

# GUIDANCE TO MAKING REPRESENTATIONS UNDER THE LICENSING ACT 2003

These notes are intended for guidance only and are not authoritative. No responsibility is accepted for errors or omissions. You may wish to seek specialist legal advice.

This guidance describes the process for making representations about applications for:

- new premises licences or certificates;
- full variations to existing premises licences or certificates;
- minor variations to existing premises licences or certificates; or
- provisional statements.

It also contains information about the hearings process, which applies to all the application processes except minor variations. Unless stated otherwise, references to 'licences' in this text also apply to club premises certificates.

## **The Licensing Act 2003**

The Licensing Act 2003 came into force in November 2005. Under the Act, businesses wishing to sell/supply alcohol, provide certain forms of entertainment (music and dancing, films, theatre and indoor sports) or provide late night refreshments (supply of hot food and drink between 23.00 and 05:00) require a licence which is issued by the local licensing authority.

The Act provides greater flexibility to businesses, but also gives local residents more opportunity to comment on proposals to alter licensed premises.

## **Who can make representation?**

Any person can comment on applications, regardless of their proximity to the premises. Organisations such as residents' associations, schools, chambers of commerce or parent-teacher associations can also comment.

Responsible authorities can comment on applications. These are statutory authorities and consist of the Police, Fire Service, Trading Standards, Environmental Health, Planning Authority and the Director of Public Health. The licensing authority itself is also a responsible authority.

A person can also ask someone – such as a friend, Ward Councillor or a lawyer – to represent them if they wish.

## What to look out for

### New licence applications and full variations

When applicants want to apply for a new licence, or vary their existing one (for example, to put on additional activities or extend their hours – other than when applying under the minor variation process), they must advertise the application by:

#### **Placing a notice at or on the premises**

- On A4 (or larger) pale blue paper (or on white paper, in the case of an application for a Minor Variation).
- Printed legibly in black ink or typed in a font of at least 16.
- Placed **prominently** at or on the premises where it can be **conveniently** read from the **exterior** of the premises.
- Placed every 50 metres on the external perimeter of the premises abutting any highway (where applicable).

#### **Placing a notice in a newspaper**

- Newspaper circulation must be in the vicinity of the premises (or if there isn't a local paper, in a local newsletter or circular).
- Advertisement will be at least once in the 10 days following the application being given to the licensing authority.

#### **Licensing Register**

Full application details can also be viewed in the licensing authority's "licensing register". Using the Register, applicants will be able to check all opening hours; licensable activities and any steps the applicant has volunteered to take to promote the four licensing objectives. These are set out in the applicant's "operating schedule".

The four licensing objectives are:

- **The prevention of crime and disorder;**
- **Public safety;**
- **The prevention of public nuisance; and**
- **The protection of children from harm.**

If any person believes that granting a licence in the terms it has been applied for is likely to have an effect (whether positive or negative) on the promotion of one or more of these objectives, they can make a representation to the licensing authority.

### Minor variations

For a Minor Variation application, a person has 10 working days in which to make a representation. For other applications, they have 28 consecutive days. In all cases, the timetable starts on the day after the day on which the application was given.

### **Licensing Policy**

Before making representations, you may wish to look at our [statement of licensing policy](#). This sets out our policies about licensing under the Licensing Act 2003.

### **Operating Schedule**

When considering the steps that an applicant has volunteered to promote the licensing objectives, it is important to remember that applicants should already be adhering to legislation in other areas, and they may feel there is nothing additional they need to do to promote the licensing objectives. Some applicants may therefore simply say something like “nothing beyond existing Health and Safety/Fire Safety etc. requirements” or if they are applying to vary a licence “nothing beyond the steps we are currently taking, which are already conditions of the licence”.

### **Making representations**

Representations should be made in writing to the licensing service. Representations can also be sent by email but must include the name and address of the person(s) making the representation.

You have a very short time in which to comment. For new licence applications and full variations, your comments must be received by the licensing authority no later than 28 days after the authority receives the application. For minor variations, the time period is shorter, and your comments must be received no later than 10 working days after the authority receives the application.

The licensing authority has no discretion to accept comments outside of these times, and these periods are set in the Licensing Act. Details of the applications which are under consideration can be found [here](#).

All representations must be about the likely effect of granting or varying the licence on the promotion of at least one of the four licensing objectives. It would be wise, therefore, to explicitly link any representation to one or more of the objectives.

Representations do not have to be objections: you can make representations in support of an application if you believe that it will have a positive impact on one or more of the licensing objectives. For example, an application to add live music or late night refreshment to a licence might help the premises attract a more diverse clientele and lower the risk of crime and disorder.

There is no requirement for a person to produce a recorded history at a premises to support their representations, and in fact, this would not be possible for new premises. However, it will assist your case if the representations are specific to the premises and evidence based. So, for example, if you believe a variation to an existing premises may cause problems in relation to crime and disorder, you may wish to talk to local police beforehand, or document existing problems yourself by, for example, keeping a diary or photographic evidence of any incidents. The licensing authority will need to be satisfied that there is an evidential and causal link between the representations made, and the effect on the licensing objectives.

In addition, the licensing authority can only consider representations that are not “vexatious” or “frivolous”. These terms have their ordinary meaning. Whether representations are frivolous or vexatious will be for the licensing authority to determine. For example, the licensing authority might find the representations were vexatious if they arise because of disputes between rival businesses or they might be frivolous representations if they plainly lacked seriousness.

Representations cannot be made anonymously, even if somebody else (e.g. a local MP or councillor) is making the representation on your behalf. This is because the licensing authority needs to be satisfied that the person making the representation is likely to be affected by the proposed activities and is not being vexatious. It is also important that an applicant is able to respond to a representation, for example, if they believe that it isn’t a “relevant” representation. Representations will be included in the report to the Licensing Sub-Committee and will be published on the council’s website. If you are concerned about possible intimidation, you could consider asking the police, or another appropriate responsible authority to make a representation on your behalf.

Alternatively, the licensing authority may be willing, in exceptional circumstances to withhold some or all of your personal details from the applicant. However, withholding such details should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.

Councillors making representations must comply with the Local Authorities (Model Code of Conduct) Order 2007 at all stages of the process.

### **Things you may want to consider when making representations**

- If no relevant representations are made (for applications other than a Minor Variations application), the licence or variation must be granted (subject to the mandatory conditions).
- Local Authorities must grant a Minor Variation unless there could be an adverse effect on the licensing objectives. They must take representations into account, but they will not hold a hearing.

- It may be helpful to get the backing of other people living, or businesses operating in the vicinity of the premises, or other “responsible authorities”, such as the police or environmental health.
- Look at your licensing authority’s official records about the premises, kept in their “licensing register”. This will show you if other people have asked for a review of the premises in the past.
- If you want to ask another person, such as an MP or local Councillor to represent you, it is advisable to make such a request in writing so that the individual can demonstrate he or she was asked. It will be a matter for them to decide whether they should agree to your request. They are not obliged to do so, however, most elected representatives are happy to help residents with this sort of issue, and there is no requirement for them to live in the vicinity of the premises in question for them to be able to make representations on behalf of residents that do. Councillors who are part of the licensing committee hearing the application will not be able to enter into discussions with you about the application, outside of the formal hearing, so it is suggested that you do not approach them to try to.
- Consider how you would like the issues to be addressed.
- If making a representation in support of an application, explain how the proposed activities would help promote the licensing objectives.

### **Where should representations be sent?**

Representations should be sent to

The Licensing Service  
Waltham Forest Town Hall  
Fellowship Square  
Forest Road  
London E17 4JF  
[Licensing@walthamforest.gov.uk](mailto:Licensing@walthamforest.gov.uk)

### **What happens after a representation has been made?**

#### **Hearings**

For applications other than Minor Variations, the licensing authority must hold a hearing to consider representations, unless:

- The representations are irrelevant (i.e. do not relate to the promotion of the licensing objectives); frivolous; or vexatious; or

- all parties can come to an agreement beforehand and agree that a hearing is unnecessary. For example, the licensing authority may offer to try and resolve matters via a negotiated agreement outside a formal hearing. You will need to decide if this is appropriate for you, but you can insist upon the hearing.

If there is to be a hearing on an application to which you have submitted representations, we will write to you to inform you of the date and time and will explain the format.

If an applicant withdraws their application after a hearing date has been arranged, the licensing authority will let you know that the hearing has been cancelled. Please note, if you make representations about an application that is later withdrawn, and the applicant makes a new, amended application, your representations will not automatically be taken forward. Any amended application would need to be re-advertised as set out above. Interested parties will then have the opportunity to decide whether to make representations about the new application.

### **Arrangements for Hearings**

For a Minor Variations application, licensing authorities must take representations into account, **but there will be no hearing**. The authority must make a decision within 15 working days after the application is made.

Any person that made representations are required to give notice to the licensing authority at least 5 working days before the start of the hearing, stating:

- Whether they will attend the hearing in person
- Whether they will be represented by someone else (e.g. councillor/ MP/ lawyer)
- Whether they think that a hearing is unnecessary (if, for example they have come to an agreement before the formal hearing)
- If they want another person to appear at the hearing (not to represent them), a request for permission for the person to attend, and details of their name and how they may be able to assist the authority in relation to the application

A person must let the licensing authority know as soon as possible (by a notice no later than 24 hours before the start of a hearing, or orally at the hearing) if they wish to withdraw their representation.

Hearings will generally be held in public, unless the licensing authority decides it is in the public interest to hold all, or part of the hearing in private. The licensing authority shall ensure that a record is taken of the hearing.

Hearings will normally take the form of a discussion and will be led by the licensing authority, which will consist of three local authority elected councillors (this will be the licensing sub-committee drawn from a full licensing committee of fifteen councillors). The

licensing authority will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the hearing and can consider evidence produced by a party at the hearing, but only if all parties agree. Further evidence can also be produced if this was sought for clarification of an issue by the authority before the hearing. Cross-examination of one party by another during a hearing is not allowed, unless the licensing authority thinks it necessary. The parties are entitled to address the authority and will be allowed equal time to address the authority and, if they have been given permission by the authority to do so, they will be given equal time to ask any questions of any other party. The authority will disregard any information it considers to be irrelevant.

**NB - A hearing can still go ahead in the absence of any party**

### **Hearing Decisions**

As a result of the hearing, the licensing authority must then decide how to proceed in order to promote the licensing objectives. It may:

- Decide to grant or vary the licence in the same terms as it was applied for;
- Decide that it is appropriate to refuse to issue or vary the licence;
- Decide to grant or vary the licence, but to modify the conditions;
- Exclude from the scope of the licence a licensable activity.
- In the case of a premises licence, refuse to specify a person as the premises supervisor

Licensing Authorities must give notice of its decision within 5 working days (if it does not give a decision at the hearing) and include information on the right of a party to appeal against the decision.