

AGENDA ITEM: 4 Page nos. 2 - 20

Meeting Licensing Committee

Date 19 January 2005

Subject Licensing Hearings Procedures

Report of Head of Committee

Summary The new licensing regime begins on 7 February 2005. Before then, the Committee should agree a procedure for Licensing Hearings. The Secretary of State has published draft Hearings Regulations. This report recommends a procedure based on the draft Regulations, which might be subject to change once the finalised Regulations are published.

Officer Contributors John Marr, Democratic Services Manager; Sarah Meyer, Principal Solicitor (Litigation).

Status (public or exempt) Public

Wards affected All

Enclosures Appendix A – Draft Hearings Regulations
Appendix B – Draft Procedure

For decision by Licensing Committee

Function of Council, acting as Licensing Authority

Reason for urgency / exemption from call-in (if appropriate) Not applicable

Contact for further information: John Marr – Democratic Services Manager on 020 8359 2031

1. RECOMMENDATIONS

- 1.1 That the Committee note the draft Hearings Regulations published by the Secretary of State detailed at Appendix A;
- 1.2 That the Committee agree a maximum period of time for parties to make representations and give supporting information to a Hearing – being the activities detailed in Regulation 16;
- 1.3 That the Committee approve and adopt the draft Hearings Procedure (to include the agreed maximum length of time as above) detailed at Appendix B as the procedure to be used by this Licensing Authority for the conduct of Hearings under the Licensing Act 2003;
- 1.4 That the Head of Committee be instructed, in consultation with the Chairman, to amend the procedure as required once the finalised Regulations have been published.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 26 October 2004 (Minute 86) noting the position on the Draft Regulations;
- 2.2 Council, 14 December 2004 (Minute 110) approving the Licensing Policy.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Hearings Procedure will directly support the delivery of the Council's approved Licensing Policy and will enable the Council to discharge its obligations under the Licensing Act 2003.

4. RISK MANAGEMENT ISSUES

- 4.1 Agreement of a procedure to be followed at Licensing Hearings is a requirement of the Legislation. Failure to have a procedure in place by the time the new arrangements come into effect on 7 February 2005 would be a breach of statutory requirements.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 None within the context of this report.

6. LEGAL ISSUES

- 6.1 None, other than those already addressed in the report.

7. CONSTITUTIONAL POWERS

- 7.1 Constitution Part 3 – 2 – Responsibility for Council Functions.

8 BACKGROUND INFORMATION

A procedure based on the draft Regulations

- 8.1 Draft Regulations made by the Secretary of State under the Licensing Act 2003 were published for consultation in September last year, with the consultation period ending on 10 November.
- 8.2 The draft regulations provide much of the procedural detail of how the new licensing regime will operate. They include "Hearings Regulations" which detail how the hearings themselves will operate.
- 8.3 The Secretary of State intends the regulations to be finalised in good time before 7 February 2005. As of preparation of this report, however, the Regulations have not been published in final form.
- 8.4 Accordingly, the procedure detailed in Appendix B is based on the current draft Regulations and might require further adjustment once the final regulations are published. Should the procedure require further amendment, it is suggested the Head of Committee arrange this in consultation with the Chairman.

Time for parties to make representations

- 8.5 Regulation 16 details the entitlement of parties to make representations and provide supporting information to a Hearing. Regulation 23 states that the Authority must allow the parties an equal maximum period in which to do this.
- 8.6 In order to ensure that all concerned have a reasonable opportunity to put their case, the Committee is invited to consider options of 10, 15 and 20 minute slots for each party wishing to make representations to the Hearing. It is suggested that less than 10 minutes would be insufficient to present a complex case, while more than 20 minutes would result in very long Hearings and cause scheduling problems. A balance is needed to ensure enough time to present a case fully including dealing with objections and calling witnesses. Experience from previous appeals has shown that the average time taken by an applicant now is approximately 15 minutes and by objectors approximately 10 minutes. Members' views are sought on the maximum time to be allowed for each party (applicant, and each individual objector) to deal with the activities referred to in Regulation 16.

9 LIST OF BACKGROUND PAPERS

- 9.1 Draft Hearings Regulations (appended).

BS: SAM

BT: CM

LONDON BOROUGH OF BARNET
LICENSING SUB COMMITTEE

HEARINGS PROCEDURE

General points

The following procedure is based on Regulations made by the Secretary of State under the Licensing Act 2003 (“the Hearings Regulations”) which may be viewed or downloaded from the website of the Department for Culture, Media and Sport by following links from www.culture.gov.uk

The procedure is intended as a general framework to ensure natural justice and a fair hearing. The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed.

The procedure allows each party a maximum period of ** minutes in which to present their case (Regulations 16 & 23). This includes time for any question and answer sessions. How best to use the time allowed is left to the discretion of the parties concerned. Each presentation will be timed, and officers will advise when there are three minutes remaining. At the end of the time allowed, the Chairman will terminate the presentation and no further discussion will be heard.

The procedure is subject to periodic review and amendment to reflect best practice and relevant legislative changes. An updated version of this procedure is published as soon as possible following any such amendments.

Chairman

- Introduces him/herself and Members of the Committee, and outlines their roles.
- Introduces Licensing, Legal and Democratic Services Officers.
- Explains that Legal and Democratic Services Officers will be present during the Committee’s deliberations to advise only, and that the Licensing Officer will be excluded from deliberations.
- Asks parties present to introduce themselves.
- Outlines procedure to be followed (Regulation 22).
- Asks Democratic Services Officer to distribute copies of the procedure aide memoir.
- Asks all parties to confirm their understanding of the procedure.
- Clarifies any aspect(s) of the procedure where any parties are uncertain or asks Legal or Democratic Services Officer as appropriate to clarify.

Applicant

- Presents case.
- Calls evidence/ witnesses as necessary.
- Questions any other party or witness.
Until completed or until time runs out.

Any time spent by the applicant on questions and answers counts towards the total time allowed for the Applicant to present his/ her case.

Applicant questions Licensing Officer on Policy**Members question applicant and witness(es)****Members question Licensing Officer on Policy****Other Parties (usually objectors)**

- Present case.
- Call evidence/ witnesses etc.
- Question any other party or witness.

Any time spent on questions and answers counts towards the total time allowed for the Objector(s) case.

Other parties question Licensing Officer on Policy**Members question objector and witness(es)****Members question Licensing Officer on Policy**

Proceed through any other parties until all have been heard or time has run out.

Determination...

There are two procedures depending on whether or not determination is to be made at the end of the Hearing or within five working days of the Hearing. This later announcement of determination is permitted in terms of the Legislation.

...At the end of the Hearing

- Parties, apart from Legal and Democratic Services Officer, leave the room.
- The Committee deliberates, with advice as required from Legal and Democratic Services Officers, and reaches a conclusion. The Legal officer may assist, as required, in formulating the wording of the determination.
- Parties return.

- Chairman reads out determination, and advises it will be sent in writing to all parties.
- Chairman gives advice about appealing against the determination.
- Democratic Services Officer circulates pre-prepared general information on appealing against the determination.
- Chairman thanks all for attending and closes the meeting.

...Within five working days of the hearing

- Chairman explains requirement to determine the Hearing within five working days, and advises that the Committee will proceed to deliberate and announce the determination within that time.
- During deliberations, Legal and Democratic Services Officers remain to advise on law and procedure as required. The Legal Officer may assist, as required, in formulating the wording of the determination. The Licensing Officer plays no part in the determination and withdraws for this part of the proceedings.
- Chairman advises all parties that they will receive written notification of the determination within five working days of the Hearing date, together with general information on how to appeal against the determination.
- Chairman thanks all parties for attending and invites the applicant, objector(s), other party(ies) and the Licensing Officer to leave.

This version

19 January, 2005

Licensing Hearings Procedure

Update for Licensing Committee meeting 19 January 2005

The report on the Agenda appends a Hearings Procedure based on the *draft* Hearings Regulations. On 13 January, the finalised Regulations* were laid before Parliament. They will come into effect on 7 February 2005 when transitional arrangements under the Act begin.

Requirement for a Hearings Procedure

Regulation 21 states “...*the authority shall determine the procedure to be followed at the hearing.*”

Regulation 23 states “*A hearing shall take the form of a discussion led by the authority...*”

Neither the Act, the Regulations nor the Secretary of State’s Guidance stipulate a date by which authorities should have agreed their Hearings Procedures. Transition arrangements begin on 7 February. The first hearings might be required by mid to end March. Taking into account this, and the need to allow parties advance notice of the procedure the authority intends to follow at the Hearings, authorities could have until the beginning of March to agree their Procedures.

Contact with some other authorities to date suggests that many are still considering the matter, and are awaiting further guidance/ information on what others are doing. A number of issues still remain to be resolved:

Time for parties to make representations

Regulation 24 states “*The authority must allow the parties an equal maximum period of time in which to exercise their rights provided for in Regulation 16.*”

Regulation 16 states “*At the hearing a party shall be entitled to –*
(a) in response to a point upon which the authority has given notice to a party that it will want clarification....give further information in support of their application...”

(b) if given permission by the authority, question any other party; and
(c) address the authority.”

The report invites the Committee to consider options of 10, 15 and 20 minute slots for each individual party at a Hearing to put their case. Legal officers can advise on the likelihood of challenge attaching to each of these options.

The following Authorities have been canvassed on the issue of how much time to allow parties to make their Representations etc under Regulation 16. Responses are detailed and, as can be seen, the issue is still far from resolved.

Authority	Response/ comment
Brent	Still under consideration.
Camden	
City of London	No decision yet but considering allocating a time limit for each individual hearing. Awaiting further guidance.
Croydon	
Ealing	
Enfield	
Harrow	
Hounslow	
Lambeth	
Newham	
Redbridge	
Richmond	Considering a flexible approach to determine the limit to be applied to each hearing taking into account the circumstances of the case <i>but</i> awaiting guidance on whether or not this is permissible in terms of the legislation.
RB Kensington & Chelsea	Have been considering 10 mins but awaiting legal advice/ guidance on this.
Southwark	
Wandsworth	
Westminster	

Definition of “Party” to a Hearing

This is defined in the Regulations and legal colleagues can advise.

Ward Members

Another issue on which clarification and guidance is still awaited is that of Ward Member involvement in the Hearings.

Site visits

It has been asked whether a Hearing could be adjourned for a site visit, as in planning cases. Legal colleagues advise that, although not specifically referred to in the Regulations, an adjournment for a site visit would be permissible provided this would not take the authority beyond the time by which the determination was to have been made (Reg 13).

Costs

Updated information on how the costs of the new arrangements are to be met can be provided by Licensing and Treasury colleagues.

Next stage

If the Committee is minded to defer consideration/ agreement of its Hearings Procedure pending further guidance, it is suggested that any such deferral

should be until no later than 1 March so as to allow time for the agreed procedure to be published and made available to the Parties.

The calendar of meetings for this period shows:

February 2005

- 21(Mon) Appeals (5) Committee – 10am
Cabinet – Formal Meeting
Regeneration & Development Scrutiny Committee – Room 3
- 22(Tue) Area Forums:
Golders Green – St Michael's Church Hall, The Riding, off Golders Green Road, NW11
Whetstone – Queenswell Junior School, Sweets Way, Whetstone, N20 0NQ
Edgware, Burnt Oak & Mill Hill – Broadfields Junior School, Broadfield Avenue, Edgware HA8 8TN
Audit Scrutiny Committee - Room 3
- 23(Wed) Planning & Environment Committee
- 24(Thur) Party Group Meetings for Council
- 28(Mon) Cabinet Overview and Scrutiny
Education and Lifelong Learning OSC

March 2005

- 1(Tue) Council

In arranging a further meeting of the Licensing Committee, account should be taken of the requirement for five clear working days notice. In practice, this could mean that deferral might allow three weeks approximately for further guidance/ information to be obtained.

Members' instructions are sought.

for
Head of Committee

[^] The Licensing Act 2003 (Hearings) Regulations 2005