

- 9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.
- 9.13 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them.

#### **DISCLOSURE OF PERSONAL DETAILS OF INTERESTED PARTIES**

- 9.14 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.
- 9.15 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.16 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.

9.17 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

- 9.18 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.

#### **HEARINGS**

- 9.19 Regulations governing hearings may be viewed on the DCMS website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is necessary. To this end it may wish to notify the interested parties concerned and give them the opportunity to withdraw their representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

- 9.20 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences.
- 9.21 The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.22 Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of Regulations made by the Secretary of State. Where matters arise which are not covered by the Regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.23 There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. However, an officer of the licensing authority may not perform this role which would compromise the licensing authority's independence.
- 9.24 As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.25 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy.
- 9.26 The licensing authority should give its decision at once, unless the Act itself states otherwise and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the

operating schedule. Any conditions imposed must be necessary for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition which is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

- 9.27 Alternatively, the licensing authority may refuse the application on the grounds that this is necessary for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that interested parties and others have the most current information.
- 9.28 In the context of variations, which may involve structural alteration to or change of use of the building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control or planning consent where appropriate.