

**AGENDA ITEM NO 7**

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**TITLE: REVIEW OF LICENSING SUB-COMMITTEE HEARINGS PROCEDURE AND SITE VISIT PROCEDURE/ REVIEW OF PUBLIC SPEAKING AT LICENSING COMMITTEE MEETINGS**

Committee: Licensing Committee

Date: 9 October 2013

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Monitoring Officer

[N119]

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1.0 ISSUE

- 1.1 To consider and approve the revised Hearings Procedure for Licensing Sub-Committee Hearings, set out in Appendix 1 to this report.
- 1.2 To consider and approve the site visit guidance for Licensing Sub-Committee meetings, set out in Appendix 2 to this report.
- 1.3 To consider and approve the 'Public Speaking at Licensing Committee' leaflet, attached as Appendix 3 to this report.

2.0 RECOMMENDATION(S)

- 2.1 That the Licensing Committee approve:
  - i. the revised Hearings Procedure for Licensing Sub-Committee meetings, set out in Appendix 1 to this report;
  - ii. the site visit guidance for Licensing Sub-Committee meetings, set out in Appendix 2 to this report; and
  - iii. the updated 'Public Speaking at Licensing Committee' leaflet, set out in Appendix 3 to this report.

3.0 BACKGROUND/OPTIONS

- 3.1 The Hearings Procedure for Licensing Sub-Committee meetings and the site visit guidance was last considered by the Licensing Committee in 2006.
- 3.2 Training on 'Licensing Hearings for All Parties' was recently delivered to a number of Licensing Committee Members and officers. As a result it is advisable that some elements of the Hearings Procedure be reviewed.
- 3.3 A review of the Procedures is also appropriate given the length of time since the Procedures were last considered by the Licensing Committee.

3.4 Licensing Sub-Committee meetings currently occur infrequently, although in March 2013 a meeting was convened to consider a new Premises Licence.

#### 4.0 ARGUMENTS/CONCLUSIONS

##### Licensing Sub-Committees

4.1 The Hearings Procedure has been amended to remove the specified time length of 5 minutes in which registered speakers can address the Sub-Committee. There is no requirement to specify the length of time and, where applications are particularly contentious, applying a strict 5 minute rule could be detrimental to the Council should there be an appeal to the Magistrates' Court.

4.2 However, to provide some guidance for speakers and for the purposes of managing the meeting, it is suggested that the following text be incorporated into the Hearings Procedure [see no.8 of the Hearings Procedure – Appendix 1]:

*'They [the speakers] should keep their representations succinct and to the point and generally should not exceed 10 minutes. If this time limit is exceeded, the same time period will be afforded to the other parties.'*

The wording used enables flexibility if the Applicant exceeds 10 minutes. The main consideration is that all speakers must be offered the same length of time to address the Sub-Committee.

4.3 Regulation 24 of The Licensing Act 2003 (Hearings) Regulations 2005 states that:

*'The authority must allow the parties an equal maximum period of time in which to exercise their rights provided for in regulation 16.'*

Therefore the Council must ensure that equal time is offered to each of the categorised speakers listed below:

- The Applicant/Agent or their representative or Supporter
- Representatives of the Responsible Authorities/Statutory Consultees
- Objectors

4.4 To enable Sub-Committee Members to speak freely and openly amongst themselves the Procedure has also been amended to presume that Members will retire into closed session to determine the application, rather than make a decision in public.

4.5 Numbers 3 – 6 of the Hearings Procedure (see Appendix 1) were previously listed as numbers 8 – 11. As these matters should be considered prior to the Licensing Officer presenting the report, these have now been listed earlier in

the Hearings Procedure. The Procedure has not been re-ordered in any other way.

- 4.6 Other amendments made to the Hearings Procedure are for formatting/clarification purposes.
- 4.7 There are no significant amendments proposed to the site visit guidance. Members should also note that further Guidance is also provided in Part 5 of the Constitution on the role of elected Members in relation to Licensing Act 2003 Hearings.

#### Licensing Committee

- 4.8 Whilst the Committee is being presented with the Hearings Procedure for Licensing Sub-Committee meetings it seems an appropriate time for the Committee to also consider the 'Public Speaking at Licensing Committee' leaflet.
- 4.9 Attached as Appendix 3 is the leaflet that appears on the Council's website with suggested track changes.
- 4.10 The Licensing Committee last considered the 'Public Speaking at Licensing Committee' leaflet in 2007 following a recommendation by the Standards Committee in light of the changes to the Code of Conduct. This has also, however, been updated by the Monitoring Officer following changes enacted under the Localism Act 2011/ and adoption of the new Code of Conduct in by Full Council on 27 July 2012.

#### 5.0 FINANCIAL IMPLICATIONS/ EQUALITY IMPACT ASSESSMENT

- 5.1 There are no additional financial implications arising from this report.
- 5.2 An Equality Impact Assessment (INRA) is not required.

#### 6.0 APPENDICES

- 6.1 Appendix 1 Revised Hearings Procedure for Licensing Sub-Committee meetings.
- 6.2 Appendix 2 Revised site visit guidance for Licensing Sub-Committee meetings.
- 6.3 Appendix 3 'Public Speaking at Licensing Committee' leaflet.

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer</u></b>
The Licensing Act 2003 (Hearings) Regulations 2005	Room 113 The Grange Ely	Jeanette Thompson Head of Legal and Democratic Services (01353) 665555 E-mail: <a href="mailto:Jeanette.thompson@eastcambs.gov.uk">Jeanette.thompson@eastcambs.gov.uk</a>
Licensing Act 2003		
Constitution		



**EAST CAMBRIDGESHIRE DISTRICT COUNCIL HEARINGS PROCEDURE FOR LICENSING SUB-COMMITTEE**

1. Any hearing required under the legislation is to take the form of a discussion led by the Council. Hearings will be held in public unless the Members of the hearing consider that the public interest in excluding the public outweighs the public interest in the hearing or that part of it, taking place in public. For these purposes a party to the hearing and any person assisting or representing a party may be treated as a member of the public.
2. The Chairman will introduce the Members and participants and explain the procedure to be followed, which will be as follows unless otherwise agreed by Members of the hearing. Any request made by a party (including Regulation 8 (2) of the Licensing Act 2003 (Hearings) Regulations 2005 “the Regulations”) or such other regulations that may be in force, will also be considered at this stage (permission not to be unreasonably withheld).
3. If any party has advised the Council they do not intend to attend or be represented at the hearing, the hearing may proceed in their absence.
4. If any party has not indicated they do not intend to attend or be represented at the hearing, the Sub-Committee may:
  - where it considers it necessary in the public interest, adjourn the hearing to a specified date; or
  - hold the hearing in that party’s absence.
5. Where a hearing is held in the absence of a party, any representations or notice made by that party shall be considered at the hearing.
6. Where a hearing is adjourned to a specified date, all parties will be notified forthwith of the date, time and place to which the hearing has been adjourned.
7. The Licensing Officer will appear first and will give:
  - a summary of the application
  - a summary of the representations made
  - a summary of how the application and any relevant representations relate to the provision of the Licensing Policy Statement, any guidance from the Secretary of State and the relevant legislation.
8. The Applicant or their representative will appear next to explain their case. They should keep their representations succinct and to the point and generally should not exceed 10 minutes. If this time limit is exceeded, the same time period will be afforded to the other parties. At the end of this stage

the Members, Legal Officer and any other party making representations will be able to ask questions of the applicant/their representative.

9. Representatives of the Responsible Authorities and/or Statutory Consultees will appear next to explain their case. The same procedure as regards questions from the Members, Legal Officer or any other party making representations will apply. The total time is not to exceed the time offered to the Applicant/their representative or the objectors/persons making representations.
10. The objectors/persons making representations will appear last to explain their case. The same procedure as regards questions from the Members, Legal Officer or any other party making representations will apply. The total time for Objector/ persons making representations is not to exceed the time offered to the Applicant/their representative or Representatives of Responsible Authorities/Statutory Consultees.
11. Members will be able to ask questions of any party at any time during the hearing but will at all times bear in mind the need for all parties to be afforded the same time to make their case.
12. Documentary or other information may be produced for consideration by the hearing by any party attending the hearing either before the hearing, or with the consent of all the other parties, at the hearing.
13. Information which is not relevant to:
  - the application, representation or notice (as applicable)
  - the provision of the licensing objectives or (in relation to a hearing to consider a notice given by a chief officer of police) the crime prevention objectivewill be disregarded.
14. For the avoidance of doubt, formal cross-examination will not be allowed at hearings of licensing applications, unless the Members of the hearing consider that it is required for proper consideration by them of any representative, application or notice as the case may require.
15. Should Members during the hearing be of the opinion that a site visit is necessary to enable them to make the decision then the meeting will be adjourned and a site visit carried out in accordance with the Council's Site Visit Guidance for Licensing Act 2003 Hearings.
16. Following the presentations by and questioning of all the parties, the Members of the hearing will generally retire into closed session (either by leaving the room or asking all other parties to do so). The Members will make a decision and record reasons for this. If during their consideration Members request the advice of a legal officer, that advice will be repeated in public.

17. As per Regulation 26 of the Regulations, in the case of a hearing under –
- (a) section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37),
    - (aa) section 53B (interim steps pending review),
    - (ab) section 53C (review of premises licence following review notice),
  - (b) section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85),
  - (c) section 105(2)(a) (counter notice following police objection to temporary event notice),
  - (d) section 167(5)(a) (review of premises licence following closure order),
  - (e) paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
  - (f) paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
  - (g) paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence),

the authority must make its determination at the conclusion of the hearing, and the Members, if they have retired, will return to announce their decision and give a summary of their deliberations.

18. In any other case (except in the case of a hearing under section 172B(1)(b)) the authority must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held.
19. In the case of a hearing under section 172B(1)(b) the authority must make its determination within 10 working days beginning with the day or the last day on which the hearing was held.
20. The Council shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for six years from the date of the determination or, where an appeal is brought against the determination of the authority, the disposal of the appeal. The right of appeal is 21 days from the date of notification of the decision.
21. For the avoidance of doubt, any irregularity resulting from any failure to comply with any provision of the Regulations before the authority has made a determination shall not of itself render the proceedings void.
22. In any case of such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take steps as it thinks fit to cure the irregularity before reaching its determination.

23. Clerical mistakes in any document recording a determination of the authority or errors arising in such document from an accidental slip or omission may be corrected by the authority.
24. Any person attending the hearing who in the opinion of the Members hearing the matter is behaving in a disruptive matter may be required to leave the hearing and may:
  - be refused permission to return; or
  - be permitted to return only on the conditions as may be specified by the Members and the hearing PROVIDED THAT such person may, before the end of the hearing, submit to the hearing in writing any information which they would have been entitled to give orally had they not been required to leave.

Issue date October 2013





**EAST CAMBRIDGESHIRE DISTRICT COUNCIL:**  
**LICENSING SITE VISIT GUIDANCE FOR LICENSING ACT 2003 HEARINGS**

1. The decision on whether to organise a Site Visit to an application site for Members of the Licensing Hearing Sub-Committee rests with the Head of Environmental Services subject to the Council's Hearings Procedure for Licensing Sub-Committees. The reason(s) why a Site Visit is considered necessary will be given to the applicant, the objectors, the responsible authorities, statutory consultees or any representatives of these.
2. The Site Visit will take place at a date and time fixed by the Head of Environmental Services. The three Sub-Committee Hearing Members and the Reserve Member will attend accompanied by the Licensing Officer. The Legal Officer may also attend.
3. Members will view the site from the nearest public place. Only with the consent of the relevant landowner, obtained by the Licensing Officer, will they go on any premises. They will keep together as a group and should not engage individually with any applicant(s), objector(s), responsible authorities, statutory consultees or any of their representatives as part of the formal organised site visit.
4. For the avoidance of doubt, it should be noted that no decision, or indication of a decision on the application will happen on the site visit, the visit being purely a fact finding exercise to appreciate the physical context, or any other relevant matter felt necessary to assist in the deliberation of the application. Even if present, no representations will be made by the applicant, the objectors, the responsible authorities, statutory consultees or any representatives of these. However, Members may ask questions seeking clarification of facts that are relevant to the four Licensing Objectives through the Licensing Officer.
5. Site Visits can put Members and the Licensing Authority at risk of accusations of bias and pre-determination. For avoidance of doubt a visit by a Member for orientation purposes is not considered as a site visit provided the Member does not enter the site or engage in discussion with anyone about the application. Members should not take part in informal site visits with the applicant, the objectors, the responsible authorities, statutory consultees, or any representatives of these, even if requested by any of them to do so. Anyone making such a request should be referred to this Guidance.



# Public Speaking at Licensing Committee

You have the right to speak at the Council's  
Licensing Committees

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This leaflet tells you how the scheme operates

The District Council is committed to extending public involvement in the Licensing process. There are already a number of consultation and procedures for some Licensing applications. [However](#), ~~Now~~ you can speak directly to Councillors at Licensing Committee Meetings.

This leaflet explains the Council's public participation policy for supporters, objectors, [councillors](#) and local councils at meetings. It tries to answer some of the questions you may have about the procedures and what to expect at the meeting. It is based on simple rules which the Council has formulated to make the system as fair and easy to operate as possible, so please read all of the leaflet.

## How does the Licensing Committee work?

Not all applications are determined by the Licensing Committee. The majority of straightforward applications are determined by officers under the Council's delegation scheme. You may wish to check with the [Licensing case Officer](#) to see whether the application in which you are interested is to be considered by the Licensing Committee [or via eOfficer's delegation](#).

This scheme does not apply to the Licensing Sub-committee [Hearings](#). [A separate Hearings Procedure is applicable to Licensing Sub-Committees and o](#) Only people who have [submitted relevant representations regarding the matter under determination by the Licensing Sub-Committee](#) ~~been involved in the licensing process~~ are entitled to speak at these [H](#)earings. Any queries on [these Licensing Sub-Committee H](#)earings should be addressed to the Council's Licensing Officer [assigned to that case](#) on 01353 665555.

## Do I need to attend the meeting to make my comments known to the Committee?

No ~~—~~ you can submit written comments to the Licensing Officer or to the Democratic Services Officer. Your comments will either be referred to by the Licensing Officer or tabled at the meeting for the Licensing Committee to ~~will be consider~~ ed by the committee anyway. If you do not wish to address the Committee, ~~As the Licensing Committee~~ meetings are open to the public and you are welcome to attend ~~may, if you wish, attend~~ the meeting just to observe proceedings. ~~just to see what happens~~. However, if Members resolve to move the meeting into exempt session, the press and public will be expected to leave the meeting.

### How can I find out when an application will be considered?

Licensing Committee ~~meetings~~ are scheduled in the calendar of meetings once a month. However, whether the meeting is required will be dependent on the volume of business on the agenda. ~~held as necessary~~. The ~~a Committee~~ Agenda for the meeting is published not less than 5 clear working days before the meeting. If you wish to speak it is your responsibility to check whether an item is on the agenda. You can do this by calling ~~our~~ Democratic Services ~~Section~~. Agendas are available to view on the Council's website and a paper copy ~~ies~~ of the agenda is ~~are~~ also available from the Council's main reception and public libraries.

The future business of the Licensing Committee can be viewed via its Forward Agenda Plan on the Council's website.

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### How do I arrange to speak at the meeting?

If you want to speak, you will need to telephone ~~the~~ Democratic Services ~~Section~~ on (01353) 665555. Please note that phoning this number is the only way to register a request to speak.

You must call by no later than 5.2pm on the day before the meeting. Registration will be on a first come first serve basis. This will mean that, for each application, the name of the first person to call as an objector or as a supporter will be noted and any subsequent callers will be given their details to organise between themselves how the ~~groups will use their~~ five-minute slot will be used.

As we also have a public speaking scheme for the Planning Committee ~~too~~, please ensure make sure that you explain when you ring that you wish to speak at the Licensing Committee.

### What is the order of speaking on each application?

~~One of the officers~~ will introduce the item. The meeting will then move out of formal session and members of the public can speak in the following order:

- Applicant/agent or supporters (5 minutes total)
- Statutory Consultees/ representatives of responsible authorities (5 minutes total)
- Objectors (5 minutes total)

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You will be asked by the Chairman of the Licensing Committee to move to a designated seat before you speak. The Chairman will strictly apply the five-minute limit and you will be asked to go back to your seat in the public gallery after that time.

The meeting will then resume in formal session. The officer may add extra comments and then there will be an opportunity for debate by the Committee. The decision is then made.

A District Councillor is entitled to attend the Committee and speak once on any item and may speak again at the discretion of the Chairman. This is governed by Council Procedure Rules and not the Public Speaking Scheme. This does not apply where the Councillor has a Disclosable Pecuniary Interest or Personal/ Prejudicial Interest.

Please note: that District Councillors with a Disclosable Pecuniary Interest in ~~a the~~ matter under consideration by the Committee should not attend the meeting. District Councillors with a personal or prejudicial interest in an item should only attend or remain at for that item if they are exercising a Speaking Right at the meeting. If the Councillor has a personal interest they will need to declare this before they speak on the issue. If a Councillor has a personal and prejudicial interest, they must declare this before the item is discussed, and can then make representations, answer questions or give evidence – *for the same length of time as a member of the public (i.e. 5 minutes)*. Once this has finished the Councillor must leave the room. The Chairman of the Licensing Committee will decide when the Member exercises this right; however, it will be before any debate on the item.

#### **Can I ask questions of other speakers?**

No - you should seek answers to your questions before the meeting and to state your case on the basis of information given to you. You must not interrupt other speakers or the Committee debate.

#### **Can I use slides or overhead transparencies or circulate supporting documents?**

No - slides or overhead transparencies are not allowed. If you wish to circulate supporting documents, you should do this before the date of the ~~e~~CCommittee. A list of Councillors' names and addresses is available on the Council's website and from Customer Services on (01353) 665555 ~~and it also available on the Council's website~~. Please do not send documents to the Council for this purpose.

#### **What can I say at the meeting?**

You are advised to make a statement of fact or opinion, but you are likely to have the greatest impact if you ~~are:~~ are brief and to the point, limit your views to the application, confine yourself to relevant issues.

#### **What issues are usually irrelevant in considering proposals?**

They will vary from case to case but the following may be considered irrelevant:-

- Matters covered by other laws
- Boundary or area disputes
- The applicants' morals or motives
- Effect on value of property
- Personal matters

You should particularly note that you should not make derogatory or defamatory remarks about other people. Any such comments leave you open to legal action.

#### **When and where are the Committee meetings held?**

Licensing Committee meetings are held as necessary, at the Council Offices at The Grange in Ely. Dates of meetings are available on the Council's website.

### **The Role of District Councillors:-**

Councillors are elected to represent you on the District Council. You may like to contact your Councillor to discuss the application. However, he or she will not be able to commit him or herself to a decision before hearing all the evidence and debate at the relevant meeting. They will need to take into account the law as well as public opinion.

Councillors also have the right to attend a meeting, where they have a personal and prejudicial interest, and make representations, answer questions or give evidence – as detailed above. [However, a Councillor with a Disclosable Pecuniary Interest should not attend a meeting.](#)

### **Who do I ask if I have any other queries?**

If you have any questions not answered by this leaflet, you are welcome to contact:-

Democratic Services  
East Cambridgeshire District Council  
The Grange  
Nutholt Lane  
Ely  
Cambs  
CB7 4EE  
Tel: (01353) 665555  
[Democratic.services@eastcambs.gov.uk](mailto:Democratic.services@eastcambs.gov.uk)