

Licensing Act 2003



Guidance for Interested parties: Applying for a Review

This guidance describes how to apply for a review of a premises licence or club premises certificate, under the Licensing Act 2003. It also contains information about the hearings process that follows.

An “interested party” may apply for a review of a licence or certificate that is in force. A licensing authority may reject the application for review if it is satisfied that the grounds for review are not relevant to one or more of the licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm

The licensing authority can reject any ground for review if it considers it to be “frivolous”, “vexatious” or a “repetition”.

What does “Frivolous or “Vexatious” Mean?

“Frivolous” or “vexatious” will bear their ordinary meaning. Whether representations are frivolous or vexatious will be for the licensing authority to determine. For example, the licensing authority might find the representations were vexatious if they arise because of disputes between rival businesses or frivolous if they clearly lacked seriousness.

What does “Repetitious” Mean?

A “repetitious” representation is one that is identical or substantially similar to:

- A ground for review in an earlier application, which has already been determined (the licensing authority’s “register of licences” will include all applications for reviews made to them in the past)
- Representations considered by the licensing authority when the premises licence was first granted
- Representations made when the application for the premises licence was first made and were excluded because of the prior issue of a provisional statement
- In addition to the above grounds, a reasonable interval has not elapsed since any earlier review or the grant of the licence

The review process is not intended to be used simply as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a “reasonable interval” in these circumstances. However, the Secretary of State (in her Guidance to Licensing Authorities) suggests that more than one review from an interested party should not be

permitted within a period of twelve months on similar grounds, save in compelling circumstances (e.g. where new problems have arisen) or where it arises following a closure order.

Interested parties cannot apply for a review anonymously; even if somebody else (e.g. a local MP or councillor) is applying for a review on their behalf. This is because, for example, the licensing authority needs to be satisfied that the person who wants the review lives in the vicinity of the premises, and is not being vexatious. Similarly, it is important that the licence holder is also able to respond to an application for a review, for example, if they believe the applicant does not live in the vicinity. If interested parties are concerned about possible intimidation, they could consider asking the police, or another appropriate responsible authority to apply for a review on their behalf.

Before applying for a review, interested parties may want to consider whether their concern(s) could be effectively dealt with outside of the formal review process. This could involve, for example:

- Talking to the licence or certificate holder to determine whether there are any steps they may be willing to take to rectify the situation
- Asking the District Council's Licensing Department to talk to the licensee on your behalf
- Ask your local MP or Councillor to speak to the licence or certificate holder on your behalf
- Talking to the relevant "responsible authority" (e.g. environmental health in relation to noise nuisance, or the police in relation to crime and disorder) to determine whether there is other legislation that could help resolve the issue

Things you may want to consider when seeking a review:

- It may be helpful to get the backing of other people living, or businesses operating in the vicinity of the premises, or other "responsible authorities".
- Look at your licensing authority's official records about the premises, kept in their 'licensing register'. This will show you if other people have made representations, or asked for a review of a premises in the past
- If you are thinking of raising a petition, it is important to ensure that the Licensing Authority can determine whether all the signatories are within the 'vicinity' of the premises. So, including their addresses and indicating clearly what grounds they are all asking for a review would be helpful. It would also help if a spokesperson could volunteer to receive details about the hearings etc. from the licensing authority and may be willing to speak on behalf of the petitioners at the hearing.
- If you want to ask another person such as an MP or local Councillor to represent you at the review, it is advisable to make such a request in writing so that the individual can demonstrate he or she was asked. It will be a matter for the MP or Councillor to decide whether they should agree to your request. They are not obliged to do so, however, most elected representatives are happy to help residents with this sort of issue, and there is no requirement for them to live in the vicinity of the premises in question for them to be able to make representations on behalf of residents that do. It should be noted that Councillors who are part of the licensing committee hearing

the application will not be able to discuss the application with you outside the formal hearing, so it is suggested that you do not approach them to try to.

- For individual incidents, try to get as much information as possible about any official response (e.g. – police being called out).
- You may also be able to back up your application with data such as crime statistics. However, it should be noted that conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek to enter or leave.
- If there is general noise nuisance on streets because of licensed premises, you will probably need to show how it relates to the specific premises.
- It is important to be able to back up your claims. You could do this by keeping a diary over a period of time, for example. Sound or video recordings may also be helpful. It may also be a while before any hearing, so it is good to keep a clear record.
- Residents or businesses applying for a review following a particular incident should be cautious, as a licensee may argue that this was a one off problem that can be rectified without a review.
- Have a good idea how you'd like the situation to be resolved.

Applying for a Review

An application for the review of a premises licence or club premises certificate must be given in writing and be in the prescribed application form, which is available to print or download from the District Council's website:

http://www.eastdevon.gov.uk/premises_review

The form is also be available on request from the East Devon Licensing Authority by either writing to the authority at the East Devon District Council, Knowle, Sidmouth, EX10 8HL, telephoning the helpline on 01395 517410/517411 or by email licensing@eastdevon.gov.uk.

Filling in the form

In the opening statement you should give the name of the person applying for the review – e.g. 'John Smith'. You should also indicate whether you are applying for the review of a "premises licence" or "club premises certificate" by deleting, as applicable.

PART 1 – Premises or club premises details

This section asks for the address and some other details of the premises concerned in the review. If the premises have no postal address you should describe the location of the premises or give the ordnance survey map reference

You are also asked to give the name of the premises licence holder or club and the licence number. This information should be available on the "Summary" of the licence or certificate, which will be displayed at the premises, concerned in the review, or may be available on request from the licensing department at your local authority.

PART 2 – Applicant details

This section asks you to indicate in what capacity you are applying for a review. As an “interested party” you must be able to tick at least one of the boxes under (1), then complete section (A) – Details of individual applicant, and if applicable, section (B) – Details of other applicant (e.g. – another resident).

An application for a review of a licence or certificate must be about the effect the licence is having on at least one of the four licensing objectives (see above). You should indicate which licensing objective(s) the application relates to.

You should state the ground(s) for review, and provide as much information as possible to support the application. You may use extra sheets of paper if necessary. Details may include, for example, dates that problems occurred and how the problem affected you.

You should state whether you have made an application for a review relating to this premises before, and give the further details of any representations you have made previously relating to this premises. This information will be used to determine whether the application for a review is “repetitious” (see above).

Checklist and declaration

The person or body requesting the review must notify the holder of the premises licence or club premises certificate and each “responsible authority” of their request, by sending them a copy of the application, together with any accompanying documents, on the same day as the application is given to the licensing authority. Responsible authorities can then, if they wish, join or back up your application for review, or use the opportunity to make their own application for a review on different grounds. The licensing authority also has to advertise the review to enable other “interested parties” to join it.

By ticking the checklist on the review form you are making a declaration that you have carried out the listed actions.

Responsible authorities include the following, for the area in which the premises are situated:

- Devon and Cornwall Constabulary
- Devon and Somerset Fire and Rescue Service
- EDDC Planning Service
- EDDC Environmental Health Services (or HSE)
- Devon Trading Standards
- Devon Area Child Protection
- And – In respect of vessels only - i) The Environment Agency; ii) The British Waterways Board; iii) The Maritime and Coastguard Agency and if different from these, iv) the relevant navigation authority / authorities for the place(s) where the vessel is usually moored or berthed or any waters where it is proposed to be navigated at a time when it is used for licensable activities.

A list of all the Responsible Authorities relating to the East Devon District Council area and their addresses is included at the end of the proscribed review application form available on the District Council’s website (Licensing Pages) or by post from the Council’s Licensing Office.

Signatures

The application form must be signed. An applicant's agent (for example a solicitor) may sign the form on their behalf, provided they have authority to do so. Where there is more than one applicant, both applicants, or their respective agents, must sign the form.

What happens after a request for a review has been made?

The licensing authority must advertise requests for a review of a licence or certificate. They will do this by displaying a notice at the premises that is subject to review, and at the licensing authority offices, for 28 consecutive days starting the day after the day on which the application is given to them. The licensing authority may also advertise the review on their website. Other interested parties and responsible authorities then have this period of 28 consecutive days starting the day after the day on which the application was given to make representations about the review.

If the request for a review is not rejected then the licensing authority must hold a hearing at the licensing authority to consider the application, unless all parties agree that this is unnecessary. For example, the licensing authority may offer to 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, of course, insist upon the hearing.

The licensing authority will write to you with the date and time of the hearing and will inform you of the procedure to be followed at the hearing.

As the person or body requesting the review, you are required to give notice to the licensing authority at least 5 working days before the start of the hearing, stating:

- Whether you will attend the hearing in person
- Whether you will be represented by someone else (e.g. councillor / MP / lawyer)
- Whether you think that a hearing is unnecessary (if, for example they have come to an agreement before the formal hearing)
- Any request for another person to attend the hearing, including how they may be able to assist the authority in relation to the application

You must let the licensing authority know as soon as possible (by written notice no later than 24 hours before the start of a hearing, or orally at the hearing) if you want to withdraw your application.

Hearings

Hearings will generally be held in public, unless the licensing authority decides it is in the public interest to hold all, or part of the hearing in private. The licensing authority will ensure that a record is taken of the hearing.

Hearings will normally take the form of a discussion and will be led by the licensing authority, which will consist of three East Devon District Councillors (this will be a licensing sub-committee drawn from the 15 councillors who make up the District Council's Licensing and Enforcement Committee). The licensing authority will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the hearing and can consider evidence produced by a party at the hearing, but only if all parties agree. Further evidence can also be produced if this was sought for clarification of an issue by the authority before the hearing. Cross-

examination of another party during a hearing is not allowed, unless the licensing authority thinks it necessary. The parties are entitled to address the Sub Committee and will be allowed equal time to address the Sub Committee and, if they have been given permission by the Sub Committee to do so, they will be given equal time to ask any questions of any other party. The Sub Committee will disregard any information it considers to be irrelevant.

It is important that you consider what you are going to say at the hearing, as the licence or certificate holder and the committee will have seen your application for review, and may get the chance to question what you are saying.

NB - A hearing can still go ahead in the absence of any party (e.g. applicant or interested party)

What happens after a hearing?

A decision will normally be made on completion of the hearing but if no decision is made at the hearing, the Sub Committee has a maximum of 5 days from the day or the last day of the hearing to come to a decision. Following a review, a Sub Committee may:

- Decide that no action is necessary to promote the licensing objectives
- Modify or add conditions to the licence
- Exclude a licensable activity from the licence
- Remove the designated premises supervisor
- Suspend the licence for a period (not exceeding 3 months)
- Revoke the licence

If you have any queries about applying for a review please contact the Licensing Section at the Council Offices, Knowle, Sidmouth, EX10 8HL or by telephoning the helpline on 01395 517410/517411 or by emailing licensing@eastdevon.gov.uk.