

Agenda Item No: 3
Report To: LICENSING COMMITTEE

Date: 17TH MARCH 2005

Report Title: Procedure Note for Licensing Hearings for both the Licensing Committee and Sub Committees.

Report Author: Head of Legal and Democratic Services

Summary: The report seeks Committee approval of the attached Procedure Note for Licensing Hearings for both the Licensing Committee and Sub Committees

Key Decision: No

Affected Wards: By implication all if there is an application requiring a hearing from every Ward.

Recommendations : **The Committee is asked to approve and adopt the attached Procedure Note for Licensing Hearings held under the Licensing Act 2003.**

Policy Overview: The procedure must take account of the statutory Licensing Objectives, the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003 and the law generally.

Financial Implications: None.

Other Material Implications: **HUMAN RIGHTS:** When considering the procedure it is necessary to consider the rights of both the applicant and other parties, such as objectors. The procedure aims to ensure a fair hearing for all relevant parties.

LEGAL: The Procedure Note provides a framework for compliance with the Council's responsibilities as a statutory licensing authority.

Background Papers: Procedure Note;
Relevant sections of Licensing Act 2003 – the Licensing Objectives;
ABC Statement of Licensing Policy;
Secretary of State's Guidance;

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Agenda Item No.3

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Background

1. Since the training attended by Members and Officers late last year, new Regulations made under the Licensing Act 2003 were laid before Parliament on 13th January 2005 setting out the procedural matters that must be observed by local authorities when dealing with licensing matters.

Issue to be Decided

2. Regulation 7 of the Licensing Act 2003 (Hearings) Regulations 2005 requires information regarding the procedure to be followed at the hearing to be sent out with the Notice of Hearing. The Committee is asked to approve the attached Procedure Note for that purpose. The Procedure Note has been drafted so as to ensure (as far as is possible) that the hearings comply with the Regulations. Further the Committee is asked to note particularly:-
 - a. that no representations can be made at the hearing other than those made strictly in accordance with the legislation, otherwise the decision could be challenged, for example, in the High Court.
 - b. the only persons¹ entitled to address the hearing are the Parties (which expression is strictly defined in the Licensing Act 2003 (Hearings) Regulations 2005 according to the type of application) and, in broad terms, only includes the applicant and “persons who have made relevant representations”² in accordance with the Regulations, which, importantly, includes them being made within the time limits as set out³.
 - c. the Regulations require certain applications⁴ to be determined at the conclusion of the meeting and others within five working days.
3. As in all Committee and Sub Committee meetings, Members will be well aware of the importance of declaring personal and/or prejudicial interests in the application (see the Borough Council’s adopted Code of Conduct) and, in particular, that if they have a personal and prejudicial interest they may not attend the meeting. In the case of any doubt Members are asked to seek the advice of the Monitoring Officer as far in advance as possible of the relevant meeting.
4. Members are asked to note particularly that the Regulations provide that only the Parties (and persons they have notified⁵ to the authority will represent them or for

¹ See paragraph 4.

² This expression includes objectors and any appropriate “Responsible Authority” such as the Police.

³ Representations must be made within 29 days of the date of the receipt of the application, except where a premises licence is being reviewed after a Closure Order, when only 7 days is allowed – Reg. 22 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

⁴ Applications made at the same time as one for conversion of an existing licence or club certificate, counter notice following police objection to temporary event or closure order, for conversion of existing licence or club certificate or for a personal licence.

⁵ In accordance with Regulation 8 of the LA2003(Hearings) Regs 2005.

whom they have permission to appear) are entitled to address the meeting and, as such, Local Ward Councillors may not speak at a hearing unless they are doing so (again subject to paragraph 3 above) in accordance with the Regulations.

Recommendations

5. It is recommended that Committee:

- a. approve and adopt the attached Procedure Note for Licensing Hearings held under the Licensing Act 2003;

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APPENDIX A – PROCEDURE NOTE FOR LICENSING HEARINGS

PROCEDURE NOTE FOR LICENSING HEARINGS

1. Prior to the meeting of the Committee¹, the Committee will have read and familiarised themselves with the Officer's report and documents referred to in it.
2. The hearing will take place in public, subject to a discretion to exclude the public and/or parties where the public interest in doing so outweighs the public interest in the hearing taking place in public². The Committee may also exclude anyone behaving disruptively.³
3. The parties⁴ are entitled to be assisted or represented by any person, whether or not legally qualified. A party is entitled to withdraw any of their representations orally at the hearing, but may only do so in writing more than 24 hours before the hearing.⁵
4. The Committee may extend any time limit in the Regulations for a specified period where it considers this to be necessary in the public interest, but must state the period of the extension and the reason for it.⁶ For example, the Committee may extend the time for making a request to call a witness (see paragraph 15 below).
5. Where a party has notified the authority that he does not intend to attend, the Committee will proceed with the hearing in his absence. Where he has not so notified the authority but does not attend, the Committee may adjourn the hearing to a specified date where it considers it necessary in the public interest to do so. Otherwise, it will proceed with the hearing.⁷
6. Before proceeding in the absence of a party who has not indicated that they do not wish to attend, the Licensing Officer should attempt to ascertain the reason for that party's non-attendance.
7. The Committee may adjourn the hearing to a specified, or extra, date where it considers this to be necessary for the determination of the case.⁸ There are limitations on the ability of the Committee to adjourn the case beyond the time limits for determination during the transitional period and on reviews following closure orders by the police.⁹
8. At the outset of the meeting, a Chair will be elected and any personal and/or prejudicial interests declared.¹⁰
9. Except where the Regulations make specific requirements, the procedure will be in the discretion of the Committee.¹¹

¹ In this Note the expression "the Committee" includes a sub Committee.

² Reg 14 Licensing Act 2003 (Hearings) Regulations 2005

³ Reg 25.

⁴ Reg 2(1) "a person to whom notice of the hearing is to be given under Reg 6(1)" – includes objectors and responsible authorities, such as the Police.

⁵ Reg 10

⁶ Reg 11.

⁷ Reg 20.

⁸ Reg 12.

⁹ Reg 13.

¹⁰ Model Code of Conduct

10. At the beginning of the hearing, the Committee will explain to the parties the procedure it proposes to follow.¹²
11. The Chairman will indicate that all the papers before the Committee have been read and that the Committee is familiar with the issues. He will ask the parties to avoid repetition.
12. The Chairman will indicate the order of presentation.
13. If there are a number of objectors present, the Chairman may request that a spokesperson be appointed. He will make it clear that any party¹³ who wishes to speak will be able to do so, and that the appointment of a spokesperson does not mean that the objections of any interested party will be given less weight.
14. The Chairman may also indicate how the Committee intends to deal with conditions proposed by the parties or by the Committee itself. He may ask the parties to attempt to agree a schedule of conditions for use if the Committee is minded to grant the application. This will not mean that the Committee has formed any view of the merits. It will only come to its decision at the end.
15. If a party wishes some other person to represent him he must first notify the authority in the manner and within the times prescribed in Reg. 8.
16. If a party wishes a person (other than himself or his representative) to appear at the hearing he must have made a request to do so prior to the hearing within the times prescribed in Reg. 8. The request must name the person and give a brief description of the point(s) on which that person may be able to assist. In such a case, the Committee will determine the application for permission at the outset of the hearing.¹⁴ In determining that request, the authority will consider the representations of all parties upon the matter and may consider the relevance of the proposed evidence, the assistance it will in fact offer to the Committee and the prejudice to the parties, if the evidence is admitted or excluded.¹⁵
17. Each of the parties has a right to:
 - a. address the Committee;
 - b. give clarification of any point, where such clarification has been sought by the Council in its notice of hearing;
 - c. question any other party, but only where this is expressly permitted by the Committee (see para 20 below).¹⁶
18. The Committee must allow an equal maximum time for the parties to exercise their rights as set out in para 16 above.¹⁷

¹¹ Reg 21.

¹² Reg 22

¹³ see footnote 4

¹⁴ Reg 22

¹⁵ Reg 22

¹⁶ Reg 16.

¹⁷ Reg 24.

19. The Committee will set the time of the hearing at the outset, having regard to its view of the length reasonably required for the hearing. It may hear the parties briefly before setting the maximum time. It may extend the time where circumstances require.¹⁸
20. The hearing is to take the form of a discussion led by the Committee.¹⁹ The Chairman will ensure that within the discussions, all parties are given an opportunity to state their case as set out in their written application/representations and to meet the case of opposing parties.
21. Cross-examination will not be permitted unless the Committee considers that it is required for it to give proper consideration to the case.²⁰ Any application to cross-examine will be heard and dealt with at the hearing.
22. The Committee may consider cross-examination to be required, for example, where there is a genuine issue of fact, which can only be resolved fairly through cross-examination.
23. The Committee may question any party or other person(s) appearing.²¹
24. The Committee may take into account documentary or other information provided by a party before the hearing. Information produced at the hearing may only be taken into account with the consent of all other parties.²² The parties are therefore strongly recommended to exchange documentary evidence and brief summaries of any proposed witness evidence at least 5 days before the hearing, otherwise they may be restricted in the information they can put before the committee. Any material exchanged should also be given to the licensing authority at the same time.
25. The Committee must disregard any information given which is not relevant to the application, representations or notice of the party giving the information. The Committee must also disregard any information which is not relevant to the promotion of the licensing objectives.²³
26. In certain circumstances, the Committee is required by law to make its determination at the conclusion of the hearing. This includes certain applications made during the transitional period, counter-notices following police objections to temporary events notices, and reviews of premises licences following closure orders. Otherwise the Committee is required to determine the application within five working days of the day or the last day on which the hearing was held²⁴.
27. The Committee will give reasons for its decision and will confirm the decision in writing to the parties.

¹⁸ Reg 11

¹⁹ Reg 23.

²⁰ Reg 23.

²¹ Reg 17.

²² Reg 18.

²³ Reg 19.

²⁴ Reg 26.