

AGENDA SUPPLEMENT

Licensing Hearing

To: Councillors Cuthbertson, Galvin and Looker

Date: Thursday, 17 November 2022

Time: 10.00 am

Venue: Remote Hearing

The Agenda for the above hearing was published on **9 November 2022**. The attached additional document sets out the procedure to be followed for this remote review hearing.

This agenda supplement was published on **10 November 2022**.

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LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR REMOTE LICENSING HEARINGS (*Review hearings*).

Introduction

1. During the coronavirus pandemic emergency period it will be necessary for licensing hearings to be dealt with remotely. This procedure sets out how City of York Council will deal with such hearings. This procedure must be considered in conjunction with the Council's Delivery of Remote Meetings document which sets out how all meetings, including licensing hearings, will be held in York.

2. The procedure adopted at a licensing Review hearing is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.

3. The Council's hearings procedure is based on regulations made by the Secretary of State under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee has a duty to view all evidence presented before them impartially. The Sub-Committee is not bound by the formal rules of evidence. Nevertheless, Members must carry out their duty placing what weight they feel is appropriate given the nature of the evidence and the manner in which it was obtained, and communicated.

4. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal. The Hearing will be recorded and the recording placed on the Council's website.

Preparation for the Remote Licensing Hearing

5. The Sub-Committee will use the video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee. This video-conferencing platform will also be used for decision making in private. All paperwork relevant to the hearing will be published online on the Council's website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made

public. Telephone numbers, email addresses and signatures will be omitted.

6. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.

7. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.

8. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.

9. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

The Remote Licensing Hearing

10. The Applicant for the Review and the Licence Holder(s) are permitted to speak at the remote hearing (see below). Ward Councillors, responsible Authorities and Representatives are only permitted to speak if they have made written submissions during the consultation period. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

11. All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.

12. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.

13. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant for the Review, the Licence Holder(s) and Members.

14. The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives. Duplication should be avoided. Comments must be confined to those points already made, although the parties may expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be made at length.

15. The Applicant for the Review or any Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.

16. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

ORDER OF PROCEEDINGS AT THE REMOTE HEARING

Chair's introduction and opening comments

17. The Chair will introduce the Sub-Committee Members and Officers and welcome the Applicant for the Review, the Licence Holder(s) and their representatives), and any Representors, and establish the identity of all who will be taking part.

18. The Chair will outline the procedure to be followed.

19. The Chair will proceed with the order of business on the agenda.

Licensing Manager

20. When the agenda item relating to the application is reached, the Chair will invite the Licensing Manager or Licensing Officer to present the application. The Chair will invite all present, one by one, to ask the

Licensing Manager / Officer questions if they wish, to clarify any points raised in the report.

The Application

21. The Applicant for the Review (and/or their representative) will address the Sub-Committee and present information in support of the application and may call any witnesses to support the application, one witness at a time [*maximum 15 minutes*].

22. The Chair will invite the Licence Holder(s), Representors and Sub-Committee to ask questions of the Applicant for the Review in the following order [maximum 5 minutes each party]:

- Responsible Authorities
- Ward Councillors
- Interested parties
- Members of the Sub-Committee;
- The Sub-Committee's legal adviser.

The Representations

23. The Chair will invite the Representors and/or their representative in the following order to address the Members of the Sub-Committee and call any witnesses in support of their representation [*maximum 15 minutes each party*]:

- Responsible Authorities
- Ward Councillors
- Interested parties

24. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

25. The Chair will invite the Applicant for the Review to ask questions of each Representor and/or their witnesses after each presentation [maximum 5 minutes per Representor]. The Chair will invite the Sub-Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

26. The Chair will invite the Licence Holder(s) (or their representative) to present their case and call any witnesses to support their case [*maximum 15 minutes*].

27. The Chair will invite the Applicant for the Review and Representors (or their representative) in the following order to ask questions of the Licence Holder(s) (or their representative) and/or witnesses *[maximum 5 minutes each party]*

- Applicant for the Review
- Responsible Authorities
- Ward Councillors
- Interested Parties

28. The Chair will invite the Sub-Committee Members to ask questions of the Licence Holder(s) or their representative.

Summaries

29. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*

- Responsible Authorities
- Ward Councillors
- Interested Parties

30. The Chair will invite the Licence Holder(s) (or their representative) to summarise their case *[maximum 5 minutes]*.

31. The Chair will invite the Applicant for the Review (or their representative) to summarise their case *[maximum 5 minutes]*.

32. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor on law and jurisdiction.

Determination

33. The Sub-Committee will withdraw to consider their decision with the Legal Adviser and the Democratic Services Officer in a separate private on line meeting. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

34. If the decision is made following the conclusion of the hearing, the Sub-Committee will return to the public online meeting to announce an

outline of the decision to those present. This decision will then be communicated in full in writing, including reasons for the decision, to the Applicant for the Review, the Licence Holder(s) and all Representors (whether in attendance or not) usually within 5 working days of the hearing. There can be no further questions or statements.

35. If the Sub-Committee does not make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democratic Services Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant for the Review, the Licence Holder(s) and the Representors within 5 working days of the decision being made.

The notification will include information about the rights of appeal against the determination made.