



Elmbridge Borough Council

... bridging the communities ...

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Guidance on Making Representations under the Licensing Act 2003 and Requesting a Premises Licence Review

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

Please note that a 'Representation' can be made either for or against an application.

This guidance describes:

- How you can make a **representation** to the Council (as the Licensing Authority), as the Licensing Authority, in respect of
 - applications for new premises licences or certificates or provisional statements;
 - variations to existing premises licences or certificates;
 - applications for provisional statements;
- How you can request a **review** of a Premises Licence.
- 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 by doing all the following:

Placing a notice at or on the premises

- On A4 (or larger), pale blue paper.
- Printed legibly in black ink or typed in a font of at least size 16.
- It must be 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 the premises covers an area greater than fifty metres square.

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 10 days following the application being given to the licensing authority.

Licensing Register

Copies of applications for premises licences or variations are available online through the Council's website – usually within a couple of days from the date they are submitted. Please visit www.elmbridge.gov.uk/licensing 'Find a licence / application'. If you wish to view a hard copy of the register or please telephone the Licensing Team on 01372 474750 to make an appointment, usually available between 9am-5pm Mon to Fri.

The application will include the proposed opening hours, licensable activities and any steps included in the "operating schedule" which the applicant has volunteered to take to promote the four licensing objectives (described below).

Licensing Objectives

- If you wish to make a representation or request a Licence review then the issue must relate to one of the licensing objectives or it will not be valid. More detailed guidance is available in the document 'Guidance on the Assessment of Premises Licence Representations'

The four licensing objectives are:

- **Prevention of Crime and disorder:** This relates to any crime, disorder or anti-social behaviour related 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.
- **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 does provide Specific protection for children, such as making it illegal for children under 18 to buy alcohol.

If you 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, or, conversely, that it may support the objectives, you have 28 consecutive days, starting on the day after the day on which the application was given to the Council, to make a representation.. 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, and they may feel there is nothing additional they need to do to promote the licensing objectives. Some applicants may therefore simply say in their schedule 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".

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 talk to the manager of the premises to try and arrange an informal resolution.

If you still have a complaint about any activities allowed under a licence, the Council's Licensing Team will be pleased to help you try and resolve it. Some complaints may not be the Licensing Authority's responsibility to deal with, but we can advise you who to contact in these circumstances.

Ultimately, if matters can't be resolved informally, you can ask for the Premises Licence to be reviewed.

Reviews allow the Licensing Sub-Committee to look at the licence permissions. If necessary the Committee can change the licence conditions or, in extreme cases, can suspend or revoke all or part of the licence or remove a Designated Premises Supervisor (often the premises manager).

Who can make a Representation or Request a Review?

Any Person or Responsible Authority (see below) can lodge a representation or request a review. These are defined as:

This will include but is not limited to:

Local Members of Parliament or Councillors cannot make a representation or request a review **on behalf of** constituents although they can make a representation or request a review in their own right. They may be able to represent someone at a hearing who is an interested party and who have themselves lodged a representation or requested a review.

“Responsible Authority”

These include Surrey Police, Surrey Fire and Rescue, Health and Safety enforcing authority, Planning Authority, the Council as Pollution Control Authority, Surrey County Council Child Protection Team, and Surrey 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 premises is a boat, etc.

The Council, as the Licensing Authority, has the power itself to make representations or request reviews of a licence, however, it will not do so in situations where the representation or review would be better made by one of the expert Responsible Authorities who hold evidence. For example, the Licensing Authority would be unlikely to review a premises licence for issues relating to noise nuisance, this would be the role of the Council's Pollution Control Authority / Environmental Health Team)

Making Representations or Requesting a Review

These must be made in writing to the licensing authority where the premises are situated i.e. for premises within the Elmbridge area to Elmbridge Borough Council.

We have (separate) forms that you can use to make a representation or request a review, you can download copies from our website. There is no fee involved

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 impacting on one or more 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 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 and times or even obtaining photographic evidence of any incidents, although this may be difficult. 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. Any representation or request must be factually correct. It is an offence to knowingly or recklessly make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for such an offence is £5,000.

The licensing authority can only consider representations or requests that are not “vexatious” or “frivolous”, a term contained in legislation. In addition a request for a review of the Premises Licence would be deemed invalid if it were repetitious.

What does frivolous or vexatious mean?

“Frivolous” or “vexatious” have their ordinary meaning. Whether representations are frivolous or vexatious will be for the Council to determine. For example, the Council might find that representation was vexatious if it was lodged because of a dispute between rival businesses or it might be a frivolous representation if it plainly lacked seriousness.

What does repetitious mean?

This again has its ordinary meaning but 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. It is important that an applicant is able to respond to a representation, for example, if they believe that it isn't “relevant”. If persons are concerned about possible intimidation, they could consider asking the police, or another appropriate responsible authority to make a representation on their behalf. The Licensing Authority may anonymise a representation if it considers there is a genuine fear of intimidation, although this is rare.

Things to consider when making representations 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 may wish 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.. Councillors who are part of the licensing committee 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 represent you

- 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. Ward Councillors do not hear applications in respect of premises within their own Ward.
- We strongly recommend that you do not attempt to lobby Councillors who serve on the Licensing Committee and who might, therefore, hear the application. Lobbying might lead to the Councillor having to disbar themselves from hearing the matter.

Licensing Policy

Before making representations or requesting a review, you may wish to look at the Elmbridge Licensing Policy Statement this is available on our website www.elmbridge.gov.uk/licensing.

What happens after a representation has been made?

The licensing authority must assess the representation to see that it is valid (i.e. not frivolous or vexatious or in the case of review the request is not repetitious). Once validated we must hold a hearing to consider those representations or a request - unless all parties can come to an agreement beforehand, and agree that a hearing is unnecessary. 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 you can decide that you do not agree with the proposed settlement and 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 an applicant withdraws their application after a hearing date has been arranged, we will write to you to let you know that the hearing has been cancelled, wherever possible. However, applications can be withdrawn at any time up to 24 hours before the hearing so this may not be. You should be aware that if you make a representation about an application that is later withdrawn and the applicant makes a new, amended application, your representation will not automatically be taken forward. Any amended application would need to be re-advertised as set out above. You will then have the opportunity to decide whether to make representations about the new application.

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 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.

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. We will also include an information sheet that tells you what the detailed order of speaking at the hearing will be.

Interested parties must let the licensing authority know as soon as possible (by a letter no later than 24 hours 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 a full licensing committee of 13 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.

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 only represent that persons views and cannot speak as a Councillor representing the community.

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 during a hearing is not usually 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 the hearing, 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 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 or remove a person as the premises supervisor

A decision will usually be given at the end of the 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 the holder of a Premises Licence 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. Such an appeal has to be made to the Magistrates Court. An appeal triggers a complete re-hearing of the matter. 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.

For further information about making representations or requesting a review, please contact the Licensing Officer at the address given below.

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