE HEARING

3.1 The Licensing Team representative is present at the hearing to present the details of the application to be considered, including any case for refusal, suspension or revocation of licences. They are also present to challenge points put forward by the applicant.

3.2 Members of the Sub-Committee are present to consider and determine an application or to consider if a licence should be suspended or revoked. In doing so they will follow the above procedure.

3.3 The representative from Legal Services is present to provide legal and procedural advice to the members of the Sub-Committee and to assist in the clarification of any issues which might arise.

3.4 The representative from Democratic Services is present to provide procedural advice to members of the Sub-Committee and to record the decision.

4. BACKGROUND

4.1 The Council's Licensing Sub-Committee will determine any applications where relevant representations have been received or objection notices in respect of standard temporary event notices, in line with the delegations laid out in the Council's Licensing Policy.

4.2 In carrying out its licensing function, the Licensing Authority will consider:

- a) the case and evidence presented by all parties;
- b) the promotion of the four licensing objectives;
- c) guidance issued by central Government; and
- d) the Licensing Authority's own Statement of Licensing Policy.

and will take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The options shall be outlined within the officer's report.

4.3 If it is reasonably considered that the licensing objectives cannot be met unless additional specific conditions are attached, then the Licensing Authority may consider attaching those which are appropriate for the promotion of the licensing objectives, proportionate to the individual style and characteristics of the event or premises concerned.

4.4 Where an application is refused or a licence is suspended or revoked by the Sub-Committee, the applicant may have a right of appeal to the courts under the relevant provisions of the legislation and the Sub-Committee will inform the applicant within their decision letter.