

SOUTH DERBYSHIRE DISTRICT COUNCIL

**LICENSING PROTOCOL
AND
PROCEDURE**

LICENSING PROTOCOL AND PROCEDURE

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INTRODUCTION

The Licensing System

South Derbyshire District Council's Licensing and Appeals Committee operates in a quasi-judicial way in determining licensing applications. Those applications which are not subject to objection are determined under powers delegated to the Director of Community Services. This Protocol is written having regard to the Council's commitment to the principles of good enforcement, particularly openness and consistency that are included within the National Enforcement Concordat.

The Committee exercises licensing and registration requirements under the Licensing Act 2003 (alcohol, regulated entertainment and late night refreshment). Applications are referred for Members' consideration where objections have been lodged by relevant parties that are not deemed to be frivolous or vexatious and where officers have reservations about the appropriateness of an application or the suitability of an applicant. These applications and appeals will be dealt with by a Sub-Committee of the Licensing and Appeals Committee.

The decisions that the Sub-Committee makes can be significant. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near and on the lives of applicants.

In all cases, human rights and natural justice considerations dictate that the Sub-Committee adheres to the following principles in that decisions must:-

1. Be made on the individual merits of a case.
2. Have regard to all relevant national and local guidance.
3. Be made impartially and in good faith.
4. Be made by the body that receives all the relevant information and evidence.
5. Relate to the issue or question placed before the Sub-Committee.
6. Be based only on consideration of relevant and material matters, not hearsay or gossip.
7. Be rational and reasoned.
8. Be made in a way that does not give rise to public suspicion or mistrust.

The purpose of this Protocol is to set out in detail how Members should act and the procedures which should be followed to ensure that Members not only act in a fair and proper manner but are also seen to do so.

This Protocol has been prepared with a particular emphasis on Members who serve on the Council's Licensing and Appeals Committee/Sub-Committee but its content is also relevant to all other Members and also to Officers in all other services.

South Derbyshire District Council, along with all other Local Authorities, adopted a Code of Conduct which specifies the obligations imposed on Members and defines personal and prejudicial interests and how these will affect the way a Member behaves. This Code of Conduct, which every Member has signed up to, is the statutory base to which this Protocol is added. In some areas, this Protocol will extend, or go further than the Code of Conduct and in those cases, the Protocol should be followed.

II LICENSING PROTOCOL AND PROCEDURE

A. THE DECISION MAKING FRAMEWORK

A1. Registration and Declarations of Interest

- A1.1 The Local Government Act 2000 and the Council's Code of Conduct place requirements on Members on the registration and declaration of their interests and the consequences for the Member's participation in consideration of an issue, in light of those interests. Guidance on the registrations and declaration of interests may be sought from the Council's Monitoring Officer. However, ultimate responsibility for fulfilling the requirements rests individually with each Member.
- A1.2 A register of Members' interests is maintained by the Council's Monitoring Officer, which is available for public inspection during office hours. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his/her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.
- A1.3 The Council's Code of Conduct uses the terms "personal" and "prejudicial" interests. The Code defines a personal interest in any matter under discussion as:-
1. If the matter relates to an interest in respect of which the Member has given notice in the statutory register of Members' interests; or
 2. If a decision upon the matter might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the Authority's area, the well-being or financial position of themselves, a relative or a friend, or
 - any employment or business carried on by such persons;
 - any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000;
 - any body which the Member is required to register in the statutory register of interests, in which such persons hold a position of general control or management
- A1.4 Where a Member considers he/she has a personal interest in any matter, he/she must declare its existence and the nature of the interest at the beginning of the meeting or when the interest becomes apparent. Members should be clear and specific in identifying the item on the agenda in which they have an interest and the nature of the interest. This declaration must be made at meetings of the Council, its Committees, Sub-Committees and Working Groups. However, the Member can still take part in the meeting and vote, unless the personal interest is also a prejudicial interest.

A1.5 The Member then needs to consider whether the personal interest is a prejudicial one. The Council's Code of Conduct provides that a personal interest becomes a prejudicial one "...if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest." If a Member has such an interest, he/she should not participate in a discussion on the matter and must withdraw from the room and must not seek improperly to influence a decision in the matter. This means that a Member with a prejudicial interest cannot represent, be an interested party or be part of the decision making process.

Examples of personal and prejudicial interests might therefore include where the Member (or their friend, family or employer):-

- lives very near to the premises in question (likely to have a personal interest and potentially a prejudicial interest)
- is a frequent visitor to the premises in a personal capacity (potentially a personal and a prejudicial interest)
- belongs to a lobby or campaign group which may be directly impacted by the outcome of the Sub-Committee hearing (personal and prejudicial interest)

A1.6 The Council's Code of Conduct states that a Member may regard himself/herself as not having a prejudicial interest in a matter if the matter under discussion relates to:-

- another Authority of which he/she is a member
- another Public Authority in which he/she has a position of general management or control
- a body to which he/she has been appointed or nominated as a representative of the Authority

The Member would need to declare the interest, but could participate if one of the above exceptions apply.

A1.7 One of the exceptions may occur where the Member carries out a function for another Public Authority or another Local Authority which is making an application for a licence or which is making a representation. For example, if the school is applying for a premises licence and the Member is on the Board of Governors of the school. It may also occur where the Member is a 'dual hatted' Member and is part of the District Council's Sub-Committee, but also a Member of the County Council which is applying for a premises licence for its land. In such situations, however, the Member may not wish to avail themselves of the exception set out in paragraph A1.6, as to do so may put the Council at risk of being accused of bias.

A1.8 Despite the exception referred to in paragraph A1.6 above, if a Member, in advance of the decision making meeting, has taken a firm view on the licensing matter, either in meetings of the other body or otherwise, it may be difficult for that Member to demonstrate that, in participating in a decision, all the relevant facts and arguments have been taken into account. Where they do participate in a decision in those circumstances, they might place the Council in danger of Judicial Review. The exception in the Code of Conduct would only operate in the licensing context, if the Member had scrupulously avoided forming a fixed view on the issue in advance.

This is the general approach taken by this Protocol and appropriate conduct in relation to membership of other bodies and the effects of such membership on participation in the decision making process is expanded in Section B1 on lobbying.

A2. Confidentiality

A2.1 It will be unusual for licensing applications or other matters to be treated as confidential items discussed and determined after the exclusion of the press and public, but it may occur. The grounds why this may occur are set down in the Local Government Act 1972 and the Council's Constitution, and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details. Members are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code of Conduct.

A3. Licensing Proposals submitted by Members and Officers; and Council

A3.1 Proposals to South Derbyshire District Council by serving and former Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for Council owned premises.

A3.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.

A3.3 Members of the Licensing and Appeals Committee / Sub-Committee should not act as agents, or submit licensing applications for other parties. To do so would give rise to suspicion that the Member was not impartial or may influence other Members in the decision making process.

A3.4 A Member or Officer who either submits a licensing application or development proposal on their own behalf or acts as an agent for a person/body who submits a licensing application must, whether that Member's or Officer's involvement is apparent from the application documentation or not, notify the Director of Community Services and the Council's Monitoring Officer of the submission of the application or proposal. That, notification must be in writing and must be sent at the same time as the submission of the application or proposal.

A3.5 Applications made in respect of Council owned premises must be dealt with on exactly the same basis as applications submitted by members of the public.

A4. Voting and Impartiality

A4.1 Licensing and Appeals Sub-Committee Members must vote in the interests of the District as a whole and must not vote on the basis of local Ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the Members and wider policies and guidance. The overriding duty of a Sub-Committee Member is to the whole community, rather than just the people living in their Ward.

A4.2 Members of the Sub-Committee must not declare which way they intend to vote in advance of the consideration of an application by the Sub-Committee. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge or allegation of maladministration. Members must not make their minds up until they have read the relevant Sub-Committee reports and heard the evidence and arguments on both sides at the Sub-Committee Meeting.

- A4.3 If a Member of the Sub-Committee does declare his or her support or opposition for a proposal before the matter has been put before the Sub-Committee, where that Member would be entitled to vote, he/she must make a declaration of their view to the Sub-Committee and should withdraw from the Sub-Committee whilst that proposal is discussed so that the Member takes no part in the debate or voting on that particular item.
- A4.4 Sub-Committee Members who are also Members of another relevant or Public Authority or a body to which they have been appointed or nominated by the Council as its representative must exercise particular care in reconciling their two roles in cases where that Authority or body makes a representation either in support of or in opposition to a licensing application.
- A4.5 Members who have participated in a decision by another Authority or body as described above shall not agree to be called to sit on a Sub-Committee convened to discuss the application in which they have previously participated.
- A4.6 Members should not organise support for or against a licensing proposal and should not lobby other Members since this would also signal that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Sub-Committee.
- A4.7 Members must not favour or show bias for or against any particular person, company or group, or any particular site or locality. They should not put themselves in a position where they may appear to do so.
- A4.8 A Member for a Ward, which would be directly affected by an application, is most at risk of being accused of bias. Such Members are also most likely to be put under pressure to represent local 'interested parties' (i.e. objectors/supporters). It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from the Sub-Committee (unless they have a prejudicial interest), those Members whose Ward includes the application or whose Ward is likely to be affected by the application are advised to not sit on the Sub-Committee, but that he/she may wish to act as, or represent, an 'interested party'.
- A4.9 Given that the point at which a decision is made cannot occur before the Sub-Committee meeting, when all the information is to hand and has been duly considered, any political group meeting beforehand must not be used to decide how Members should vote. The use of the party whip is incompatible with the role of the Sub-Committee and shall not be used.

A5. Pre-Application Discussions / Informal Site Meetings

- A5.1 Members should not seek to advise applicants or agents about the likely acceptability of licensing proposals. They should advise prospective applicants to contact the appropriate Officer to advise on both merits and procedures. If Members do give an indication of their initial reaction to a proposal (e.g. this appears to accord with licensing policy) they should make it clear that they will only be in a position to take a final view after having considered the Officer's reports, representations and heard any debate at the Sub-Committee meeting.
- A5.2 Formal meetings of Members with any parties involved with a licensing application should be undertaken in the presence of at least one Officer and a written note should be made of that meeting.

- A5.3 Members of the Sub-Committee should ensure that they do not take part in any pre-application/pre-decision discussions and that applicants are referred to the Licensing Officer. Informal meetings with any of the parties may be misinterpreted by the public or any other party. A Member discussing issues on site or otherwise may be perceived to be more than merely receiving and absorbing information. If a Member who is to sit on the Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application, then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making.
- A5.4 The fact that Members have discussed any licensing proposal with any party must be made clear when the application is before the Sub-Committee for determination. Copies of notes (or e-mails) should be forwarded to the appropriate Officer to be placed on file.

B. THIRD PARTY RELATIONSHIPS

B1. Lobbying of Members and Circulation of Unofficial Information

B1.1 Lobbying is an attempt to influence a Member's view in order to achieve a particular decision. It is a normal part of the political process but where Members are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly, or being perceived to be made improperly with undue influence from any parties resulting in inconsistent or erratic decision-making.

B1.2 Members should treat lobbying with care and should ensure that "unofficial" views, promises or documents do not unduly influence them. Members should advise lobbyists to present their views in writing to the Licensing Officer in order that they can be formally considered in a balanced way at the Sub-Committee meeting. Alternatively Members may choose to pass on the views and or submissions of lobbyists to the Officer but should make clear that they are not giving their own views as this is a matter for formal consideration by the Sub-Committee.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular Members must not prejudge proposals before they have read the officer's reports and considered all the evidence presented at the hearing.

Lobbying can take two forms:-

- Lobbying of Members by any party.
- Lobbying by other Members.

Lobbying may be verbal or by the circulation of letters or documents to all or some Members.

Lobbying can be particularly problematical if Members are given information or assurances by applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if Members are given information by objectors which may be misleading, untrue or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Sub-Committee about them.

This would cause particular problems if the Committee based a refusal on matters which neither officers, applicant(s) nor objectors had had an opportunity to consider and comment upon.

Circulation of unofficial papers at a Committee meeting also constitutes a form of lobbying and, therefore, will not be permitted.

B2. Member Training

- B2.1 Members will be required to attend initial training sessions when first serving on the Licensing Committee (prior to serving on any Sub-Committee) and regular refresher training courses where appropriate. Members who do not participate in training will be advised that such training is necessary and Group Leaders will be asked to encourage them to participate and review their nomination for the Committee at the Annual Council meeting if an acceptable level of attendance is not achieved.
- B2.2 Members will be given regular updates to keep them informed of important changes in legislation, procedures or practices.

B3. Gifts and Hospitality

- B3.1 Members and Officers involved in the licensing process should avoid receiving gifts and hospitality from any of the parties. (The Council's Code of Conduct requires that any gift or hospitality received by Members of the value of £25 and over has to be notified in writing to the Council's Monitoring Officer within 28 days).

B4. Impartiality and Respect

- B4.1 Officers must always act impartially.
- B4.2 If Officers have a personal interest (which would include matters relating to their own financial interests, and matters which might reasonably be regarded as affecting the well-being or financial interest of themselves, a relative or a friend) or a suspicion that they may be perceived to have a personal interest, which may affect or be perceived to affect their objective, impartial professional advice, they should declare an interest and have no dealings with the application. The interest should be recorded in writing on all files held by the Council relating to the application and a copy should be sent to the Monitoring Officer. If the matter is considered at Sub-Committee the Officer's declaration shall be made at the Sub-Committee Meeting.
- B4.3 Members and Officers should treat each other with respect at all times and not do anything which is likely to compromise the impartiality of those involved in the process or to create a perception that decisions are not well-founded.
- B4.4 Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious).

SOUTH DERBYSHIRE DISTRICT COUNCIL**LICENSING ACT 2003****HEARINGS PROCEDURE****HEARING TO DETERMINE OBJECTIONS/REPRESENTATIONS****PROCEDURE FOR DEALING WITH APPLICATIONS UNDER THE
LICENSING ACT 2003****1. RIGHT TO DISPENSE WITH HEARING UNDER THE ACT**

- 1.2 The Licensing Act 2003 ("the Act") specifies various situations when a Licensing Authority ("the Council") must hold a hearing to consider either relevant representations or police objections to an application. The Licensing Act 2003 (Hearing) Regulations 2005 ("the Regulations") authorise the Council to dispense with holding a hearing if all relevant persons have notified the Council that they consider a hearing unnecessary. If the Council agrees that no hearing is necessary it must forthwith give notice to all Parties that the hearing has been dispensed with.

2. TIMING OF HEARING UNDER THE ACT

- 2.1 In relation to applications received under the Act, the Council shall arrange for hearings to be held within the periods of time specified in the Annexe attached to this Procedure (at column C).

3. NOTICE OF HEARING

- 3.1 The Council shall give due notice (Column D) of any hearing held under the Act to those persons specified (Column E ["the Party"]), together with any documents required (Columns F and G) in the Annexe to this Procedure.

- 3.2 In all cases the notice of hearing sent to the Party will include the following information:-

- the date, time and place of the hearing;
- the right of the Party to be represented at the hearing by another person, whether that person is legally qualified or not;
- the right of the Party at the hearing to call any witness in support of their application, representations or notice (as applicable); to question any other party or witness; and to address the hearing, subject to any maximum time-limit imposed by the Sub-Committee;
- the consequences if the Party fails to attend or is not represented at the hearing;
- the procedure to be followed at the hearing
- any particular points on which the Council considers that it will want clarification from a Party at the hearing;
- any information the Council has received in support or opposition of the application (or a summary thereof, if appropriate).

3.3 In the notice of hearing the Party will be asked if they have any special needs or requirements at the hearing and be requested to notify the Council of any difficulty in attending.

4. RESPONSE TO NOTICE OF HEARING

4.1 Following receipt of the notice of hearing the Party must give to the Council within the period of time specified (Column H) in the Annexe attached to this Procedure a notice stating:-

- whether she/he intends to attend or be represented at the hearing;
- whether she/he intends calling any witness at the hearing and, if so, the name of that witness;
- whether she/he considers a hearing to be unnecessary

4.2 The Party must include with their notice a written summary of the representations, which they wish to make to the Sub-Committee together with any documentary or other evidence in support of their case. If the hearing proceeds in the Party's absence, the Sub-Committee will consider these written representations.

5. POWER TO EXTEND TIME

5.1 The Council may extend time-limits specified in the Regulations for a specified period where it considers this necessary in the public interest. Notice of any extension must be given to the Parties forthwith stating the reasons.

5.2 The Council may adjourn a hearing to a specified date, or arrange for it to be held on specified additional dates, where it considers this necessary for its consideration of any representations or notice made by a Party. Notice of the date, time and place to which the hearing has been adjourned, or specified additional date on which and time and place at which the hearing is to be held, must be given to the Parties forthwith.

5.3 The Council may not exercise these powers such that the effect will be to treat the following applications made during the transitional period as being either granted or rejected. The date received by the Council will determine the final date for decisions:-

- Conversion and/or Variation of an existing licence to a new "premises" licence (2 months)
- Variation of a new "premises" licence (2 months)
- Conversion of a club registration certificate to club premises certificate (2 months)
- Variation of a new club premises certificate (2 months)
- Determination of a personal licence application under 'grandfather rights' (3 months)
- Review of a premises licence after a closure order (28 days)

5.4 In any other case the Sub-Committee may adjourn a hearing where it considers this necessary in the public interest and must do so if it considers this necessary to prevent any breach of natural justice.

6. PUBLIC ACCESS TO HEARINGS

6.1 The Sub-Committee will hear all matters in public except:-

6.1.1 where it considers the public interest in excluding the public outweighs the public interest in the hearing (or part of it) taking place in public, and/or

6.1.2 to the extent that the public may be excluded under Section 100A of the Local Government Act 1972, and/or

6.1.3 that it may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may:-

- refuse to permit that person to return
- permit them to return only on such conditions as the Sub-Committee may specify

but such a person may, before the end of the hearing, submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

7. PROCEDURE AT HEARING

7.1 The three Members of the Sub-Committee will be drawn by the Head of Legal & Democratic Services from the 15 Members of the Licensing and Appeals Committee. The first item of business will be the election of a Chair for the hearing. Upon election, the Chair will remind Members of the Sub-Committee of their obligation to declare any personal and prejudicial interests.

7.2 The Chair will identify the Legal Adviser and the Democratic Services Officer for the benefit of those attending the hearing. The Chair will explain that the Democratic Services Officer's role is to record the minutes of the hearing and the Legal Adviser's role is to provide legal advice to the Sub-Committee.

7.3 The Chair will explain the procedure to be followed at the hearing and ensure that all Parties understand the proceedings.

7.4 Each matter to be dealt with by the Sub-Committee will be called in turn, usually in the order listed on the Sub-Committee agenda. However, the Chair may change the order at his/her discretion.

7.5 As each matter is called, the Chair will ask the Parties in the case to identify themselves and consider any requests made by them to be assisted or represented by any person whether or not that person is legally qualified and such permission shall not be unreasonably withheld.

7.6 If a Party has informed the Council that she/he will not be attending or be represented at the hearing, it may proceed in their absence. If a Party who has not informed the Council that she/he will not be attending or represented fails to attend or be represented, the Sub-Committee will decide if, in the interests of justice, the hearing of the matter should be adjourned until a specified date. If the Sub-Committee proceeds without the Party present, the Sub-Committee must give full reasons for proceeding in his/her absence. These reasons will be recorded by the Democratic Services Officer and the Party will be informed of the decision.

7.7 Where the Sub-Committee holds the hearing in the absence of a Party, the Sub-Committee shall consider at the hearing the application, together with any representations made or notice given by that Party.

- 7.8 The Chair will ask the Council Officer ("the Officer") who is presenting the case to identify him/herself. If the case is being held in private, the Chair will direct all members of the public and all other officers, apart from the presenting officer, Democratic Services Officer and Legal Adviser, to leave the room.
- 7.9 The case will be opened with an outline of the relevant facts by the Officer. The Sub-Committee may impose a maximum time-limit on the Officer's representations.
- 7.10 The Members of the Sub-Committee and the Parties may ask questions of the Officer and any witnesses called by the Officer.
- 7.11 Any witness called by any Party will provide appropriate identification to the Sub-Committee i.e. name, capacity, etc.
- 7.12 The Chair will invite Responsible Authorities who are present, and have given proper notice to the Council of their intention to make representations at the hearing, to present their case, in the order determined by the Chair, including any evidence and/or the calling of witnesses in support of their case. The Sub-Committee may impose a maximum time limit on the Responsible Authorities' representations.
- 7.13 The Members of the Sub-Committee and the Parties referred to in paragraphs 7.14 and 7.16 may ask questions of clarification of the Responsible Authorities and any witnesses called by them.
- 7.14 The Chair will invite any Parties (other than those Parties dealt with under paragraphs 7.12 and 7.16) who are present, and have given proper notice to the Council of their intention to make representations at the hearing, to present their case, in the order determined by the Chair, including any evidence and/or the calling of witnesses in support of their case. The Sub-Committee may impose a maximum time limit on the Parties' representations.
- 7.15 The Members of the Sub-Committee and the Parties referred to in paragraphs 7.9, 7.12 and 7.16 may ask questions of clarification of the Parties referred to in paragraph 7.14 and any witnesses called by them.
- 7.16 The Chair will ask the applicant to present their case, including any evidence and/or the calling of witnesses in support of their application. The Sub-Committee may impose a maximum time-limit on the applicant's representations.
- 7.17 The Members of the Sub-Committee and the Parties referred to in paragraphs 7.9, 7.12 and 7.14 may ask questions of clarification of the applicant and any witnesses called by the applicant.
- 7.18 The hearing shall take the form of a discussion led by the Sub-Committee and cross-examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the cases put by the Parties.
- 7.19 Where an interested party has made written representations to the Sub-Committee, it will consider these.
- 7.20 Where the Sub-Committee sets a maximum time-limit for each Party to present their case, this time-limit must be equal for all Parties.
- 7.21 The content of any representations and/or evidence should have been disclosed to all Parties prior to the hearing within the periods of time specified (Column H) in the Annexe attached to this Procedure. Additional representations and/or evidence, of which proper notice has not been given, may only be made or submitted at the hearing with the consent of all the other Parties and, ultimately, the Sub-Committee.

7.22 The Sub-Committee shall disregard any information given or evidence produced by a Party or a witness which is not relevant to:-

- (1) their application, representations or notice (as applicable); and
- (2) 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.

7.23 The Chair will invite any final comments to be made by the Officer and any of the Parties referred to in paragraphs 7.12 and 7.14 above.

7.24 The Chair will invite the applicant (or his/her representative) to exercise a final right of reply.

8. EVIDENCE

8.1 The strict legal rules of evidence will not apply and evidence will not be taken on oath.

9. LEGAL ADVICE

9.1 The role of the Sub-Committee's Legal Adviser is to provide the Members with advice on:-

- questions of law;
- matters of practice and procedure;
- the options available to the Sub-Committee in making their decision;
- any relevant decisions of "superior courts or other guidelines (eg. - Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
- other issues relevant to the matter before the Sub-Committee (eg. any consultation currently in progress through Council etc.)
- where appropriate to assist the Sub-Committee in formulating the reasons for its decision.

9.2 The Legal Adviser may ask questions of Parties and witnesses in order to clarify the evidence and any issues in the case.

9.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

10. DETERMINATION OF APPLICATIONS

10.1 When all the representations have been heard, the Sub-Committee will withdraw to make their deliberations. The Democratic Services Officer and the Legal Adviser may remain with the Sub-Committee to give legal or procedural advice, but the Members will make the decision.

10.2 If the Sub-committee needs to ask any further questions of either of the Parties, all Parties will be asked to return before the Sub-Committee.

10.3 In the case of hearings held under the following sections of the Act, the Sub-Committee must make its determination at the conclusion of the hearing:-

- Hearing to consider police objection to temporary event notice [s.105(2)(a)]
- Hearing to consider review of premises licence following closure order [s.167(5)(a)]
- Hearing to determine application for conversion of existing licence to a new "premises" licence [Schedule 8, para 4(3)(a)]
- Hearing to determine application to vary a premises licence or premises supervisor made at the same time as application to convert [s.34 or 37]
- Hearing to determine application for conversion of existing club certificate to a new "club premises" certificate [Schedule 8, para 16(3)(a)]
- Hearing to determine application to vary a club premises made at the same time as application to convert [s.85].
- Hearing to determine application for grant of personal licence [Schedule 8, para 26(3)(a)]

In any other case the Sub-Committee must make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.

10.4 The determination will be confirmed in writing, giving reason(s) for the determination and details of the right of appeal to the Magistrates' Court within 21 days from the date of the decision. The determination notice/letter will be sent out within 5 working days of the end of the meeting.

10.5 Where a hearing has been dispensed with [under paragraph 1.2 above], the Council must make its decision within the period of 10 working days beginning with the day on which it gives notice to the Parties, considering all the written representations submitted by the Parties.

11. QUORUM

11.1 The quorum for any hearing of a Sub-Committee shall be three (3) Members.

Decisions shall be that of the Licensing Authority. (ie. Not individual Members).

12. RECORD OF PROCEEDINGS

12.1 The Council shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for 6 years from the date of the decision or, where an appeal is brought against the decision of the Council, the disposal of that appeal. This shall be the responsibility of the Democratic Services Officer.

13. IRREGULARITIES

13.1 Any irregularity resulting from any failure to comply with any provision of the Regulations before the Council has made a decision shall not of itself render the proceedings void.

- 13.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the Council shall take such steps as it thinks fit to remedy the irregularity before reaching its decision.
- 13.3 The Council may correct clerical mistakes in any document recording a decision of the Council or errors arising in such a document from an accidental slip or omission.

14. FORM OF NOTICES

- 14.1 Any notices required to be given under this Procedure must be given in writing to the Head of Legal and Democratic Services and should be sent by first class post or hand delivered to:-

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 OAH

- 14.2 The requirement that any notice must be given in writing is satisfied where:-
- (a) the text of the notice
 - (i) is transmitted by electronic means
 - (ii) is received in legible form, and
 - (iii) is capable of being reproduced in written form and used for subsequent reference,
 - (b) the person to whom the notice is to be given has agreed that such a notice may be given to them by those electronic means, and
 - (c) forthwith on sending the text of the notice by electronic means the notice is given to the recipient in writing.
- 14.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the text of the notice is received by the recipient in accordance with paragraph 14.2(a).

PROCEDURE FOR DEALING WITH APPLICATIONS UNDER THE LICENSING ACT 2003 AND SUCH OTHER APPLICATIONS AS MAY BE DELEGATED FOR DETERMINATION BY A LICENSING SUB-COMMITTEE

THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

Statutory Instrument 2005 No.44

	Schedule 1	Schedule 2	Schedule 3	Schedule 4			
	Period of Time within which hearing must be held	Persons who must be given notice of hearing	Persons who must be sent documents with notice of hearing	Documents to accompany notice of hearing			
A	B	C	D	E			
	Provision under which hearing is held	Time by which notice of hearing must be given	Persons who must be given notice of hearing	Persons who must be sent documents with notice of hearing	Documents to accompany notice of hearing	Time within which applicant must give notice to the authority under R.8	
1.	Section 18(3)(a) (determination of application for premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c)	No later than 10 working days before hearing	E (1) the person who has made the application under section 17(1); (2) persons who have made relevant representations as defined in section 18(6)	F The person who has made the application under section 17(1)	G The relevant representations as defined in section 18(6) which have been made	H No later than 5 working days before the day or the first day on which the hearing is to be held
2.	Section 31(3)(a) (determination of application for a provisional statement)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30	No later than 10 working days before hearing	(1) the person who has made the application under section 29(2); (2) persons who have made relevant representations as defined in section 31(5)	The person who has made the application under section 29(2)	The relevant representations as defined in section 31(5) which have been made	No later than 5 working days before the day or the first day on which the hearing is to be held
3.	Section 35(3)(a) (determination of application to vary premises licence)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 34(5)	No later than 10 working days before hearing	(1) The holder of the premises licence who has made the application under section 34(1); (2) Persons who have made relevant representations as defined in section 35(5)	The holder of the premises holder who has made the application under section 34(1)	The relevant representations as defined in section 35(5) which have been made	No later than 5 working days before the day or the first day on which the hearing is to be held

4.	Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor)	20 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 37(5)	No later than 10 working days before hearing	<p>(1) The holder of the premises licence who has made the application under section 37(1);</p> <p>(2) Each chief officer of police who has given notice under section 37(5);</p> <p>(3) The proposed individual as referred to in section 37(1)</p>	<p>(1) the holder of the premises licence who has made the application under section 37(1)</p> <p>(2) the proposed individual as referred to in section 37(1)</p>	The notices which have been given under section 37(6)	No later than 5 working days before the day or on which the hearing is to be held
5.	Section 44(5)(a) (determination of application for transfer of premises licence)	20 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 42(6)	No later than 10 working days before hearing	<p>(1) The person who has made the application under section 42(1)</p> <p>(2) Each chief officer of police who has given notice under section 42(6)</p> <p>(3) The holder of the premises licence in respect of which the application has been made or, if the application is one to which section 43(1) applies, the holder of that licence immediately before the application was made</p>	<p>(1) The person who has made the application under section 42(1)</p> <p>(2) The holder of the premises licence in respect of which the application has been made or, if the application is one to which section 43(1) applies, the holder of that licence immediately before the application was made</p>	The notices which have been given under section 42(6)	No later than 5 working days before the day or on which the hearing is to be held
6.	Section 48(3)(a) (cancellation of interim authority notice following police objections)	5 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 48(2)	No later than 2 working days before hearing	<p>(1) The person who has given notice under section 47(2)</p> <p>(2) Each chief officer of police who has given notice under section 48(2)</p>	The person who has given notice under section 47(2)	The notices which have been given under section 48(2)	No later than 1 working day before the day or on which the hearing is to be held

7.	Section 52(2) (determination of application for review of premises licence)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c)	No later than 10 working days before hearing	(1) The holder of the premises licence in respect of which the application has been made; (2) Persons who have made relevant representations as defined in section 52(7) (3) the person who has made the application under section 51(1)	The holder of the premises licence in respect of which the application has been made	The relevant representations as defined in section 52(7) which have been made	No later than 5 working days before the day or on the first day on which the hearing is to be held
8.	Section 72(3)(a) (determination of application for club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c)	No later than 10 working days before hearing	(1) The club which has made the application under section 71(1) (2) Persons who have made relevant representations as defined in section 72(7)	The club which has made the application under section 71(1)	The relevant representations as defined in section 72(7) which have been made	No later than 5 working days before the day or on the first day on which the hearing is to be held
9.	Section 85(3)(a) (determination of application to vary club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4)	No later than 10 working days before hearing	(1) The club which has made the application under section 84(1) (2) Persons who have made relevant representations as defined in section 85(5)	The club which has made the application under section 84(1)	The relevant representations as defined in section 85(5) which have been made	No later than 5 working days before the day or on the first day on which the hearing is to be held
10.	Section 88(2) (determination of application for review of club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c)	No later than 10 working days before hearing	(1) The club which holds the club premises certificate in respect of which the application has been made; (2) Persons who have made relevant representations as defined in section 88(7) (3) The person who has made the application under section 87(1)	The club which holds the club premises certificate in respect of which the application has been made.	The relevant representations as defined in section 88(7) which have been made	No later than 5 working days before the day or on the first day on which the hearing is to be held

11.	Section 105(2)(a) (counter notice following police objection to temporary event notice)	7 days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 104(2)	No later than 2 working days before hearing	(1) The premises user; (2) Each chief officer of police who has given notice under section 104(2)	The person who has made the application under section 117(1)	The notice which has been given under section 120(5)	No later than 1 working day before the day or the first day on which the hearing is to be held
12.	Section 120(7)(a) (determination of application for grant of personal licence)	20 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 120(5)	No later than 10 working days before hearing	(1) The person who has made the application under section 117(1) (2) The chief officer of police who has given notice under section 120(5)	The person who has made the application under section 117(1)	The notice which has been given under section 121(3)	No later than 5 working days before the day or the first day on which the hearing is to be held
13.	Section 121(6)(a) (determination of application for the renewal of personal licence)	20 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 121(3)	No later than 10 working days before hearing	(1) The person who has made the application under section 117(1) (2) The chief officer of police who has given notice under section 124(3)	The holder of the licence in respect of which a notice has been given	The notice which has been given under section 124(3)	No later than 5 working days before the day or the first day on which the hearing is to be held
14.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence)	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 124(3)	No later than 10 working days before hearing	(1) The holder of the premises licence in respect of which the notice has been made (2) Persons who have made relevant representations as defined in section 167(9)	The holder of the premises licence in respect of which the review has been made	The relevant representations as defined in section 167(9) which have been made	No later than 2 working days before the day or the first day on which the hearing is to be held
15.	Section 167(5)(a) (review of premises licence following closure order)	10 working days beginning with the day after the day the relevant licensing authority receives the notice given under section 165(4)	No later than 5 working days before hearing				

16.	Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 3(2) or (3) of Schedule 8	No later than 5 working days before hearing	(1) the person who has made the application under paragraph 2(2) of Schedule 8 (2) each chief officer of police who has given notice under paragraph 3(2) or (3) of Schedule 8			No later than 2 working days before the day on which the hearing is to be held
17.	Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 15(2) or (3) of Schedule 8	No later than 5 working days before hearing	(1) The club which has made the application under paragraph 14(2) of Schedule 8 (2) Each chief officer of police who has given notice under paragraph 15(2) or (3) of Schedule 8			No later than 2 working days before the day on which the hearing is to be held
18.	Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 25(2) of Schedule 8	No later than 5 working days before hearing	(1) The person who has made the application under section 117 to which paragraph 23(1) of Schedule 8 applies (2) The chief officer of police who has given notice under paragraph 25(2) of Schedule 8			No later than 2 working days before the day on which the hearing is to be held

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