

LICENSING AND HEALTH AND SAFETY COMMITTEE

MINUTES of a **MEETING** of the **LICENSING AND HEALTH AND SAFETY COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **17th MARCH 2005**

PRESENT: Cllr. Goddard (Chairman);
Cllr. Weller (Vice-Chairman);
Cllrs. Allcock, Enock, Heyes, Koowaree, Mrs Larkin, Mrs Martin, Wells.

APOLOGIES: Cllrs. Claridge, Feacey, Link, Maltby.

ALSO PRESENT: Mr B Turner – Kent Police

Divisional Environmental Health Officer – Commercial, Licensing Manager, Solicitor acting on behalf of Council, Principal Legal Assistant, Licensing Assistant, Member Services Officer.

Prior to the commencement of the meeting the Chairman introduced the new Licensing Manager.

497 LICENSING HEARINGS – PROCEDURE NOTE

The Principal Legal Assistant tabled a revised report and Procedure Note, which had been amended slightly following consultation with Counsel. The changes were, in the most part, in relation to those who were entitled to speak at hearings. The report sought the Committee's approval of the Procedure Note for Licensing Hearings held under the Licensing Act 2003. Regulation 7 of the Licensing Act 2003 (Hearings) Regulations 2005 made it a requirement that information relating to the procedure to be followed at a hearing be sent out with the Notice of a Hearing and that the Procedure Note, as approved by Members, would then be used accordingly. Members were advised that the Procedure Note could be reviewed at any time if it was considered necessary.

There was some debate surrounding the issue of Ward Members attending the hearings and speaking on behalf of their ward residents. It was explained that the Act was very prescriptive as to "interested parties" and the regulations as to who could speak at hearings. Members were reassured that the Head of Legal and Democratic Services would be contacting them on this issue and would give further guidance on this matter.

Resolved:

That the Procedure Note for Licensing Hearings held under the Licensing Act 2003, as appended to these minutes, be approved and adopted.

(HC)
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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 or at least 24 hours before the day or the first day of 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 16 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
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.

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

¹¹ Reg 21.

¹² Reg 22

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. A party is entitled to be represented or assisted by another person, whether or not that person is legally qualified.¹⁴
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.¹⁵ 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.¹⁶
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 21 below).¹⁷
18. The Committee must allow an equal maximum time for the parties to exercise their rights as set out in para 17 above.¹⁸
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.¹⁹
20. The hearing is to take the form of a discussion led by the Committee.²⁰ 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.

¹³ see footnote 4

¹⁴ Reg 15.

¹⁵ Reg 22

¹⁶ Reg 22

¹⁷ Reg 16.

¹⁸ Reg 24.

¹⁹ Reg 11

²⁰ Reg 23.

21. Cross-examination will not be permitted unless the Committee considers that it is required for it to give proper consideration to the case.²¹ 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.²²
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.²³ 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.²⁴
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 held²⁵.
27. The Committee will give reasons for its decision and will confirm the decision in writing to the parties.

²¹ Reg 23.

²² Reg 17.

²³ Reg 18.

²⁴ Reg 19.

²⁵ Reg 26.