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 Licensing Authority, in respect of applications for new premises licences or certificates, or variations to existing premises licences or certificates;

• 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.)

Supplementary information to Environmental Health and Licensing Privacy notice

Please be aware that all valid responses to licensing consultations and review applications will form part of an official report to be considered by elected members of Reigate and Banstead Borough Council. We therefore share information we collect from you internally with Democratic Services, Legal Services and Licensing Councillors.

Your data will be shared externally with the premise licence applicant, licence holder or their agent.

Official reports are published on the Council’s website. To this extent, the following information about persons etc making representations will be published on the Council’s website; name and address but not specific house numbers. We include reference to streets so that decision makers can make a judgement on the appropriate weight to add to consultation responses. We redact all other personal information when we publish official reports.

In the event of the Council facing a legal challenge to a decision it has made, we may be required to disclose information about you as part of those legal proceedings.
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 during the 28-day consultation period by completing the following two points:

1. Placing a notice at or on the premises
   - On A4 (or larger) pale blue paper (or white for minor variations).
   - 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.

2. 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 within 10 working days following the application being given to the Licensing Authority.

Licensing Register
Copies of applications for premises licences or variations are usually available within a couple of days from the date they are submitted and can be found on the Council’s website at: www.reigate-banstead.gov.uk.
Alternatively, call the Licensing team on 01737 276672 to make an appointment, usually available Monday to Friday between 10am-4pm.

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.

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 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 any steps detailed in the application 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. 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 licensable activities, the Council’s Licensing team will be pleased to help you try to 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 (individual, body or business) or Responsible Authority (see below) can lodge a representation or request a review. 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, Surrey County Council Trading Standards Department, Public Health and Home Office. The Council, as the Licensing Authority, has the power 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 another person or 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 Reigate & Banstead area to Reigate & Banstead Borough Council. Facilities to make electronic comment on applications are available through the Council’s website. Application forms to apply for a review are available on request by emailing licensing@reigate-banstead.gov.uk. 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.
objectives. Representations or review requests which do not explicitly link to one or more of the objectives will be deemed invalid.

Any representations or review requests should be specific to the premises and preferably evidence based. Persons may therefore wish to document problems themselves i.e. keeping a diary detailing specific problems together with dates and times or even obtaining photographic evidence 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. 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”, terms 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 12 months except in compelling circumstances.

Anonymous representations

Persons 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 is convinced 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 close by, or businesses operating in the vicinity of the premises to establish if they have similar concerns.

It will be helpful if you consider how you would like the situation to be rectified so that you can make suggestions if the matter goes before a hearing.

If you want to ask another person (such as a friend or neighbour) to represent you, you may wish to get their agreement before lodging your representation or request. If you approach a local Councillor to speak on your behalf, it is for them to decide whether they will agree to your request.

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 Reigate & Banstead Licensing Policy Statement this is available on our website: [www.reigate-banstead.gov.uk](http://www.reigate-banstead.gov.uk).

**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. If the application is to go to a hearing, we will write to inform you of the date and time of the hearing 10 working days in advance and will explain the format of the hearing.

If an applicant withdraws their application after a hearing date has been arranged, we will make every effort to you to let you know that the hearing has been cancelled. However, applications can be withdrawn at any time up to 24 hours before the hearing so this may not be possible. 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 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**

Anyone invited to a hearing is required to give notice to the Licensing Authority at least five working days before the start of the hearing, stating:

- If they will attend the hearing in person.
- If they will be represented by someone else (e.g. friend/Councillor/lawyer).
- If they think that a hearing is unnecessary (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.

Persons 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 three Councillors drawn from a full licensing committee of 11 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.

While 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.

If nominated by a representor, a Councillor can speak on their behalf but will need to confine their comments to the content of the representation.

The Sub-Committee will determine any request for additional persons to appear at the hearing as witnesses. It will consider evidence produced as part of the representation and may 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**

At the conclusion of the hearing, the Licensing Authority must decide how to proceed in order to promote the licensing objectives. Depending on the application type 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;
- refuse to specify or remove a person as the premises supervisor.

A verbal decision will usually be given at the end of the hearing and confirmed later in writing to all persons invited to the hearing. The decision notice 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 receiving the decision notice. Any appeal must be made to the Magistrates Court. An appeal triggers a complete re-hearing of the matter. Whilst costs are not awardable against any party making a representation, or requesting a review to the Council, 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 email the Licensing team at: licensing@reigate-banstead.gov.uk.