

MEETING

LICENSING COMMITTEE

DATE AND TIME

MONDAY, 21 FEBRUARY 2005

at 7.00 PM

VENUE

THE TOWN HALL, THE BURROUGHS,

HENDON, NW4 4BG

TO: MEMBERS OF THE COMMITTEE (Quorum 4)

Chairman: Councillor Eva Greenspan

Vice Chairman: Councillor Daniel Hope

Councillors:

Steven Blomer

Claire Farrier

Ansuya Sodha

Maureen Braun

Malcolm Lester

Soon-Hoe Teh

Peter Davis

Susette Palmer

Jim Tierney

Aba Dunner

Wendy Prentice

Olwen Evans

Agnes Slocombe

You are requested to attend the above meeting for which an Agenda is attached.

Roy Goddard
Head of Committee
Town Hall, Hendon NW4 4BG

Committee Section contact John Marr
020 8359 2031

FACILITIES FOR PEOPLE WITH DISABILITIES

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ORDER OF BUSINESS

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2.	ABSENCE OF MEMBERS	-
3.	DECLARATION OF MEMBERS' PERSONAL AND PREJUDICIAL INTERESTS	-
4.	Report of the Head of Committee, and Borough Solicitor Licensing Sub-Committee: Draft Hearings Procedure	3 - 5
5.	ANY OTHER ITEMS THAT THE CHAIRMAN DECIDES ARE URGENT	

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Meeting **Licensing Committee**

Date **21 February 2005**

Subject **Licensing Hearings Procedure**

Report of **Head of Committee, and Borough Solicitor**

Summary Hearings Regulations under the Licensing Act 2003 require Authorities to agree a procedure which they will follow in conducting Licensing Hearings. This report recommends a procedure based on the Regulations.

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

Status (public or exempt) Public

Wards affected All

Enclosures Appendix A – Hearings Regulations

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 Hearings Regulations published by the Secretary of State detailed at Appendix A;**
- 1.2 That the Committee approve and adopt the draft Hearings Procedure, detailed in the supplementary paper to this report, as the procedure to be used by this Licensing Authority for the conduct of Hearings under the Licensing Act 2003;**
- 1.3 That the Procedure be reviewed periodically and amended as required to reflect legislative changes and developing best practice; and**
- 1.4 That the Head of Committee be authorised, in consultation and agreement with the Chairman and Vice-Chairman, to make any minor or consequential amendments to the Procedure as might be required.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 26 October 2004 (Minute 86) noting the position on the Draft Regulations; Council, 14 December 2004 (Minute 110) approving the Licensing Policy; Licensing Committee, 19 January 2005 (Minute 4) noting the requirements of the finalised Regulations and instructing officers to develop an appropriate Hearings Procedure for approval by the Committee.

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 Licensing Hearings begin would breach statutory requirements.
- 4.2 As with all of the Council's activities, over-arching principles of Common Law, Natural Justice and Human Rights apply.
- 4.3 In respect of the Licensing Act 2003 Hearings, the requirements of the Regulations made under that Act to provide on the one hand a hearing in the form of a discussion and, on the other, a maximum period of time for parties to make their case gives rise to a potential risk of challenge.
- 4.4 If the Procedure is too prescriptive in setting rigid time limits, parties may argue that Natural Justice had not been allowed to prevail and that a fair hearing had not taken place. If, however, the Procedure does not specify a time limit, then there would be a technical breach of the Regulations.
- 4.5 The risk which requires to be managed is to develop a procedure which balances the strict letter and spirit of the Regulations with Natural Justice and Human Rights 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

8.1 The Licensing Act 2003 (Hearings) Regulations 2005 came into force on 7 February 2005. The Regulations had been published for consultation in September last year, with the consultation period ending on 10 November.

8.2 The Regulations require Licensing Authorities to determine the procedure to be followed at their Licensing Hearings.

8.3 On 19 January, the Committee considered a proposed Hearings Procedure based on the draft Regulations which had, at the time, still not been finalised.

8.4 Changes to the finalised Regulations meant that the Hearings Procedure proposed in January had to be re-worked in order to reflect the new requirement for Hearings to be discursive rather than adversarial. New Regulation 23 states that “A Hearing shall take the form of a discussion led by the Authority...”.

8.5 The Regulations also state that parties to the Hearing must be allowed an equal maximum period of time in which to make their representations.

8.6 The Hearings procedure to be adopted must strike a balance which allows parties equal opportunity to put their case within the context of a discussion. As referred to in Section 4, above, the risk is that the Procedure must balance the technical requirements and the spirit of the Regulations and Act with the wider principles of Natural Justice and Human Rights.

8.7 Officers have developed a Hearings Procedure which balances these requirements, is in accordance with the Regulations, and which takes account of current guidance and thinking in this area.

8.8 The Procedure is detailed in the supplementary paper to this report.

9 LIST OF BACKGROUND PAPERS

9.1 Hearings Regulations (appended).

BS: SAM; BT: CM

AGENDA ITEM: 4

Meeting	Licensing Committee
Date	21 February 2005
Subject	Supplemental report on Licensing Hearings Procedure – Head of Committee, and Borough Solicitor.

This supplemental paper should be read in conjunction with the report at Agenda Item 4 on the agenda for the meeting of the Licensing Committee on 21 February 2005.

The report circulated with the agenda seeks the Committee's approval to a Procedure to be followed by the Licensing Sub-Committee in the conduct of Hearings under the Licensing Act 2003.

The proposed Procedure, which officers recommend be adopted by the Committee, is attached.

The Committee is invited to consider the proposed Procedure, and the recommendations at Paragraph 1 of the main report.

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 5 minutes in which to present their case (Regulations 16 & 24). At the end of the time allowed, the Chairman will terminate the presentation and the hearing will proceed in the form of a discussion led by the authority to explore points of dispute. The discussion will not be timed

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.

DSO

- Informs Committee of absent parties.
- Details persons whom a party is seeking permission to represent them at hearing.
- Panel confer re permission.
- Chairman announces decision re permission.

Licensing Officer presents the report to the Committee

- Is a statement of the facts including details of the application and operating schedule, relevant policy details, detail representations made, a chronology of events and highlights the points on which the Authority requires clarification.

Applicant

- Presents opening submissions and clarifies points raised by Authority in notice of hearing. Time allowed 5 mins.

Other parties

- Presents opening submissions either in person or by spokes person Time allowed 5 mins per interested party.

Members question Licensing Officer on Policy

Discussion

Chairman leads a discussion concentrating on points of dispute:

Chairman asks Applicant what he disputes in other parties' submissions, and asks other parties to comment.

Chairman proceeds through all objectors dealing with all matters of contention.

When Chairman feels all matters have been thoroughly discussed and all parties have been given a fair and equal opportunity to comment and make representations, she/he closes discussion.

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 for certain types of applications.

Chairman informs all present that will deliberate, that Legal and DSO will remain to advise but will not be part of decision-making process, and that all others must leave (under Reg. 14).

- 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.
- Opportunity for determination to be clarified by any interested party who is unclear.
- 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

9 February, 2005