

## **LICENSING SUB-COMMITTEE**

### **EXTRACT FROM RULES OF PROCEDURE**

Note – the full Rules of Procedure can be viewed at:

<http://democracy.eastherts.gov.uk/ieListMeetings.aspx?CId=144&Year=0>

#### **8.0 Procedure at hearing**

*As a matter of practice, the Sub-Committee shall 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. The hearing is a discussion lead by the Authority (i.e. the Chairman) with advice from the Legal Adviser.*

- 8.1 The order of business shall be at the discretion of the Sub-Committee, but shall normally proceed in accordance with the following paragraphs.
- 8.2 The Chairman shall at the beginning of the hearing, introduce the Sub-Committee members, invite the Parties to the Hearing and any Councillor representative to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow. Councillors in attendance for training purposes shall also be identified and their role and non-participation explained.
- 8.3 The Sub-Committee shall then proceed to consider any request made by a Party to the Hearing for permission for another person to appear at the hearing. Permission shall not be unreasonably withheld.
- 8.4 The Chairman may ask a representative of the Licensing Authority to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.
- 8.5 The Parties to the Hearing shall usually be invited to address the Sub-Committee in the following order:

- (a) Affected Person
- (b) Responsible Authority
- (c) Interested Person

However, this may be varied at the discretion of the Chairman, if in his/her opinion, this would assist the efficient business of the Sub-Committee.

8.6 Parties to the Hearing shall be entitled to:

- (a) give further information in support of their application, Relevant Representations or notice (as applicable) in response to a point upon which the Licensing Authority has given notice that it requires clarification;
- (b) question any other party if given permission by the Sub-Committee; and
- (c) address the Sub-Committee.

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

8.8 Where there is more than one Relevant Representation raising the same or similar grounds, the Sub-Committee shall request that only one party address them on behalf of the parties who have made the representations in question.

8.9 Subject to paragraph 8.10 below, in considering any Relevant Representations or notice made by a Party to the Hearing, the Sub-Committee may take into account additional documentary or other information produced by such a Party in support of their application, Relevant Representations or notice (as applicable) either before the hearing date or, with the consent of *all* the other parties and the Chairman, at the hearing. Where all the other parties consent the Licensing Sub-Committee has discretion as to whether to admit additional documentary evidence or other information at the hearing.

*Note - As a matter of good practice, any additional documentation or other information produced in advance of the hearing date,*

*should be submitted to the licensing officer no later than two working days before the hearing.*

- 8.10 The Sub-Committee shall disregard any information given or evidence produced by a party or any person to whom permission is given to appear at the hearing, which is not relevant to:
- (a) their application, Relevant Representations or notice (as applicable) or in the case of another person, the application, Relevant Representations or notice of the party requesting their appearance, 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.
- 8.11 Hearsay evidence may be admitted before the Sub-Committee, but consideration shall always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.
- 8.12 The Parties to the Hearing shall be entitled to make closing submissions, usually in the following order:
- (a) Responsible Authority
  - (b) Interested Person
  - (c) Affected Person.
- 8.13 The Sub-Committee will, after hearing the Relevant Representations of the Parties to the Hearing, withdraw from the room to make their deliberations.
- 8.14 The Legal Adviser and the Democratic Services Officer shall accompany the Sub-Committee when they retire to make their deliberations.

## **9.0 Determination of applications**

- 9.1 The Sub-Committee shall give appropriate weight to:
- (a) the Relevant Representations (including supporting information) presented by all the parties;

- (b) national guidance;
- (c) the Licensing Authority's Licensing/Gambling Policy;  
and
- (d) the steps that are necessary to promote the licensing objectives.

9.2 The Sub-Committee shall make its determination:

- (a) at the conclusion of the hearing in accordance with the relevant Regulations; or
- (b) within 5 working days thereafter (all other cases).

9.3 The determination shall be issued by the Director of Neighbourhood Services under delegated authority.

## **10.0 Role of Legal Adviser**

10.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the Legal Adviser at any time during the course of the hearing.

10.2 The Legal Adviser shall provide the Sub-Committee with any advice it requires properly to perform its functions, 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 Sub-Committee;
- (e) any relevant decisions of courts;
- (f) relevant national guidance or policy;
- (g) other issues relevant to the matter before the Sub-Committee.

10.3 The Legal Adviser shall assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.

10.4 The Legal Adviser shall play no part in making findings of fact, but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the Democratic Services Officer's notes.

10.5 The Legal Adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The Legal Adviser is under a duty to ensure that every case is conducted fairly.

### **11.0 Role of Democratic Services Officer**

11.1 The Democratic Services Officer's role shall be to make a record of the proceedings, summarise and record decisions and to provide help and assistance to members of the public attending hearings.

### **12.0 Role of Licensing Officer**

12.1 The Licensing Officer will present the pertinent facts of the application and the representations made by parties to the hearing.

### **13.0 Failure of parties to attend the hearing**

13.1 If a Party to the Hearing has informed the Licensing Authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

13.2 If a Party to the Hearing fails to provide notification in accordance with paragraph 13.1 above, and fails to attend or be represented at a hearing, the Sub-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 and shall consider at the hearing, the application, Relevant Representations or notice made or submitted by that party.

### **14.0 Adjournments**

14.1 Subject to the provisions of the Regulations, the Sub-Committee may, where necessary for its consideration of any relevant representations or notice made by a party to the hearing, adjourn the hearing to a specified date.

14.2 Where the Sub-Committee adjourns the hearing to a specified date, it shall forthwith notify the Parties to the Hearing of the date, time and place.

### **15.0 Right of Appeal**

15.1 The applicant has a right of appeal to the Magistrates' Court within 21 days (beginning with the day on which the applicant was notified of the decision of the Licensing Authority) against a decision.

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

## Definitions

<b>Term</b>	<b>Meaning</b>
<b>Affected Person</b>	In relation to the Affected Premises, the holder of a premises licence or club premises certificate or club gaming/club machine permit or other permit issued under the Gambling Act 2005, the premises user in relation to a temporary event notice or temporary use notice, the applicant for a premises licence or club premises certificate or club gaming/club machine permit or other permit issued under the Gambling Act 2005 (where the application has not been determined), a person in receipt of a provisional statement and an applicant for the grant or renewal of a personal licence.
<b>Affected Premises</b>	The premises that are the subject of the Application.
<b>Application – Gambling Act 2005</b>	The application for the grant, variation or review of premises licences or the grant or cancellation of permits or the consideration of temporary use notices.
<b>Application – Licensing Act 2003</b>	The application for the grant, variation or review of a premises licence or club premises certificate, the application for a temporary event notice or the application for the grant or renewal of a personal licence.
<b>Interest</b>	A Disclosable Pecuniary Interest as defined in the Council’s Members’ Code of Conduct.
<b>Interested Person – Gambling Act 2005</b>	Any persons living in the vicinity of the Affected Premises that are likely to be affected by the Application, or those persons who are involved in a business

	in the vicinity of the Affected Premises that might be affected by the Application or any person who is representing such persons.
<b>Interested Person – Licensing Act 2003</b>	Any persons making Relevant Representations or any person who is representing such persons.
<b>Licensing Authority</b>	East Hertfordshire District Council
<b>Parties to the Hearing</b>	Affected Person, Interested Person and Responsible Authorities.
<b>Relevant Representations</b>	Representations that relate to one or more of the licensing objectives made by an Affected Person, Interested Person or Responsible Authority.
<b>Responsible Authority</b>	The bodies that must be fully notified of the Application and that are entitled to make representations to the Licensing Authority on the Application and include the chief officer of police, the fire & rescue authority, the local planning authority, environmental health, primary care trusts and public health boards for the area in which the Affected Premises are situated.