

Licensing Act 2003

Briefing

Note

Guidance to Elected Members on responding to licensing applications.

Quick reference guide

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INTRODUCTION

The purpose of this briefing note is to advise Members of some of the provisions of the Licensing Act 2003, how and when applications to vary existing licences (e.g. by extending hours) can be made and what steps Members should take, if they are asked to make representations to extended licences on behalf of the community.

Further details about the new Licensing Act can be found on the Council's intranet or on the website for the Department of Culture, Media and Sport (www.culture.gov.uk).

Members should not only refer to this guide when considering licensing applications, but should also be mindful of other essential documents including the Statement of Licensing Policy, Government Guidance, Statutory Regulations, LACORS Guidance on the roles of elected members in relation to Licensing Hearings, in particular the reference to personal and prejudicial interests, appearance of bias and also the National Code of Conduct for Elected Members.

WHAT LICENCES ARE COVERED BY THE LICENSING ACT 2003?

The Licensing Act 2003 overhauls the way in which various licences are applied for and granted in England and Wales. Under the old system the Magistrates Court granted licences for alcohol whilst the Council dealt with licences for entertainment and late night refreshment.

Under the new system the Council inherits the licensing responsibilities of the Magistrates Court and will issue licences covering:

- the sale or supply of alcohol
- the provision of regulated entertainment
- the provision of late night refreshment between 11pm and 5am

The aim of the Act is to simplify and streamline the existing processes. It is designed to bring greater flexibility in licensing (including later closing hours) together with new responsibilities for licensees and powers to the Council and the Police to deal with irresponsible licensing activities.

SO HOW CAN PREMISES OPEN FOR 24 HOURS ?

Any premise that wishes to open for longer hours (or add new licensable activities such as entertainment or alcohol which were not previously provided) must apply to vary the terms of their licence.

HOW WILL I KNOW THAT THE PREMISES IN MY WARD HAVE MADE AN APPLICATION?

Where the premises make an application to vary the terms of the licence then the requirements on the applicant to inform various agencies and the public are much stricter.

In these circumstances the Licensing Section will make sure that copies of the application have also been sent to Warwickshire Police, the Fire Service, Environmental Health, Social Services, the Health and Safety Team of the Council and Warwickshire Trading Standards. All of these agencies have the right to object to the licence being granted at all or being granted in the form for which was applied.

The community will most likely find out about the application from local newspapers, because the applicant must place a notice in a local newspaper circulating in the area within 10 days of making the application to the Council. The applicant must also display at or on the premises a notice of the application. The notice must be displayed somewhere where it can be conveniently read by the public and must not be obscured. The notice will be pale blue in colour, at least A4 in size and should be in black ink giving details of the existing licence and the proposed variation and should tell the public how to object to the Council and the date by which objections must be received.

The notice must be displayed for 28 days from the day after the application was given to the licensing authority. This is the same period of time that local residents have to make an objection to the Council.

NOTIFICATION TO WARD MEMBERS

Notification to ward members of any applications is by a Fortnightly list of premises that have applied for a New/Variation/ Review, will be produced and placed on the website (Weekly List). Also E Mailed to all Members.

I'VE HEARD ABOUT AN APPLICATION - HOW DO I FIND OUT MORE ABOUT IT?

Each applicant must complete a standard application form. This application form includes an **operating schedule**, which sets out the full detail of the application together with the steps that the applicant proposes to minimise the impact of the licence on the community. If you are concerned about an application, for example because you think that activities at the premises are causing a problem in the locality or because of the hours proposed, you should contact the Licensing Section and arrange to view a copy of the application so that you can see exactly what is being proposed and the steps that the

applicant is suggesting he or she will take to mitigate any foreseen issues. An electronic copy of the application will be available to members of the public, accessed through the Council's Reception Customer Advisors.

WHAT HAPPENS IF NO REPRESENTATIONS ARE MADE?

If no representations are made then the Council must grant the licence, and the only terms and conditions that will apply are those that have been suggested by the applicant.

This means if the applicant has requested a 24-hour licence he or she will receive a 24-hour licence, if no objections are received.

I'VE CHECKED THE OPERATING SCHEDULE AND I THINK I NEED TO MAKE AN OBJECTION - WHAT DO I DO?

The first important point to note is that a member can only make a representation on his own behalf as a resident, if they live in the vicinity of the premises in question. If the ward member is asked to represent members of the ward he may do so, but the persons being represented would have to be listed on the representation. There is a time limit for making objections. The Licensing Section must receive the objection **within 28 days** of the date of the application being made to the Council. This date will be clearly stated on the advertisement and the notice. Late objections **cannot** be considered.

Any objection must be made in writing to the Licensing Section and a form has been devised which will help you to make a **relevant representation**. This form is available on the Council's Intranet. Copies are also available from reception.

SO WHAT IS A RELEVANT REPRESENTATION?

A relevant representation is one that addresses the likely effect of the licence on the promotion of the four licensing objectives. These are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

So for example if you are concerned about noise at late hours your objection is on the grounds public nuisance that would be caused to local residents.

If you are concerned about the increase in alcohol related disorder your objection will be based on the prevention of crime and disorder. If you are concerned that premises want to provide adult entertainment and are near to a school, your objection will be about protecting children from harm.

Representations can relate to more than one objective.

Representations that do not relate to the licensing objectives are not relevant and may not be considered. An example of a representation that is not relevant is the effect of the premises on house prices in the area.

CAN I MAKE A REPRESENTATION ON BEHALF OF RESIDENTS IN MY WARD?

Representations can come from responsible authorities or interested parties. Responsible authorities are bodies such as the Police, Fire Service and Environmental Health. Interested parties are defined as residents or businesses in the vicinity of the premises and those who represent such residents or businesses. This means that you can make a representation on behalf of residents in your ward who live in the vicinity of the premises, subject to receiving **written confirmation** from residents that you represent them. If a hearing is necessary, then a formal notice of your representation will be needed from the residents in order to comply with the Hearings Regulations.

WHAT SORT OF INFORMATION SHOULD I PUT IN THE REPRESENTATION?

Representations should contain as much detail as possible. If for example you have received letters from 10 residents in the last 6 months complaining about noise problems from a particular premise that is now applying for longer hours then the full details of these letters should be included in your representations. If you have the permission of the residents who wrote to you, you could attach copies of the letters to your representation form.

WHAT HAPPENS AFTER I HAVE MADE A REPRESENTATION?

Your representation, together with any others that the Council has received, will be put before a hearing of a Licensing Panel. Panel will consist of three Members of the Licensing Committee.

Officers cannot be delegated to take decisions in cases where objections have been received.

The hearing could take the form of a full hearing before the panel. A copy of the procedures will be made available to all attendees at the hearing, and all objections are copied to the applicant. A copy of the Hearings procedure can be obtained from Committee Services.

There are strict time limits within which the Council must convene the hearing. Generally for applications to vary licences, the hearing must take place within 20 working days of the close of the period for making objections.

If the Council does not hold a hearing to determine the application within two months of the application being received, the application will be deemed to have been refused and the applicant will have an automatic right of appeal to the Magistrates Court.

MEMBERS' INTERESTS AND THE LICENSING COMMITTEE

Members will be familiar with the Council's Member Code of Conduct, which applies whenever a Member is acting in this official capacity. The Member Code of Conduct will therefore apply to Members when they are making representations, appearing as an objector before a panel or if they sit on a licensing panel, which is determining any applications. This guidance relates to Members who wish to make representations to the Licensing Committee or Panels.

CAN I APPEAR BEFORE A PANEL TO OBJECT ON BEHALF OF MY CONSTITUENTS?

Members who wish to appear before a panel should consider whether they have a personal and prejudicial interest in the application. Where the interest is personal and prejudicial, then the Member must not appear before the panel. Neither should the Member be in the meeting room whilst the application is being considered. This is to avoid any appearance of improper influence. It does not have to be shown that the Panel was influenced, merely that they might have been, for a breach of the Code of Conduct to occur.

Examples of personal and prejudicial interests might include; frequent visitor to premises in a personal capacity; living very near to the premises in question; owning a business or stake in a business close to the premises in question; belonging to a lobby or campaign group that may be affected by decisions of the Licensing Committee. If you have any doubts, then the issue should be discussed with the Monitoring Officer before the meeting.

SO CAN I PUT IN WRITTEN REPRESENTATIONS ON BEHALF OF MY CONSTITUENTS?

Members with a personal and prejudicial interest are advised to rely only on written representations, providing that the existence and nature of the interest is disclosed and that such Members do not seek preferential consideration for their representations.

Written representations can be made to Licensing Officers within 28 days, but not to individual Members of the committee. If a Member with a personal and prejudicial interest wishes to ensure that the views of constituents within their

area are presented verbally to the committee, they should consider arranging for a ward colleague to present those views.

CAN I LOBBY THE COMMITTEE OR OFFICERS?

Members must be cautious about lobbying Members of Licensing Panels where a representation has been made. Any prohibition upon discussing applications with committee members is impractical, but Members must be careful that such discussions do not give the impression of pre-determination or bias on the part of the panel Member. An example of what may be viewed as excessive is attempting to obtain a commitment as to how the Member might vote in advance of the hearing.

Members with a personal and prejudicial interest should also certainly not attempt to lobby committee Members about the matter, before or after a meeting or attempt to use their status as a Member to influence consideration of a submission.

It should be noted that the role of the Licensing Officer at the Panel is a neutral role. The Licensing Officer will not make any recommendations to Members about whether particular applications should be granted or refused. The Officer/Member Protocol will govern any discussions between Members and Licensing Officers.

If a Member having considered this guidance requires more detailed advice on their own specific circumstances, then they should raise this with the Monitoring or Legal Officers.