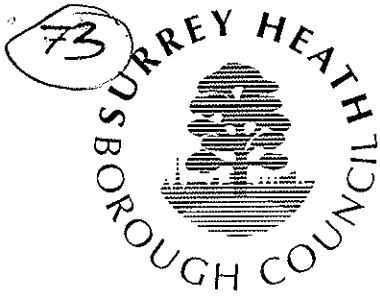


Received: 27/03/07



Surrey Heath Borough Council

Surrey Heath House  
Knoll Road  
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Division: Legal and Corporate Services

Our Ref: CB/AC/36/06/0005

Your Ref:

[REDACTED]

Licensing Guidance Review Team,  
Department for Culture, Media and Sport,  
Tourism Division,  
6<sup>th</sup> Floor,  
2 – 4 Cockspur Street,  
London,  
SW1Y 5DH

23<sup>rd</sup> March, 2007

Dear Sir/Madam,

**LICENSING ACT 2003 – REPRESENTATIONS AND ATTENDANCE AT HEARINGS.**

This Council is due to approve guidelines for Councillors in relation to functions exercised by the Council under the Licensing Act 2003. The draft guidelines have already been considered by the Council's Licensing Committee and are now to be submitted to the Council's Standards Committee for comment. The guidelines will eventually be determined by the Council's Executive.

In considering the draft guidelines members of the Licensing Committee found it difficult to accept advice given by officers in relation to councillors addressing the Licensing Sub-Committee and in particular to the fact that this advice also applied to ward councillors. The advice that is being given by officers in relation to this matter is as follows:

Councillors who are not members of the Licensing Sub-Committee cannot speak at a hearing unless one or more local residents, who qualify as "interested parties" for the purposes of an application, request him/her to represent or appear on their behalf at the hearing. An "interested party" will usually reside not more than 100 to 200 metres from the premises (this distance has been set by the Council for general guidance). If a councillor is an "interested party" in their own right the submission of representations on their own behalf will mean that they have either a personal or prejudicial interest. If, as is likely, they have a prejudicial interest as defined in the Code of Conduct this would mean that he/she could not attend the meeting in any capacity. This would not debar a councillor who was an interested party and had a prejudicial interest from making representations in writing and making arrangements to be represented at the hearing by another person.

Members of the Licensing Committee are fully aware that functions of the licensing sub-committee are quasi-judicial in nature. They are also aware that decisions on applications must relate to the promotion of the licensing objectives and that extraneous matters not related to representations made by the applicant, interested parties or responsible authorities to achieve the licensing objectives must not be taken into account. Political considerations and the affect of activities over a wider area are precluded. The position has in fact been made very clear in the legislation, regulations and guidelines.

However, it is felt that an anomaly has been created by the reference made in the DCMS Guidelines, currently subject to consultation, to the inclusion of parish councils as being interested parties under the terms of Section 13 (3)(b) of the Licensing Act, 2003. That is "a body representing persons who live in that vicinity". Parish Councils are increasingly elected on a political basis and can cover very large areas, as is the case with some parishes in Surrey Heath. This means that parish councillors who live a considerable distance from premises that are the subject of an application under the Licensing Act 2003 can participate in lodging representations. The parish councillor representing the ward in which the premises are situated could in fact be appointed to represent the parish council at the hearing.

On this basis, a district council could also be considered to be "a body representing persons who live in that vicinity" which would then entitle it to make representations and appoint the local ward councillor to represent the Council at a hearing. This would of course have implications in relation to the rules of natural justice

Nevertheless this makes it very difficult to justify the reasons why ward councillors should not be allowed to speak at hearings whereas their parish council counterpart may be permitted to do so.

Parish Councils do of course differ from local residents associations which generally do not have a political make up and are far more localised. Residents associations can in fact cover just a few streets or roads and it is far more probable that they will be representing people living in the vicinity of the premises.

If it had originally been intended that Parish Councils should have the rights they appear to have under Section 13(3)(b) surely they would more appropriately have been designated as "Responsible Authorities" in which case some of these anomalies may have been avoided. Your early comments would be very much appreciated in order that this apparent anomaly can be explained to the Council's Executive when it considers this Council's guidelines for councillors.

Yours sincerely,



Alan Charman  
Licensing Manager