

A Residents' guide to dealing with Premises Licensed under the Licensing Act 2003

1. The Licensing Act 2003

The Licensing Act 2003 requires businesses, including pubs, clubs, restaurants, off licences and supermarkets sell alcohol, sell hot food after 23.00 hours, provide certain entertainment to apply for a 'premises licence'.

This guide is to provide some answers you may have if you are experiencing problems with an establishment with a premises licence. It details the various processes involved, information on who to contact and what to do in certain circumstances.

In addition to a premises licence, there is also provision for a Temporary Event Notice (TEN).

2. Temporary Event Notices

A Temporary Event Notice can be used for an extension to an existing premises licence, or for occasional events such as a Summer or Christmas fete for carrying on of the sale or supply of alcohol, the provision of regulated entertainment or the provision of late night refreshment at any premises which is not authorised by a premises licence or club premises.

A premise may have up to 15 temporary events in any calendar year and can last up to 168 hours (7 days) for up to 499 persons.

3. First steps to resolve problems

Firstly, if you are able, do try and resolve any problems informally by having a chat with the person in charge of the establishment. This person is called the Designated Premises Supervisor (DPS). The DPS is the responsible person under the terms of the premises licence. The name of the DPS is always stated on the 'Summary of the Premises Licence' which is displayed at the premises. It may be that by simply talking to the DPS will resolve the issue quickly.

If you do not feel able to speak directly to the premises, you could contact your local Ward Councillor or the Licensing Team and ask us to approach the DPS on your behalf.

4. What can I do if I am constantly disturbed by noise?

If you are disturbed by noise, please contact the Council's Environmental Health team and they can talk you the process you will have to follow to make a complaint. This will include keeping a noise log.

If the matter has to be taken further. It needs to be completed in a clear, concise and accurate manner. The following points should be borne in mind when keeping a log:

1. Make sure all entries are written clearly (print if necessary)
2. Only refer to noise
3. Do not make assumptions ("He turned the stereo up deliberately")
4. Record the time of noisy events accurately (do not write "All day" or "All the time")
5. Describe the noise (TV, live music) and, if you can be sure, identify who is responsible.
6. Describe how the noise adversely affected you (woken from sleep, could not hear the TV).
7. Name and address of any witness to the noise
8. Note when you were out or away for long periods
9. Keep the log for the required number of days
10. Sign and date your log upon return to the investigating officer

An example of a Noise log

Record No	Date	Start Time	Finish Time	Type of Noise	How does the noise affect you	Possible cause of the noise
1.	1.7.2015	21.15	00.30	Loud music from public house	The base of the music can be heard throughout my house I have to shut my windows on a hot summers evening	Live band
2.	8.7.2015	21.45	01.00	Loud drunken patrons from pub leaving the premises	The shouting and screaming of people woke up my baby	People leaving the premises and car doors banging .

5. How a business applies for a Premises Licence

The process for granting a licence and allowing a variation to an existing licence is the same. An application is made to Epsom & Ewell Borough Council and, at the same time, the applicants are required to advertise the application in the local paper and to display notices on pale blue paper at the premises for 28 days - this is known as the consultation period. The application will also be displayed on the Council website www.epsom-ewell.gov.uk.

When an application is made to the Council, the applicant is required by law to copy the application to the following 'Responsible Authorities':

- Surrey Police
- Surrey Fire and Rescue Service
- Health and Safety Authority
- Planning Authority
- Trading Standards
- Child Protection Team
- Primary Care Trust

This allows each Responsible Authority to submit a 'representation' or objection.

Members of the public and other businesses can also submit a representation at this stage.

6. Making objections to premises applications

Members of the public and businesses can object to an application for a premises licence or a variation to an existing licence. Objections must be based on one or more of the following licensing objectives:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm.

If, having seen the notices mentioned above, you are concerned that the grant of the licence would impact on one or more of these objectives you should consider making an objection - this is known as a Representation.

You should include your name and address when making a representation. This will help us decide whether or not you are living in the vicinity of the premises where the application has been made. Please note that your name and address will be made known to the applicant. If you do not wish to give us your name or address we will not be able to accept your objection. If you are concerned about possible intimidation, you could consider asking the police or another appropriate responsible authority to make a representation on your behalf

If you wish to object to an application for or variance to a licence, you must put your objection in writing and send it to us within 28 days of the application being served. You must include the following information:

- Your name and signature.
- The date you wrote the letter.
- The application that you are opposed to.
- The reasons why you are opposed to the application

All representations must be specific to the premises and be evidence based. You may, therefore, wish to talk to local police beforehand, or document problems, for example by keeping a diary or photographic evidence of any incidents.

All representations form part of the Committee Report that is taken to the Council's Licensing Panel who will determine if a Licence can be issued.

Please contact one of the Council's Licensing Team if you wish to discuss a representation. Contact details are at the end of this leaflet.

Things you may want to consider when making representations

- If no relevant representations are made, the licence or variation will be granted.

If, for whatever reason you do not feel able to make a representation, you may want to ask another person, such as a local Councillor to represent you. It will be a matter for the person to decide whether they should agree to your request. They are not obliged to do so.

Examples of valid representations;

The Prevention of Crime and Disorder

If you are subjected to criminal damage (ie you have evidence of patrons leaving the premises and causing damage to your property), you must report the incident to the Police and get a crime reference number.

This can be quite difficult for you to record as evidence, and typically representations under the objective would normally be submitted by Surrey Police, eg if there are reports of fighting or other anti-social behaviour in the premises.

Public Safety

There could be existing problems with crowds of drinkers outside a premises, forcing pedestrians to walk in the road or patrons hanging about outside with glasses/bottles, which potentially causes intimidation.

Representations on this objective are typically received from Responsible Authorities as opposed to Other Persons.

The Prevention of Public Nuisance

Noise nuisance is the most commonly used reason for making a representation. Other examples of public nuisance are light, litter and odour nuisances.

For example, A premises applies to vary the licence to permit regulated entertainment (live and recorded music, dancing, exhibition of films), or extend their terminal hour. As a neighbour you are already subjected to noise nuisance at an earlier hour. If the premises are allowed to stay open longer, would this make the problem worse? Sound evidence would be to produce noise logs (See No. 2). In addition, a diary of nuisance or disturbance, such as details of litter from the premises being thrown into your property, again maintained over time could prove to be valuable in support of your representation.

The licensing authority can only consider representations that are not “vexatious” or “frivolous”.

Protection of Children from Harm

It is quite difficult to submit representations under this objective, as often only the Police or Trading standards would have such evidence, following test purchases.

In addition the Child Protection Team may consider there are not sufficient safeguards in place to protect minors. For example the nature of entertainment to be offered may be unsuitable for young children or it is alleged that underage drinkers are being served at the premise, in which case it would be the Responsible Authorities role to submit a representation.

What happens after a representation has been made?

If the Council, as the licencing authority, considers that the representation is relevant, it must hold a hearing to consider the representation - unless all parties can come to an agreement beforehand and agree that a hearing is unnecessary. For example, the licensing authority may offer to try and 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 Council will write to you 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, the Council will let them know that the hearing has been cancelled. Interested parties should be aware that if they make representations about an application that is later withdrawn, and the applicant makes a new, amended application, their representations 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.

Licensing Panel Hearing

If you wish to make a representations, you are required to give notice to the Council at least five 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
- Whether you think that a hearing is unnecessary (if, for example you have come to an agreement before the formal hearing)
- If you want another person to appear at the hearing (not to represent you), a request for permission for the person to attend, and details of their name and how they may be able to assist in relation to the application

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

Hearings will generally be held in public, unless the Council decides it is in the public interest to hold all or part of the hearing in private. The Council shall ensure that a record is taken of the hearing. You can download the agenda and minutes of the Licensing Panel meetings from the Council website. If you attend a hearing these are normally voice recorded.

Licensing Hearings are a panel of 3 elected members and will be led by the Chairman of the Panel.

The Panel 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.

You will have a chance to speak at the Hearing, but all representations would have been read in advance of the Hearing. Further evidence can also be produced if this was sought for clarification of an issue by the Council before the hearing. Cross-examination of one party by another during a hearing is not allowed, unless the Panel think it necessary.

The parties are entitled to address the Panel and will be allowed equal time to address the sub-committee and, if they have been given permission by the committee to do so, they will be given equal time to ask any questions of any other party. The Panel will disregard any information it considers to be irrelevant.

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

Hearing Decisions

As a result of the hearing, the licensing panel will then decide how to proceed. In order to promote the licensing objectives, it may:

- Decide to grant or vary the licence in the same terms as it was applied for
- Decide that it is necessary to refuse to issue or vary the licence
- Decide to grant or vary the licence, but to modify the conditions
- Exclude from the scope of the licence a licensable activity
- In the case of a premises licence, refuse to specify a person as the premises supervisor

The Council must give notice of the decision within five working days (if it does not give a decision at the hearing) and include information on the right of a party to appeal against the decision. For more information on appeals, see below.

7. The Licence Review

Following the grant of a premises licence, any interested party may ask the Council to review a premises licence because of problems arising at the premises that are connected with any of the four licensing objectives. Applying for a Review of a premises licence is seen as the last resort when all other avenues have been exhausted.

A licensing review is a request for their local authority to look at the existing licence and decide whether its conditions are adequate to meet the four licensing objectives defined under the Licensing Act 2003.

This is because Licences last for the lifetime of the business and would not otherwise be subject to review by the authority. Reviews are dealt with in the same way as contested licence applications.

8. The Appeal process

If you are dissatisfied with the decision of the licensing panel, you can appeal to the Magistrates Court whose decision is final. Appeals can only be made by persons who submitted a representation to the application. You must do so within 21 days of being notified of the decision by the Council.

Appeals are not to be entered into lightly as the magistrate's court has the discretion to award costs against you if you lose. The costs could include both those of the Council and of the licence holder and could be in the hundreds and possibly thousands of pounds. Magistrates are less likely to award costs against you, if it is clear that you have acted in good faith and felt you had good reason to mount the appeal.

You should take as much advice as possible before starting an appeal as to whether there are reasonable grounds on which to appeal. It is not enough that you do not like the decision of the Licensing Panel.

9. Useful contacts

Licensing Authority

Licensing Service
Epsom & Ewell Borough Council
Town Hall
The Parade
Epsom, Surrey. KT18 5BY
Telephone: 01372 732000
Email: licensing@epsom-ewell.gov.uk

Surrey Police

Licensing Epsom
Surrey
Police
PO Box 101, Guildford
Surrey GU1 9PE
Telephone: 01372 721212

Primary Care Trust

Public Health Business Manager
Surrey County Council
Woodhatch Place
Cockshot Hill
Reigate, Surrey
RH2 8EF
Telephone: 03456 009 009

Planning Authority

Chief Planning Officer
Epsom & Ewell Borough Council

Town Hall, The Parade, Epsom
Surrey. KT18 5BY
Telephone: 01372 732000
Email: planning@epsom-ewell.gov.uk

Environmental Health Service

Housing and Environmental Services
Epsom & Ewell Borough Council
Town Hall
The Parade
Epsom, Surrey. KT18 5BY
Telephone: 01372 732000
Email: contactus@epsom-ewell.gov.uk

Surrey Fire and Rescue Service

Protection Manager
East Area Office, Leatherhead Fire Station
Cobham Road
Fetcham, Leatherhead
Surrey, KT12 1RZ
Telephone: 01737 224041

Surrey Social Services

County Child Employment & Strategy
Manager
Woodhatch Place
Cockshot Hill
Reigate, Surrey
RH2 8EF
Telephone: 03456 009 009

Trading Standards

Surrey Trading Standards Service
Woodhatch Place
Cockshot Hill
Reigate, Surrey
RH2 8EF
Telephone: 03456 009 009
Email: trading.standards@surreycc.gov.uk