



Guidance on Making Representations and Premises Licence Reviews

Introduction

This guidance describes:

- How you can make a representation (an objection) to the Council, as the Licensing Authority, against
- Applications for new premises licences or certificates or provisional statements
- Variations to existing premises licences certificates
- Application for provisional statements
- How you can request a **review** of a Premises Licence
- The minor variations process
- It also contains information about the hearings process

(Please note that references to 'licences' in this guidance also apply to Club Premises Certificates.)

Applications

What to look out for:

When applicants want to apply for a new licence, or vary their existing licence (for example to put on additional activities or extend their hours), they must advertise the application for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority, by;

Placing a notice at or on the premises

- On A4 (or larger), pale blue paper
- Printed legibly in black ink or typed in black in a font of a size equal to or larger than 16
- It must be placed prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the case of a premises covering an area of more than 50 metres square, a further notice in the same form and subject to the same requirements every fifty metres along the external perimeter of the premises abutting any highway.

Placing a public notice in a newspaper

- The newspaper circulation must be in the vicinity of the premises (if there isn't a local paper a local newsletter or circular can be used).
- The advertisement must be in the newspaper at least once in the ten days following the application being given to the licensing authority.

Licensing Register

Our website carries an index of all applications received and full application details can also be viewed in the public register which is held at the Council Offices, The Campus, Welwyn Garden City. Please make an appointment to view the register between 8.45 and 5.15 Monday to Thursday and 8.45 to 4.45 on a Friday.

Licensing Objectives

If you wish to make a representation or request a Licence review then the reason must relate to one of the four licensing objectives.

These are:

Crime and Disorder:

Any crime, disorder or anti-social behaviour must relate to the management of the premises. The licence – holder cannot be responsible for the conduct of individuals once they leave the vicinity of the premises, but can impact on customers as they enter or leave the premises.

Public Safety:

This relates to the safety of the public on the premises, such as fire safety, lighting and fire exits

Prevention of public nuisance:

This can relate to hours of operation, noise and vibration, noxious smells, light pollution and litter.

Protection of children from harm: This relates to protecting children from the activities carried out on the premises whilst they are on the premises. The law provides specific protection for children, such as making it illegal for children under 18 to buy alcohol.

If interested parties are concerned that granting a licence in the terms it has been applied for is likely to have an adverse effect on the promotion of one or more of these objectives, they have 28 consecutive days, starting on the day after the day on which the application was given to the Council, to make a representation to the Council. Details of how to do this are set out below.

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, (for example Health and Safety or Fire Safety) and they may feel there is nothing additional they need to do to promote the licensing objectives.

Requesting a Review of a Premises Licence

Occasionally things may go wrong once a licence has been granted. In the first instance, we strongly advise you to talk to the manager of the premises to try and arrange an informal resolution.

If you have a complaint about any activities allowed under a licence, the Council's Licensing Section will be pleased to help you try and resolve it.

Ultimately, if matters can't be resolved informally, if you qualify as an interested party, you can ask for the premises licence to be reviewed.

Reviews allow the Licensing Sub-Committee to look at the licence again. If necessary the Committee can change the licence conditions, or in extreme cases, can suspend or revoke all or part of the licence.

Who can make a representation or request a review.

The Licensing Act stipulates that only an Interested Party or a Responsible Authority can lodge a representation or request a review. These are defined as:

“Interested Party”

- A person living in the vicinity of the premises, or
- A body representing persons who live in the vicinity of the premises, or
- A person involved in a business in that vicinity, or
- A body representing persons involved in such businesses, or
- A member of the relevant licensing authority i.e. elected councillors of the licensing authority for the area in which a premises is situated.

If you do not live in the vicinity of the premises or your business is not in the vicinity of the premises (i.e. likely to be directly affected) then your representation or request will be deemed to be invalid.

“Responsible Authority”

These include Hertfordshire Police, Fire and Rescue, Health and Safety enforcing authority, Planning authority, the Council as Pollution control Authority, Hertfordshire County Council Social services, and Hertfordshire County Council Trading Standards department. There are other Responsible Authorities in special cases such as premises that lie in two Council areas or if the premise is a boat etc.

The Council, as the Licensing Authority, has no power itself to object to any licence or variation application or to call in a contentious application so that it can be considered by a licensing sub-committee. The Licensing Authority cannot initiate a review of the Premises licence but other parts of the Council such as Planning or Environmental Health may be able to object or request a Premises review and they would be treated as any other representor.

Making Representations or Requesting a Review

Representations

These should be made in writing to the licensing authority where the premises are situated i.e. within the borough of Welwyn Hatfield to Welwyn Hatfield Borough Council.

We have a form that you can choose to make a representation on. This is available at the Council offices or you can download a copy on our website. You don't have to use this form but using it makes sure all the important information is included. Representations sent by electronic means must also be sent in as a letter or on the form provided. There is no fee involved in making a representation.

Requesting a Review

These should be made in writing to the licensing authority where the premises are situated, in this case the borough of Welwyn and Hatfield.

A review of a premises Licence must be made using a statutory form. A copy of this form can be obtained free from us or can be down loaded from our website.

Reasons for Representations or Reviews

A representation must be about the likely effect of granting the licence, or certificate, on the promotion of at least one of the four licensing objectives. Similarly a request for a review must be about how the activities of the premises are adversely affecting one of the licensing objectives. If a representation or request does not relate to one of these objectives it will be deemed invalid. Representations or review requests must therefore, explicitly link to one or more of the licensing objectives.

It will also assist if the representations or review requests are specific to the premises and evidence based. Interested parties may, therefore, wish to document problems themselves by, for example, keeping a diary detailing specific problems together with dates of any incidents. If the matter goes to a hearing the Councillors at the hearing will need to be satisfied that there is an evidential and causal link between the representations made (or the matters giving rise to the review request) and the effect on the licensing objectives.

Please remember that lodging a representation or requesting a review of a Premises licence is a serious matter.

The licensing authority can only consider representations or requests that are not vexatious or frivolous. In addition a request for a review of the Premises licence would be deemed invalid if they were repetitious.

The Council would decide if a representation was frivolous, vexatious or repetitious as these terms have their ordinary meaning. The statutory guidance says that more than one review should not be permitted on similar grounds within a period of twelve months except in compelling circumstances.

Interested parties cannot make representations anonymously. This is because the licensing authority needs to be satisfied that the person making the representation lives in the vicinity of the premises, and is not being vexatious. It is also important that an applicant is able to respond to a representation if they believe it is not a relevant representation. If interested parties are concerned about possible intimidation, they could consider asking the police or another appropriate responsible authority to make a representation on their behalf.

Points to consider when making a representation or requesting a review.

- If no valid representations are made against an application, the licence or variation must be granted.
- You may wish to discuss your representation with other people living in the vicinity of the premises, or businesses operating in the vicinity of the premises.
- If you want to ask another person, such as a friend or a local Councillor to represent you, it would be appropriate to get their agreement before lodging your representation or request. If you approach a local Councillor to represent you then it is for them to decide

whether they will agree to your request. They are not obliged to do so, although most elected representatives are happy to help residents. Councillors who are part of the licensing committee are not able to sit on a subcommittee if they have any interest that is likely to prejudice the members' judgement of the public interest. However the Councillor could still represent you as they would not be part of the decision making process.

- Consider how you would like the situation to be rectified so that you can make suggestions if the matter goes before a hearing.
- It will not be possible to tell which councillors from the Licensing Committee will be selected to hear the application until a week or two before the hearing. Councillors on the Licensing Committee would not discuss current applications or representations in order to preserve their impartiality.

Minor variations

This was introduced by the Licensing Act 2003 (Premises licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 as a way in which operators could make minor changes by a simplified procedure. The application does not have to be advertised in a local paper, and only needs to be advertised on the premises for ten days on a white notice as opposed to 28 days on a blue notice for full variations. If there are no objections, the application must be granted.

Licensing Policy

Before making representations or requesting a review, interested parties may wish to look at Welwyn Hatfield Councils [licensing policy](#). This sets out the Councils' policies about licensing. It is available on our [website](#) or you can contact us to request a printed copy.

What happens after a representation has been made?

If the licensing authority considers that the representations or requests are valid (i.e. are from an interested party and are not frivolous or vexatious or in the case of review the request is not repetitious) we must hold a hearing to consider those representations or review unless all parties can come to an agreement beforehand and agree a hearing is unnecessary. For example, the licensing authority may try to resolve matters via a negotiated agreement outside a formal hearing. You will need to decide if this is appropriate for you, but if you do not agree with the proposed amendments then your representation will go before a hearing.

If the application is to go to a hearing we will write to inform you of the date and time of the hearing and will explain the format of the hearing.

If a hearing is cancelled as the representations have been resolved or withdrawn then we will write to you to let you know. However, applications can be withdrawn at any time up to 24 hrs before the hearing so this may not be possible. Any new applications submitted would start the process once more and would need to be advertised so interested parties can decide whether to make representation or not.

Before the Hearing

Interested parties 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. friend/Councillor/lawyer).
- Whether they think a hearing is unnecessary (if, for example to an agreement has been reached before the formal hearing).
- If they want another person to appear at the hearing (not to represent them), a request for permission for that person to attend, and details of their name and how they may be able to assist the authority in relation to the application.

When we write to you notifying you of the date of the hearing we will include a form for you to return to us that gives these details.

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

At the Hearing:

Hearings will take place before a Sub Committee which will consist of 3 councillors drawn from the full licensing committee of 15 councillors. Hearings will generally be held in public unless the Sub Committee decides it is in the public interest to hold all, or part of the hearing in private.

Whilst you do not have to attend the hearing this is your opportunity to put forward your case. If there are a number of representations against an application then we would encourage the representors to appoint a single spokesperson to represent the views of all the representors or the views of a group with the same issues.

At the start of the hearing the procedure to be followed will be explained. The hearing will normally take the form of a discussion and will be led by the Sub Committee members. A representor, or a person or body requesting a review, can either speak on their own behalf at a hearing or may be represented by another person. This may be a solicitor or barrister, but could also be any other person such as a friend or neighbour who is used to public speaking. Councillors can speak on behalf of a representor, or someone who has requested a review, but can also speak in their own right if they have any concerns about any premises.

The Sub Committee will determine any request for additional persons to appear at the hearing as witnesses. It will consider evidence produced before the hearing and can consider additional documentary evidence produced by a party at the hearing, but only if all parties agree. Cross examination of one party by another at a hearing is not allowed. The parties are entitled to address the Sub Committee and will be able to ask questions of any other party through the Chairman of the Sub Committee.

Please note that if you or the applicant decides not to attend the hearing it may go ahead without you or the applicant being present. Your written representation or review request will still be considered.

Hearing Decisions

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

- grant or vary the licence in the terms it was applied for;
- refuse to issue or vary all or part of the licence;
- grant or vary the licence but with changed or additional conditions;
- exclude from the licence a licensable activity;
- in the case of a premises licence, refuse to specify a person as the premises supervisor

In the case of a review it may ;

- modify the conditions of a licence;
- to exclude a licensable activity from the scope of a licence
- to remove the designated premises supervisor
- to suspend the licence for a period not exceeding three months
- to revoke the licence

A decision will usually be given at the end of a hearing and confirmed in writing and we will include information on the right of a party to appeal against the decision.

Can I appeal against a decision?

Either the applicant for a licence or a representor or any party who applied for a review of a Premises licence can appeal against the decision of the licensing Sub Committee within 21 days of the written notification. An appeal has to be made to the Magistrates Court for the area where the premises concerned are situated. The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both. The court may then dismiss the appeal, make a decision that the licensing authority could have made or send the case back to the licensing authority to dispose of in accordance with directions from the court. Whilst costs are not awardable by the Council against any party making a representation, or requesting a review, a Magistrates Court can award costs either for or against any party which lodged the appeal.

If you have any further queries please contact our Licensing Team at the address below.

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