

**EXETER CITY COUNCIL  
LICENSING ACT 2003**

**NOTICE OF HEARING BEFORE A LICENSING SUB-COMMITTEE**

Date: 26 November 2009  
Name: Devon and Cornwall Constabulary.  
Address: Heavitree Rd. Police Station  
Heavitree Rd.  
EXETER  
EX1 2LR

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Case Number:

Application: By: John Gaunt Solicitors on behalf of the Hole in the Wall  
Of: Little Castle Street Exeter EX4 3PX  
Re: TEMPORARY EVENT NOTICE

PLEASE NOTE that the hearing of this application will be heard by the licensing sub-committee sitting

AT: The Civic Centre, Paris Street, Exeter

AT: 09.30

ON: Thursday 3 December 2009



Principal Licensing Officer

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N.B. Because you have made written representations against this application, you are now a party to the proceedings and **you should respond to this notice if you wish to address the sub-committee.** Please turn to page 2 which explains how and by when you should respond.

Please notify the licensing authority if you have any special needs or requirements for the hearing or if you will have any difficulty in attending.

**ADDRESS ALL CORRESPONDENCE TO:**

The Principal Licensing Officer, Civic Centre, Paris Street, Exeter EX1 1JN  
Tel: 01392 265434 Fax: 01392 265853 E-mail: [licensing@exeter.gov.uk](mailto:licensing@exeter.gov.uk)

## **RESPONSE TO NOTICE OF HEARING**

You are required by Regulation 8 of The Licensing Act 2003 (Hearings) Regulations 2005 to give the Senior Licensing Officer a notice:-

- a) stating whether you consider a hearing to be unnecessary;
- b) stating whether you intend to attend and/or be represented at the hearing; and
- c) requesting permission if you wish any other person to appear at the hearing, stating that person's name and giving a brief description of the point(s) on which that person may be able to assist the licensing sub-committee in relation to your application, representations or objection (as applicable).

### **PLEASE SEND THIS INFORMATION TO:**

The Senior Licensing Officer, Civic Centre, Paris Street, Exeter EX1 1JN  
Tel: 01392 265434 Fax: 01392 5853 E-mail: [licensing@exeter.gov.uk](mailto:licensing@exeter.gov.uk)

**TO ARRIVE BY NO LATER THAN:** Tuesday 1 December 2009

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**Accompanying this notice you will find information about the licensing sub-committee hearing procedure together with copies of any documents which have to be disclosed to you prior to the hearing.**

**In the interests of all those attending the hearing, the sub-committee requests that each party limit any oral submissions to a maximum time of 20 minutes. During such submissions, the sub-committee will expect you to provide clarification on the following particular point(s):-**

*\*[insert any points which require clarification]*

**EXETER CITY COUNCIL – LICENSING ACT 2003  
PROCEDURE AT LICENSING SUB-COMMITTEE HEARINGS  
INFORMATION FOR PARTIES**

References in these notes to “the Act” are to the Licensing Act 2003 and references to “the Regulations” are to The Licensing Act 2003 (Hearings) Regulations 2005.

**1. Right of attendance, assistance and representation**

You may attend the hearing and be assisted or represented by any person whether or not that person is legally qualified. This right is subject to the licensing authority’s right to exclude any person from a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing taking place in public.

**2. Representations and supporting information**

At the hearing you will be entitled:-

- a) to address the sub-committee;
- b) to give further information in support of your application, representations or notice (as applicable) in response to any point(s) upon which the licensing authority has advised that you will be required to provide clarification (see page 2 above); and
- c) if given permission by the sub-committee, to question any other party.

**3. Consequences if you fail to attend or be represented**

- 3.1 If you inform the licensing authority that you do not intend to attend or be represented at the hearing, the hearing may proceed in your absence.
- 3.2 If you do not so inform the licensing authority and then fail to attend or be represented at the hearing, the hearing may either be adjourned to a specified date or be held in your absence.
- 3.3 Where the hearing is held in your absence, the sub-committee will consider your application, representations or notice (as applicable).
- 3.4 Where the hearing is adjourned to a specified date you will be notified of the date, time and place to which the hearing has been adjourned.

**4. Procedure to be followed at the hearing**

- 4.1 The Chair shall open the sub-committee and remind Members of their obligation to declare any personal and prejudicial interests.
- 4.2 If appropriate, the sub-committee may make a resolution under Section 100A of the local Government Act 1972 to exclude the public from the hearing of a particular matter. Alternatively the sub-committee may make a resolution to exclude the public from the hearing of a particular matter where it considers this to be in the public interest.

- 4.3 The Chair shall identify the elected Members, the Legal Adviser, the Member Services Officer (and the Licensing Officer, if present) for the benefit of those attending the hearing. The Chair shall explain the officers' respective roles.
- 4.4 Each matter to be dealt with by the sub-committee shall be called in turn, usually in the order listed on the sub-committee agenda. However, the Chair may change the order at his/her discretion.
- 4.5 If the matter is being heard in private, the Member Services Officer will direct everyone except the Members, officers and parties to leave the room.
- 4.6 As each matter is called, the Chair will ask all the parties to identify themselves. Parties may be assisted or represented by any person whether or not that person is legally qualified, except that the sub-committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return, or permit them to return only on such conditions as the sub-committee may specify; but such a person may, before the end of the hearing, submit to the sub-committee in writing any information which they would have been entitled to give orally had they not been required to leave.
- 4.7 The Chair (or Legal Adviser) will ask the parties if they understand the procedure to be followed and, if not, will explain the procedure to them, including any maximum time-limit to be imposed in respect of each party's representations.
- 4.8 If a party has informed the authority that he will not be attending or be represented at the hearing, it may proceed in his absence. If a party who has not informed the authority that he will not be attending or represented fails to attend or be represented, the sub-committee may hold the hearing in that party's absence or, if it considers it to be necessary in the public interest, adjourn the hearing to a specified date.
- 4.9 Where the authority holds a hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 4.10 Where the authority adjourns a hearing to a specified date, it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 4.11 The Chair (or Legal Adviser or Licensing Officer) will introduce the matter by outlining the relevant facts. If the Licensing Officer attends, the Members may consult him at any time during the hearing to clarify any point relating to the application.
- 4.12 The sub-committee shall consider any request(s) previously made by any party(s) (in its Response to Notice of Hearing) for permission for another person to appear, and such permission shall not be unreasonably withheld.

- 4.13 The Chair (or Legal Adviser) will invite the applicant(s) to present his case to the sub-committee, subject to any maximum time-limit imposed and to the requirements of paragraphs 4.19 and 4.20 below.
- 4.14 Members of the sub-committee may ask questions of the applicant(s) and of any other person appearing on behalf of the applicant. Any other party may ask questions with the permission of the sub-committee.
- 4.15 The Chair (or Legal Adviser) will then invite each interested party and/or responsible authority in turn to present its case to the sub-committee, subject to any maximum time-limit imposed and to the requirements of paragraphs 4.19 and 4.20 below.
- 4.16 Members of the sub-committee may ask questions of each party who has addressed them and of any other person appearing on that party's behalf. Any other party may ask questions with the permission of the sub-committee.
- 4.17 The Chair (or Legal Adviser) will then invite the applicant to respond to the representations made by the other parties.
- 4.18 Where the sub-committee sets a maximum time-limit for each party to present its case, that time-limit shall apply to all parties.
- 4.19 Applications, relevant representations and/or notices shall have been sent to the authority, and to the other parties entitled to receive them, prior to the hearing within the statutory time-limits. The sub-committee may, at its discretion take into account additional documentary or other information produced by a party in support of its application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. Any party seeking to produce additional documentary information shall provide sufficient copies for the Members, officers and other parties attending the hearing.
- 4.20 The sub-committee shall disregard any information given or evidence produced by a party or a witness which is not relevant to:-
- (1) its application, representations or notice (as applicable), and
  - (2) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a Chief Officer of Police, the crime prevention objective.

## **5. Evidence**

The strict legal rules of evidence shall not apply and evidence shall not be given on oath.

## **6. Legal Advice**

- 6.1 The role of the sub-committee's Legal Adviser is to provide the Members with advice on:-
- questions of law;

- matters of practice and procedure;
- the options available to the sub-committee in making their decision;
- any relevant decisions of superior courts, or other guidelines (eg. - Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
- other issues relevant to the matter before the sub-committee (eg. any consultation currently in progress through Council etc.)
- where appropriate to assist the sub-committee in recording the reasons for its determination.

6.2 The Legal Adviser may ask questions of parties and persons appearing on their behalf in order to clarify the evidence and any issues in the case.

6.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

## **7. Determination of applications**

7.1 When all the evidence has been heard, the Members may withdraw to make their deliberations. The Member Services Officer and the Legal Adviser may remain with the sub-committee to give legal or procedural advice, but the Members will make the determination.

7.2 If the sub-committee needs to ask any further questions of any party, all parties will be asked to return before the sub-committee.

7.3 In the case of hearings held under the following sections of the Act, the sub-committee shall make its determination at the conclusion of the hearing:

- Hearing to consider police objection to temporary event notice [s.105(2)(a)]
- Hearing to consider review of premises licence following closure order [s.167(5)(a)]
- Hearing to determine application for conversion of existing licence to a new premises licence [Schedule 8, para 4(3)(a)]
- Hearing to determine application to vary a premises licence which is made at the same time as an application to convert an existing licence [s. 35 or s.39]
- Hearing to determine application for conversion of existing club certificate to a new club premises certificate [Schedule 8, para 16(3)(a)]
- Hearing to determine application to vary club premises certificate which is made at the same time as an application to convert an existing club registration certificate [s.85]
- Hearing to determine application for grant of personal licence to existing justices' licence holder [Schedule 8, para 26(3)(a)]

7.4 In any other case the authority shall make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.

7.5 Where all the parties have agreed that no hearing is required, the authority shall make its determination within the period of 10 working days beginning with the day on which it gives notice to the parties.

## **8. Quorum**

8.1 The quorum for any hearing of a licensing sub-committee shall be two (2) Members.

8.2 Determinations shall be made by a majority vote with the Chair having a casting vote in the event of an inconclusive result.

## **9. Record of proceedings**

The authority shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for 6 years from the date of the determination or, where an appeal is brought against the determination of the authority, the disposal of that appeal. This shall be the responsibility of the Member Services Officer.

## **10. Irregularities**

10.1 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.

10.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the authority shall take such steps as it thinks fit to remedy the irregularity before reaching its determination.

10.3 The authority may correct clerical mistakes in any document recording a decision of the authority or errors arising in such a document from an accidental slip or omission.

## **11. Form of notices**

11.1 Any notices required to be given under this procedure (and/or under the Regulations) must be given in writing.

11.2 The requirement that any notice must be given in writing shall be satisfied where:-

- (a) the text of the notice
  - (i) is transmitted by electronic means;
  - (ii) is capable of being accessed by the recipient;
  - (iii) is legible in all material respects; and
  - (iv) is capable of being reproduced in written form and used for subsequent reference;

- (b) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and
- (c) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.

11.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph 15.2(a) are satisfied.

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