

**NOTICE OF MEETING**

**Licensing Committee**

TUESDAY, 6TH DECEMBER, 2005 at 19:00 HRS - CIVIC CENTRE, HIGH ROAD, WOOD GREEN, N22 8LE.

MEMBERS: Councillors Haley (Chair), Basu, Beacham, Bloch, Dobbie, E Prescott, Floyd, Gilbert, Herbert Brown, Knight, Newton, Patel (Deputy Chair), Reynolds and Rice

**AGENDA**

**1. APOLOGIES FOR ABSENCE**

**2. URGENT BUSINESS**

The Chair will consider the admission of any late items of urgent business. (Late items will be considered under the agenda item where they appear. New items will be dealt with at item 14 below)

**3. DECLARATIONS OF INTEREST**

A member with a personal interest in a matter who attends a meeting of the Authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

**4. DEPUTATIONS/PETITIONS**

To consider receiving deputations and/or petitions in accordance with Standing Order 37, part E.8.

**5. MINUTES**

To approve the minutes of the previous meeting of the Licensing Committee held on 15 March 2005 (attached)

**6. LICENSING DECISIONS AND THE RELATIONSHIP TO TOWN PLANNING CONTROLS (PAGES 1 - 12)**

To report to Members of the Committee on Counsel's opinion about the relationship between decisions under the Licensing Act 2003 and Town Planning Controls. (Attached)

**7. AMENDMENT AND ADOPTION OF THE LOCAL LICENSING PROCEDURE RULES (PAGES 13 - 38)**

To seek Members views on the operation of the Local Licensing Procedure Rules and to recommend certain amendments prior to the adoption of these Rules as part of the Council's Constitution. (Attached)

**8. POLICY FOR GAMING ACT PROVISIONS UNDER THE LICENSING ACT 2003 (PAGES 39 - 44)**

To review the current policy on "amusement with prizes" gaming machines (AWP machines) in premises that are not solely or wholly amusement centres. To determine policy on applications to play certain games on licensed premises and the commercial provision of amusement with prizes. (Attached)

**9. ORAL REPORT ON EMBEDDED LEGAL RESTRICTIONS OF THE LICENSING ACT 1964**

For the Head of Legal Services to inform Members of the embedded restrictions on the Licensing Act 2003 from the previous Licensing Acts.

**10. ORAL REPORT ON THE ROLE OF COUNCILLORS IN RESPECT OF RELEVANT REPRESENTATIONS TO LICENSING ACT 2003 HEARINGS**

For the Chair and Licensing Manager to inform Members of the correct procedure for Councillors to engage in Hearings under the Licensing Act 2003.

**11. COMMENCEMENT OF LICENSING ACT 2003 (PAGES 45 - 58)**

To make Members aware of the Licensing Act 2003 applications received for premises licenses. (Attached)

**12. ANNUAL ENTERTAINMENT LICENSES AND NIGHT CAFE LICENSES DEALT WITH BY WAY DELEGATED AUTHORITY (PAGES 59 - 64)**

To make members aware of the Licenses (terminating hours after 2am) granted under delegated authority. (Attached)

**13. ANNUAL ENTERTAINMENT LICENSES AND NIGHT CAFE LICENSES DEALT WITH BY WAY DELEGATED AUTHORITY (PAGES 65 - 78)**

To make members aware of the Licenses (terminating hours 2am or earlier) granted under delegated authority. (Attached)

**14. ITEMS OF URGENT BUSINESS**

To consider any new items admitted under item 2 above.

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Agenda item:

**Licensing Committee**

on

**6 December 2005**Report Title: **Licensing Decisions and the Relationship to Town Planning Controls**Forward Plan reference number (if applicable): **N/A**Report of: **Head of Legal Services**Wards(s) affected: **All**Report for: **Non-Key Decisions****1. Purpose**

1.1 To report to Members of the Committee on Counsel's Opinion about the relationship between Decisions under the Licensing Act 2003 and Town Planning Controls

**2. Recommendations**

- 2.1 That Members note and accept the advice in Counsel's Opinion attached as Appendix 3 to this report.
- 2.2 That Members provisionally approve for statutory consultation the proposed revisions to paragraphs 8.1 and 8.2 of the Council's Statement of Licensing Policy, as set out in Appendix 2 to this report.
- 2.3 That Members request the General Purposes Committee to agree the commencement of the statutory consultation referred to in paragraph 2.2 above.
- 2.4 That, Members agree to apply the Statement of Licensing Policy in the light of Counsel's advice when making decisions at Licensing Sub-Committee hearings during the period before the formal adoption of the proposed revisions referred to in paragraph 2.2 above.
- 2.5 That Members agree not to impose conditions that would leave the hours of operation for licensable activities to be determined by the Planning Authority or by Planning Controls when making decisions at Licensing Sub-Committee hearings.

Report Authorised by:

**Davina Fiore, Head of Legal Services and Monitoring Officer**

Contact Officer: **Terence Mitchison, Senior Project Lawyer, Corporate**  
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### **3 Executive Summary**

3.1 The report attaches a recent Counsel's Opinion which advises that the Licensing Committee and Sub-Committees must always reach their own view at hearings when determining hours, activities or conditions. Although the Licensing bodies should give appropriate weight to relevant Planning decisions, the Licensing decision cannot be "tied" to Planning controls. The General Purposes Committee will be asked to authorise statutory consultations on the proposed changes to the Council's Statement of Licensing Policy.

### **4 Reasons for any change in policy or for new policy development (if applicable)**

4.1 Receipt of Counsel's Opinion and the possibility of legal challenge on these issues.

### **5 Local Government (Access to Information) Act 1985**

5.1 The following background papers were used in the preparation of this report:

(i) the Council's Statement of Licensing Policy (ii) the Opinion of Philip Kolvin dated 21 October 2005 (iii) the Legal Service file on this matter.

### **6 Background**

6.1 The Council's Statement of Licensing Policy contains a section (no. 8) on "Planning" which is set out in Appendix 1 to this report. The paragraph that has given rise to the main concern is 8.2 which states:

"All premises that apply for a licence must have planning permission for the intended use and hours of operation or be deemed "lawful" for the purposes of planning control. The Licensing Authority will not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission."

6.2 Applications for new licences, or variations of hours, come before Licensing Sub-Committees when there are objections (technically called "relevant representations"). In many cases the applicant owns premises which have Planning Permission for opening hours less extensive than the hours sought in the Licensing application. In some cases the applicant is in the process of applying for Planning Permission to extend the hours to match those sought in the Premises Licence.

- 6.3 Where this has not seemed the appropriate course of action on the facts, Members have been reluctant to enforce the Statement of Licensing Policy strictly by refusing to consider the application or by restricting applicants for Premises Licences to the opening hours currently allowed by the Planning Permission.
- 6.4 In certain instances where the Operating Schedule submitted with the Licence application has sought hours in excess of the Planning Permission, a condition has been imposed on the Licence to the effect that
- “the hours permitted by this licence shall not exceed the hours permitted by Planning Controls for the time being in force”.
- 6.5 The effect of this is to prevent the premises from opening later than the Planning hours before Planning Permission for extended hours is obtained. But, once that Planning Permission is obtained, there would be no need for the owner to make a further Licensing application for the same extended hours.
- 6.6 There have been complaints from some quarters that the Council’s Statement of Licensing Policy has not been strictly enforced with regard to Planning Control. From an opposing point of view, many applicants and their representatives have questioned the legality of the Council’s policy here.
- 6.7 In order to resolve the uncertainty the Head of Legal Services, at the request of the Assistant Director Enforcement, obtained Counsel’s Opinion from Philip Kolvin a barrister with a reputation as a leading practitioner in the Licensing area and the Chairman of the Institute of Licensing. It has to be said that others involved with Licensing have in the past expressed different views but the Legal Service now believes that Philip Kolvin is correct and that his view would be upheld by the Courts.

## **7 Counsel’s Opinion**

- 7.1 Philip Kolvin’s Opinion is attached as Appendix 3 to this report. The “Opinion” is in the form of an e-mailed letter. Paragraph numbers have been added for ease of reference.
- 7.2 The main thrust of the Opinion is in paragraph (4). Counsel states emphatically that Licensing Sub-Committees cannot refuse to consider a new application or variation on the basis that grant would be for hours or uses not authorised by planning control.
- 7.3 Legally, the only basis for the Licensing Authority having the power to refuse or restrict hours and activities set out in an Operating Schedule is that the Licensing Authority itself (not the Planning Authority) must consider this necessary for the promotion of the four national licensing objectives i.e. (i) prevention of crime and disorder, (ii) public safety, (iii) prevention of public nuisance, and (iv) protection of children from harm.
- 7.4 Counsel explains, at paragraph (7) of his Opinion, that in every case it is necessary for the licensing Authority to arrive at its own view. The fact that Planning Permission covered the hours sought in an Operating Schedule should not automatically guarantee the grant of a Licence if, in the circumstances, this would be harmful to the licensing objectives. Nor should the absence of Planning Permission automatically result in refusal. In each case the Licensing Authority must consider the whole of the evidence before it at the hearing and reach its own conclusion on the merits.

7.5 The Licensing Authority may, and should, take into account any Planning decision that is relevant to the Licensing application and persuasive in the circumstances. Counsel gives the example, in his paragraph (6), of an Inspector's decision at a recent Planning Inquiry covering the same issue that comes before the Licensing Authority i.e. should the closing hour be limited to midnight to avoid nuisance. In such a case the Inspector's view must be given great weight by the Licensing Authority. Nonetheless, the Licensing Authority must reach its own conclusion on the totality of the evidence.

## **8 Revising the Statement of Licensing Policy**

8.1 Counsel advises, at paragraphs (4) and (8) of his Opinion, that the Councils' Statement of Licensing Policy (SLP) needs revision. The recommended changes are set out in Appendix 2 to this report. The critical sentence in paragraph 8.2 reads:

“The Licensing Authority will give appropriate weight to relevant Planning decisions and to the views of the Planning Authority on the compliance of the application with the licensing objectives.”

8.2 In paragraph (3) of his Opinion Counsel points out the inaccuracy of Paragraph 8.1 of the SLP. This has arisen because of a recent amendment to the Planning Use Classes Order. The effect of this is that changes of use from a restaurant to a public house or to a hot food takeaway all now require Planning permission. The necessary changes, reflecting the change in Planning law, are set out in Appendix 2.

8.3 The current SLP adopted in January 2005 has a three-year maximum life before it must be wholly re-considered and re-adopted. The Council must keep its SLP under review during the three-year period and make such revisions as it thinks appropriate.

8.4 Before any revision to the SLP is adopted the Council must go through the extensive statutory consultation exercise followed before the initial adoption of the SLP in January. This will include consultation with representatives of local businesses and residents, representatives of the licensed trade and personal licence holders, the Police and the Fire Authority.

8.5 Under the relevant legislation and the Council's Constitution this review is a “non-executive” function and therefore authorisation for the review must be given by the General Purposes Committee followed by formal adoption of the revised SLP by full Council.

8.6 Under the Licensing Act 2003, the Licensing Authority must “have regard” to its SLP when making decisions on applications. This means that the Licensing Authority can depart from parts of its SLP if there is good reason to do so, for example Counsel's Opinion accepted by the Licensing Committee. In the interim, until the formal adoption of the proposed revisions to the SLP, it is recommended that Members on the Licensing Sub-Committees should apply paragraphs 8.1 and 8.2 in the light of Counsel's advice.



## **9 Conditions**

- 9.1 In paragraph (9) of his Opinion, Counsel advises against imposing conditions of the kind mentioned in paragraph 6.4 of this report i.e. “the hours permitted by this licence shall not exceed the hours permitted by Planning Controls for the time being in force”. The reason for this is because the Licensing Authority should make its own decision on the hours rather than leaving the matter to the Planning Authority.
- 9.2 If a premises licence is granted for hours extending beyond those allowed by the Planning Authority, it would still be unlawful for the owner to open during those extended hours. But in this situation enforcement action would have to be taken by the Planning Authority.
- 9.3 Counsel points out that in these circumstances the Licensing Authority could still attach an informative to a premises licence to the effect that the applicant would still need to obtain Planning Permission to operate for the extended hours granted by the Licence.

## **10 Recommendations**

- 10.1 That Members note and accept the advice set out in Counsel’s Opinion attached as Appendix 3 to this report.
- 10.2 That Members provisionally approve for statutory consultation the proposed revisions to paragraphs 8.1 and 8.2 of the Council’s Statement of Licensing Policy as set out in Appendix 2 to this report.
- 10.3 That Members request the General Purposes Committee to agree the commencement of this statutory consultation.
- 10.4 That Members agree to apply the Statement of Licensing Policy in the light of Counsel’s advice when making decisions at Licensing Sub-Committee hearings during the period before the formal adoption of the proposed revisions.
- 10.5 That Members agree not to impose conditions that would leave the hours of operation of licensable activities to be determined by the Planning Authority or by Planning Controls when making decisions at Licensing Sub-Committee hearings.

## **11 Comments of the Director of Finance**

- 11.1 There are no specific financial implications.

## **12 Comments of the Head of Legal Services**

- 12.1 The legal implications are set out in the body of the report.

**13 Equalities Implications**

13.1 There are no specific equalities implications.

**14 Use of Appendices / Tables / Photographs**

14.1 Appendix 1 to this report is the existing text of paragraphs 8.1. and 8.2 of the Council's Statement of Licensing Policy

14.2 Appendix 2 to this report shows the proposed revisions to the Statement of Licensing Policy

14.3 Appendix 3 to this report is the Opinion of Philip Kolvin dated 21 October 2005.

**APPENDIX 1**

EXISTING STATEMENT OF LICENSING POLICY

**8.0 Planning**

8.1 Planning permission is usually required for the establishment of new premises and change of use of premises. Uses that are relevant to licensed premises are set out in the Town and Country Planning (Use Class) Order 1987 (as amended) and include:

- a retail shop, licensed for the sale of liquor for example (A1);
- food and drink sold and consumed on the premises or where hot food is sold for consumption off the premises, including restaurants and bars (A3);
- assembly and leisure uses, including cinemas, concert halls, dance halls and indoor/outdoor sports and recreation (D2); and
- various “sui generis” uses which do not fall within a use class such as theatres.

8.2 All premises that apply for a licence must have planning permission for the intended use and hours of operation or be deemed "lawful" for the purposes of planning control. The Licensing Authority will not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission. The Licensing Authority will consider a degree of flexibility in this when dealing with applications for provisional statements, which applies to premises still to be constructed or altered for licensing purposes.

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**APPENDIX 2**

PROPOSED REVISIONS TO STATEMENT OF LICENSING POLICY

[the words proposed for deletion are shown struck through and the words proposed for addition or insertion are shown in italics and underlined]

**8.0 Planning**

8.1 Planning permission is usually required for the establishment of new premises and change of use of premises. Uses that are relevant to licensed premises are set out in the Town and Country Planning (Use Class) Order 1987 (as amended) and include:

- (a) a retail shop, licensed for the sale of liquor for example (A1);
- (b) food and drink sold and consumed on the premises ~~or where hot food is sold for consumption off the premises, including restaurants and bars~~ (A3);
- (c) public house, wine bar or other drinking establishment (A4);
- (d) hot food sold for consumption off the premises (A5);
- (e) assembly and leisure uses, including cinemas, concert halls, dance halls and indoor/outdoor sports and recreation (D2); and
- (f) various "sui generis" uses which do not fall within a use class such as theatres.

8.2 All premises that apply for a licence ~~must have~~ will be encouraged to obtain planning permission for the intended use and hours of operation ~~or be~~ if not already deemed "lawful" for the purposes of planning control. The Licensing Authority will give appropriate weight to relevant Planning decisions and to the views of the Planning Authority on the compliance of the application with the licensing objectives. ~~not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission. The Licensing Authority will consider a degree of flexibility in this when dealing with applications for provisional statements, which applies to premises still to be constructed or altered for licensing purposes.~~

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**APPENDIX 3**

**OPINION OF PHILIP KOLVIN**

Dear Benita

(1) Since I am out of Chambers next week, I hope that this short e-mailed reply will suffice. A longer opinion would not contain more, or different, legal views.

(2) Your statement of licensing policy does not accurately represent the law in relation to the relevance of planning control. You have power to interfere with the contents of an operating schedule (e.g. by refusing a licence or attaching conditions) only if both the following are satisfied, namely, a) there has been a relevant representation and b) if it is necessary to promote the licensing objectives. If there is no relevant representation, you must grant as asked, subject of course to the mandatory conditions. This is regardless of whether planning consent is in place or not.

(3) Whereas paragraph 8.1 of your policy was once an accurate statement of the law, it no longer is, since a recent amendment to the Use Classes Order has created Classes A3, A4 and A5 to distinguish pubs, restaurants and takeaways.

(4) Paragraph 8.2 needs revision. You cannot refuse to **consider** a new application or variation on the basis that grant would be for hours or uses unauthorized by planning control. The legal reason for that is that the only basis to interfere is that interference is necessary to promote the licensing objectives. The practical reason is that planning control is a matter for the planning authority, who will decide whether a use is an offending one and whether to enforce against it.

(5) Thank you for sending me the extract from Hyde. Whereas under the old law, licensing authorities did have policies saying that planning permission had to be obtained first, the legal basis for such an approach was never entirely clear, and any legal basis has been removed by the Licensing Act 2003, which limits the discretion of licensing authorities to interfere, as I have indicated.

(6) What, then, is the role of planning? It is simply that the absence of planning consent **might** GO to the question of whether refusal is necessary to promote the licensing objectives. Imagine that there had been a planning inquiry which had specifically considered the question of hours and an Inspector had concluded, after hearing evidence, that the terminal hour should be limited to midnight to avoid nuisance. The licensing authority may find that persuasive if precisely the same issue arose before them. There is authority for that in the shape of *R v Manchester Crown Court ex parte Dransfield* [2001] LLR 556, in which Glidewell LJ stated: "... it is clear that [the inspector's] view or conclusion must be given great weight by the local [licensing] authority, and by the Crown Court on appeal, and there would have to be good reason for rejecting that view or conclusion..."

(7) But in every case it is still necessary for the licensing authority to arrive at its own view. The fact that the premises have the requisite consent does not guarantee a licence if the evidence shows that a grant would be harmful, although weight would be attached to the view of the planning authority or inspector on the issue. Nor is the absence of consent a guarantee of refusal. Each case is to be determined on its merits. The role of planning is to bring its own expertise to bear on the issue, in the same way as health and safety or police departments may bring their expertise to bear on the issue, by putting information or evidence before the sub-committee to help it decide whether interference is necessary in order to promote the licensing objectives.

(8) Thus, while your policy can say that premises need planning consent or a lawful planning use in order to operate, and that the licensing authority will give weight, where relevant, to the views of the planning authority on the compliance of the application with the licensing objectives, you cannot in your policy make planning consent a prerequisite to grant.

(9) There is no harm in attaching an informative to the licence explaining that the licence does not constitute a consent under any other regime and that it is necessary for the licensee to obtain any other consents which may be necessary for the lawful operation of the premises. It would not be proper, whether by informative or condition, to make a statement to the effect that the operating hours are limited to those permitted under planning control. I.e. where there have been relevant representations you should grant such hours as you believe are consistent with the licensing objectives, regardless of whether those hours are consistent with those lawful under planning legislation. But there is nothing wrong with informing the applicant that he may still need consents under other legislation to operate the licensed hours.

(10) You have raised the issue of XXXXX, where the operator may need a planning consent that he does not have. For the reasons just given, that is no bar to the licensing application proceeding, and you must determine it having regard to what is necessary to promote the licensing objective. The absence of planning consent may or may not be material to that issue, but it cannot and should not justify a failure to determine the application at all.

(11) You have also raised the question of what happens when standard objections are made regarding hours in particular areas, by reference to XXX, XXX and XXX. Because of the volume of applications, and also because some statutory and non-statutory organizations have policies of their own, standard objections have been lodged. But the approach of the licensing authority is to determine each application on its merits, having regard to the statement of licensing policy and national guidance.

(12) Finally on this issue, you note that XXXX has appealed a refusal where the hours applied for exceeded those permitted by the planning authority. It will be up to you to justify this refusal. It would not, in my view, be sufficient merely to call the licensing officer to explain what had happened before the sub-committee. You should call officers from planning / licensing and/or environmental control to explain why it is necessary to curtail the hours in order to promote the licensing objectives. I note that environmental control officers did not object to the application, so this narrows your choice down to planning (who are a must) and licensing. I note that there were some local residents and also a Neighbourhood Watch representative. If they are helpful, you should call them too. I see that the sub-committee's attention was drawn to the policy regarding planning. You will need to make it clear on appeal that you are defending the appeal on the merits, and not asking the magistrates to dismiss the appeal on the basis that that part of the licensing policy precludes a determination on the merits.

(13) On the ancillary issue – corkage. You are right that licensing control attaches to sale of alcohol, not to charges for removing the cork from alcohol purchased elsewhere, or to consumption of such alcohol. Since alcohol is not being sold, the activity is not licensable.

I hope this is helpful.

Regards

Philip Kolvin



Agenda item:

**Licensing Committee**

on

**6 December 2005**Report Title: **Amendment and Adoption of the Local Licensing Procedure Rules**Forward Plan reference number (if applicable): **N/A**Report of: **Head of Legal Services**Wards(s) affected: **All**Report for: **Non-Key Decisions****1. Purpose**

1.1 To seek Members views on the operation of the Local Licensing Procedure Rules and to recommend certain amendments prior to the adoption of these Rules as part of the Council's Constitution

**2. Recommendations**

- 2.1 That Members review the operation of the Haringey Local Licensing Procedure Rules in the light of practical experience at Licensing Sub-Committee hearings.
- 2.2 That Members approve the amendments to the Local Rules, as set out in Appendix 1 to this report.
- 2.3 That Members request the General Purposes Committee to recommend the Local Rules, as amended above, to full Council for adoption as part of the Council's Constitution.
- 2.4 That, Members agree to use the Summary of Procedure, as set out in Appendix 2 to this report, as a guide at Licensing Sub-Committee hearings.
- 2.5 That Members note that Council Procedure Rule 37 does not apply to Licensing Sub-Committee hearings and agree that the "stand alone" item on Deputations/Petitions should no longer appear on Licensing Sub-Committee agendas.

Report Authorised by:

**Davina Fiore, Head of Legal Services and Monitoring Officer**

Contact Officer: **Terence Mitchison, Senior Project Lawyer, Corporate**  
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### **3 Executive Summary**

- 3.1 The report seeks the Committee's views on these local Rules which have been applied in many hearings over the past 4 months.
- 3.2 Officers are recommending changes to clarify (i) that the Members' Code of Conduct applies in whatever capacity a Councillor may attend a hearing, (ii) that the full procedures can be abridged in the majority of cases where it is unnecessary to consider every Rule (iii) the role of the Chair in making procedural decisions, (iv) the power of a Sub-Committee to amend its decisions in order to correct any fault or legal error, and (v) the procedure if a case is remitted to the Council by the Magistrates Court on appeal.
- 3.3 Once approved by the Licensing Committee, the Rules would be recommended via General Purposes Committee to full Council for adoption as part of the Council's Constitution.
- 3.4 The Licensing Committee is also being asked: (a) to agree the use of a standard summary of the Rules to assist at hearings, and (b) to note that Council Procedure Rules 37 on Deputations and Petitions does not apply to Licensing hearings.

### **4 Reasons for any change in policy or for new policy development (if applicable)**

- 4.1 This report follows four months practical experience of operating the Rules to regulate hearings under the Licensing Act 2003

### **5 Local Government (Access to Information) Act 1985**

- 5.1 The following background papers were used in the preparation of this report:
- the Legal Service file on this matter.

## **6 Background**

- 6.1 The Committee's five Sub-Committee's have been holding hearings under the Licensing Act 2003 since 10 May 2005 but on an approximate weekly basis only since late August. This report is intended to provide the opportunity for Licensing Members to review the operation of the Haringey Local Licensing Procedure Rules after about 4 months practical experience. These Rules are attached as Appendix 1 to this report.

6.2 The matters which affect the substance of Haringey's Local Rules are: (i) the traditional common law Rules of Natural Justice, (ii) the Human Rights Act 1998, (iii) the Licensing Act 2003, and (iv) the Government's "Hearings Regulations" S.I. 2005/44. The Local Rules must be consistent with all the matters (i), (ii), (iii) and (iv) above. The "Hearings Regulations" govern procedures before the actual hearing and prescribe many aspects of the hearing procedure itself. There is still some scope for local choice about the details.

## **7 Review of Procedures and the "Summary of Procedure"**

7.1 The most novel feature of the new Rules, as compared to earlier and more formal Licensing Procedure Rules, is the requirement that "a hearing shall take the form of a discussion led by the authority" (in practice this has meant led by the Chair). This is a requirement of the "Hearings Regulations" and so not a provision which Members can ignore. However, the requirement could be put into practice in a number of ways.

7.2 There have been demonstrable advantages from allowing a general "discussion" between the parties with the Chair acting as arbiter. An informal part of the proceedings, with easy exchanges between the opposing sides, has encouraged all concerned to compromise and to achieve workable solutions acceptable to everyone.

7.3 On the other hand, there are advantages in keeping the more formal and traditional elements of the procedure but within a flexible framework. These formal elements are an opening statement, the chance for each party to ask questions, the requirement on each party to be subject to questions and the right to a closing address. If the parties are given the right to these formal steps in the procedure, then there will be less chance of complaints or appeals on the basis that a party was not given a fair hearing.

7.4 Both these formal elements and the general "discussion" are provided for within the current Local Rules. Therefore, it is recommended that no fundamental changes are needed.

7.5 Since the full version of the Rules is very long (12 pages), it is recommended that the Licensing Sub-Committees be guided on a regular basis by a shorter Summary of Procedure. This is attached as Appendix 2 to this report. It sets out the procedures that are relevant to many, or most, hearings and it has been used successfully at several hearings already.

## **8 Recommended Amendments to the Local Rules**

8.1 Several amendments are now recommended to the Local Rules. These amendments do not affect the main principles of the procedure. They do clarify a few important points and make provision for certain matters not included in the Rules originally. The suggested amendments are set out in Appendix 1. The words recommended for deletion are shown struck through. The words recommended for addition or insertion are shown in italics and underlined.

8.2 In Rule 16 some additional text is proposed to cover the Code of Conduct requirements that apply to any Councillor who wishes to attend a hearing as an objector, a witness or a representative for a party. For the avoidance of any possible doubt, Members will be reminded that personal interests must be disclosed, that

prejudicial interests prevent the Member from attending at all and that the Code of Conduct applies to all Councillors attending in any capacity.

- 8.3 The small addition to Rule 17 makes clear the scope of the duty of Sub-Committee Members to consider and seek advice upon personal or prejudicial interests.
- 8.4 The extra text recommended in Rule 51 allows the Chair to omit express reference to any procedural steps or Rules that are not relevant to that particular hearing. For example, the special Rules on confidential evidence are rarely likely to be needed. The point of the change is to ensure that the Council is not challenged simply because some irrelevant or unimportant aspect of the procedure was not addressed.
- 8.5 A new Rule 60 would legitimise a feature of the procedure that generally happens in practice. It would expressly authorise the Chair to make procedural rulings without having to formally consult his colleagues on the Sub-Committee or put each point to the vote on every occasion. There are many Rules which are stated to be the decision of "the Sub-Committee". In these cases each Member has the right, if they so wish, to call for an immediate vote on a procedural point but unless questioned in this way the decision of the Chair stands.
- 8.6 Two new rules are proposed at the end. Rule 73 would cover the situation that arose at a hearing in October when inaccurate information was given to the Sub-Committee by the applicants for conversion and extended hours about their existing "grand-father rights". The Sub-Committee, without any fault by officers or Members, made a decision that was beyond its jurisdiction. On legal advice, and with the consent of the parties, this decision was amended. The introduction of a new Rule to cover this situation would tend to avoid unnecessary appeals or challenges and thus protect the Council's interests.
- 8.7 A new Rule 74 would provide expressly for cases remitted by the Magistrates Court to the Council on appeal. In most cases where one party appeals the Council's decision, the Magistrates Court will hear the whole case afresh and decide to uphold or reject the appeal. However there may be cases where the appeal is essentially on a procedural point, for example, whether some evidence should have been admitted at the original hearing. In such circumstances the Magistrates may remit the case to the Council with a Direction to deal with it in a specific way, for example, to re-hear the matter but allowing in evidence a document previously excluded. The proposed new Rule provides for the Chair of the Licensing Committee to agree, on legal advice, the steps that the Council will take to comply with the Direction.

## **9 The Constitution**

- 9.1 If Members of the Licensing Committee are satisfied that the Local Rules, including the amendments suggested in this report, are now fit for their purpose, they could recommend to full Council through the General Purposes Committee that the Local Rules be formally adopted as part of the Councils' Constitution. This would be appropriate because other procedural rules governing the work of Committees, such as the "Protocol for Hearing Representations at Planning Applications Sub-Committee" (Part C6), have already been incorporated into the Constitution.

- 9.2 On the other hand, if Members considered that more practical experience was needed and that there might be further changes, that would be an argument for delaying incorporation into the Constitution. Changes to the Constitution necessarily involve a longer process than a simple amendment to non-constitutional Rules. The Local Rules remain perfectly valid even if not adopted as part of the Constitution.

## **10 Deputations**

- 10.1 At the meeting of the Licensing Committee on 8 February 2005, Members resolved to exclude the Council's Procedure Rules (Part E.8 of the Constitution) from applying to hearings by Licensing Sub-Committees (Minute LC56). The consequence is that CPR 37 on Deputations and Petitions at Committees does not apply.
- 10.2 It follows that the "stand alone" reference to "Deputations/Petitions" on Licensing Sub-Committee agendas should not appear.
- 10.3 There is provision within the Local Procedure Rules for parties to a hearing to submit petitions subject to the Rules on Documentary Evidence. There is no express provision for Deputations but registered objectors, who have submitted relevant representations in time, may constitute themselves as a deputation or seek to call signatories to a deputation as witnesses subject to the existing Local Rules.

## **11 Recommendations**

- 11.1 That Members review the operation of the Haringey Local Licensing Procedure Rules in the light of practical experience at Licensing Sub-Committee hearings.
- 11.2 That Members approve the amendments to the Local Rules, as set out in Appendix 1 to this report.
- 11.3 That Members request the General Purposes Committee to recommend the Local Rules, as amended above, to full Council for adoption as part of the Council's Constitution.
- 11.4 That, Members agree to use the Summary of Procedure, as set out in Appendix 2 to this report, as a guide at Licensing Sub-Committee hearings.
- 11.5 That Members note that Council Procedure Rule 37 does not apply to Licensing Sub-Committee hearings and agree that the "stand alone" item on Deputations/Petitions should no longer appear on Licensing Sub-Committee agendas.

## **12 Comments of the Director of Finance**

- 12.1 There are no specific financial implications.

## **13 Legal Implications**

- 13.1 The Haringey Local Licensing Procedure Rules are made under section 9 (3) of the Licensing Act 2003 and Reg. 21 of "The Licensing Act 2003 (Hearings) Regulations 2005" (S.I. 2005/44).

## **14. Equalities Implications**

- 14.1 There are no specific equalities implications

**15. Use of Appendices / Tables / Photographs**

- 15.1 Appendix 1 to this report is the text of the Haringey Local Licensing Procedure Rules showing the amendments proposed
- 15.2 Appendix 2 to this report is the “Summary of Procedure” proposed for use at Licensing Sub-Committee hearings.

**APPENDIX 1**

**HARINGEY COUNCIL – LOCAL LICENSING PROCEDURE RULES FOR HEARINGS UNDER THE LICENSING ACT 2003**

Interpretation

1. “Act” means the Licensing Act 2003

“Applicant” means a natural person or other legal entity making any application or giving any notice for any form of licence, certificate, consent or determination in accordance with the Act

“Application” means any type of application or notice for any form of licence, certificate, consent or determination for which provision is made under the Act

“Chair” means the Chair of the Licensing Committee or Licensing Sub-Committee determining the relevant application

“Committee clerk” means the officer(s) instructed by the Head of Members’ Services to attend Licensing Sub-Committee meetings to take the minutes and assist with the proper running of the meetings

“Council” means the Council of the London Borough of Haringey

“Hearings Regulations” means The Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005 no. 44)

“Interested party” has the meaning prescribed in the Act

“Legal representative” means the officer(s) instructed by the Head of Legal Services to attend Licensing Sub-Committee meetings to advise on matters of law and procedure

“Licensing Committee” means the Council’s statutory Committee under the Act

“Licensing representative” means the officer(s) instructed by the Assistant Director, Enforcement to administer application procedures and to attend Licensing Sub-Committee meetings to advise on licensing matters

“Licensing Service” means the Service under the Assistant Director, Enforcement responsible for administering the Council’s functions under the Act

“Member” means Haringey Councillor appointed to serve as a Member of the Licensing Committee or a Licensing Sub-Committee as the context requires

“Notice” means any notice made in accordance with the Act, or Regulations made thereunder, in relation to an application

“Objector” means each interested party, responsible authority, other natural person or legal entity who/which has made relevant representations or given any notice in relation to any application

“Party/Parties” means the applicant(s) and/or the objector(s) in relation to any particular application

“Premises” means any premises or land in respect of which an application is made

“Relevant Representation” means any relevant representation made in accordance with the Act, or Regulations made thereunder, in relation to an application

“Responsible authority” has the meaning prescribed in the Act

“Sub-Committee” means a Licensing Sub-Committee to which the Licensing Committee of the Council has delegated powers to determine applications. Unless the context otherwise requires, this shall be interpreted to include the Council’s Licensing Committee when that Committee is hearing an\_ application within its terms of reference.

“Ward Councillor” means a Haringey Councillor representing a Ward within which are located any premises that are the subject of an application.

### Scope and Application

2. These Rules apply to all applications made in accordance with the Act, or Regulations made thereunder.
3. These Rules should be read and interpreted in conjunction the Hearings Regulations and the Act.



Pre-Hearing Procedure

4. The Licensing Service will notify the relevant Ward Councillors of each application, notice or relevant representation relating to premises within their Ward within 2 working days of receiving such application, notice or relevant representation. This requirement is in addition to any requirement arising under the Hearings Regulations.
5. The Licensing Service may seek to mediate between the parties to an application with a view to securing: -
  - (a) the withdrawal of any relevant representation or notice,  
or
  - (b) the agreement of the parties that a hearing is unnecessary.
6. If, in any case, the parties agree that a hearing is unnecessary, the Licensing representative, in consultation with the Chair, shall decide whether the Council consider that a hearing is unnecessary to determine the application and shall give notice of that decision to the parties forthwith.
7. In any case where it has been decided that a hearing is unnecessary, the Sub-Committee shall consider the application at an ordinary meeting. In reaching its decision, the Sub-Committee shall take into account the form of application and accompanying documents, any written relevant representations and notices that have not been withdrawn and any report or other documents that appear to be relevant.

Membership and Quorum for Hearings

8. Where an application relates to premises within a Ward, then a Ward Councillor shall not take part in the decision upon that application as a Member.
9. So far as practicable, hearings will be arranged so that the Sub-Committee determining the application does not include Members representing any Ward in which premises affected by the application are located
10. The quorum for any hearing of a Sub-Committee shall be three Members and the quorum for any hearing by the Licensing Committee shall be four Members.

11. Any Member arriving after the commencement of a hearing, or leaving during the course of a hearing, shall take no part, or no further part, in the conduct of that hearing or the decision on the application in question.

#### Councillors' Participation in Hearings

12. A Councillor, who is not a Member of the Sub-Committee determining the application in question, may participate in the hearing but only if the Councillor is an objector who has made relevant representations in accordance with the Hearings Regulations and the Act, or if the Councillor has been asked to attend by a party in order to act as a witness or a representative for that party.
13. A Councillor, who is a Member of the Sub-Committee determining the application in question, will have a prejudicial interest in that application if the he/she makes a relevant representation by way of objection to it and may well have a prejudicial interest if he/she has otherwise been involved in supporting or opposing the application. Any Member of a Sub-Committee who has a prejudicial interest for these or other reasons must not participate in the decision upon the application and must not be present at the hearing in any capacity or at all.
14. Any Member of a Sub-Committee who has made a relevant representation by way of objection to an application on behalf of his/her constituents and who cannot attend the hearing personally by reason of Rule 13, should arrange to be represented by an agent or a fellow Ward Councillor who is not a Member of the Sub-Committee.
15. A Councillor will have a personal interest in an application if it might reasonably be regarded as affecting that Councillor (or his/her spouse/partner, relatives, friends, employer or business) to a greater extent than other residents in the area. A Councillor with a personal interest shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee. This is in order to avoid any possible allegation of bias.
16. Whenever a Councillor, who is not a Member of the Sub-Committee, intends to participate in a hearing in accordance with Rule 12, the Councillor must consider whether he/she has a personal or a prejudicial interest before the hearing. A Councillor with a personal interest, who is not a Member of the

Sub-Committee determining the application, may participate in a hearing in accordance with Rule 12 but must disclose such an interest first. A Councillor with a prejudicial interest, who is not a Member of the Sub-Committee determining the application, must not be present at the hearing in any capacity or at all. Members must be aware that their Code of Conduct applies to all Councillors at all times in whatever capacity they attend a hearing.

17. Where a Member of a Sub-Committee has had any form of personal or business involvement with a party to an application, which is to be determined by the Sub-Committee, or with any person connected to a party, then the Member must consider whether such involvement could amount to a personal or a prejudicial interest or whether such an interest could exist for any other reason. If there is any doubt on this matter, the Member must seek the advice of the Monitoring Officer or the legal representative.
18. A Councillor who has participated in a decision by the Council to make any application, or to support or assist an application made by another person, shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee.

#### Lobbying of Members and Expressions of Opinion by Members

19. If a Member of a Sub-Committee is approached by a party or a lobbyist for or against an application to be determined by that Sub-Committee, then the Member must: -
  - (a) explain that he/she cannot discuss the matter, and
  - (b) refer the lobbyist to another Councillor who is not a Member of the Sub-Committee or to the Licensing Service who can give further information on the process of dealing with the application, and
  - (c) keep an adequate written record of the approach, and
  - (d) disclose the fact of the approach before the hearing in accordance with Rule 51(c).
20. If a Member of a Sub-Committee receives any written representation either supporting or opposing an application to be determined by that Sub-Committee, then the Member shall pass the representation to the Licensing Service for appropriate action.

21. A Member of a Sub-Committee must avoid expressing any personal opinion about the merits of an application to be determined by that Sub-Committee and must not take any action that would bring into question the Member's capacity to consider the application objectively.
22. A Member of a Sub-Committee must not accept any gift, favour or free hospitality that could be seen as connected to any application to be determined by that Sub-Committee.
23. Members of Sub-Committees are not to be influenced by party political factors or pressures when determining any application.

#### Non-Attendance at Hearings

24. Where a party has not notified the Council that he/she does not intend to attend or to be represented at a hearing, and that party fails to attend the hearing then the Sub-Committee may either: -
  - (a) adjourn the hearing to a specified date where it considers this to be necessary in the public interest, or
  - (b) hold the hearing in the party's absence.
25. Normally, a party who fails to attend a hearing in the circumstances described in Rule 24 above, will be allowed one further opportunity to attend the hearing adjourned to a specified date.
26. Where an adjournment is granted, the Licensing representative shall make every reasonable endeavour to contact the party who failed to attend by telephone or in person in order to warn them of the new date for the adjourned hearing and the likelihood that the application will be determined in that party's absence in the event of further failure to attend.

#### Calling Witnesses

27. Where a party wishes to call a witness to give evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing stating: -
  - (a) the name of the witness, and
  - (b) a brief description of the point or points upon which the witness' evidence may assist the Sub-Committee in making its decision on the application

28. Where a party has given notice under Rule 27, the Licensing Service shall forthwith communicate this notice to the other party/parties, if possible by electronic means or by the most rapid practicable alternative means.
29. Where a party has given notice under Rule 27, the Sub-Committee shall consider at the commencement of the hearing whether it will permit the party to call the witness for the purpose(s) notified. Such permission shall not be unreasonably withheld.

#### Documentary Evidence

30. Where a party wishes to rely upon documentary evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. This notice shall be accompanied by six copies for the Council and sufficient additional copies of all the relevant documentary evidence for each other party made known to the notifying party. Compliance with this Rule is especially important in relation to documents that are not easy to photocopy because, for example, they are coloured or not A4 size.
31. Where a party has given notice under Rule 30, the Licensing Service shall forthwith communicate all the relevant documentary evidence to the other party/parties if possible by electronic means or by the most rapid practicable alternative means.
32. Where a party has complied fully with Rule 30, that party shall have the right to have the relevant documentary evidence admitted and, subject to the provisions of the Hearings Regulations, the Sub-Committee shall take such evidence into account in making its decision.
33. In any case where a party wishes to rely upon documentary evidence but has not fully complied with Rule 30, then at the commencement of the hearing the Sub-Committee shall follow this procedure: -
  - (a) the Chair shall establish whether the other party/parties consent to the documentary evidence being admitted, and
  - (b) if all the other parties so consent, then the documentary evidence shall be treated as if Rule 32 applied to it, or

- (c) if any party does not so consent, then the Sub-Committee shall decide whether to admit the documentary evidence nonetheless
  - (d) in making its decision under Rule 33(c), the Sub-Committee shall have regard to any reasons given for the late production of the documentary evidence, or other non-compliance with Rule 30.
  - (e) in making its decision under Rule 33(c), the Sub-Committee shall consider how far any other party may be prejudiced by the late production of the documentary evidence, or other non-compliance with Rule 30, and also the extent of the prejudice to the party seeking to rely upon the evidence if its admission is refused.
  - (f) in making its decision under Rule 33(c), the Sub-Committee shall consider whether it would be desirable in the public interest to adjourn the hearing for any period of time, or to another date, in order to allow any other party a reasonable opportunity to consider the documentary evidence.
  - (g) in making its decisions under Rules 33(c) and 33(f) above, the Sub-Committee shall consider any representations by the parties and the advice of its legal representative.
34. Where a party wishes to rely upon documentary evidence at a hearing but considers that any details of that evidence should be treated as confidential, for example the name or address of the signatory of a letter, then the party may exclude such confidential details from any documentary evidence sent to the Licensing Service under Rule 30. This Rule does not apply to any notice given or relevant representation made, since the originator must state his/her name and address in order for it to be valid.
35. In any case where confidential details are excluded under Rule 34, the Licensing Service must be informed that a request will be made by the party under Rule 42. If permission is refused under Rule 43, the whole or part of the relevant documentary evidence may be excluded from consideration. If permission is granted to exclude any confidential details, this may affect the weight to be given to the rest of the related evidence under Rule 58.
36. Where a party wishes to rely upon a model, or any form of evidence that cannot be photocopied, at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. The party seeking to rely upon such evidence shall indicate in the

notice, so far as practicable, the nature of that evidence and the purpose(s) of producing it.

37. Where a party has given notice under Rule 36, the Licensing Service shall forthwith communicate all relevant information about the evidence to the other party/parties if possible by electronic means or the most rapid practicable alternative means.
38. Rules 30 to 33 shall be applied flexibly to evidence of the type described in Rule 36 with a presumption that such evidence will be admitted if it materially helps the Sub-Committee to understand relevant issues between the parties at the hearing.

#### Petitions

39. Petitions shall on each page state their purpose and contain a warning to potential signatories that they are liable to be made public and that a copy will be supplied to other parties to the application. Each person signing should print their name and address legibly. At the end a petition must state the name(s) and address(es) of the persons circulating the petition and the dates on which this took place.
40. A petition must comply with Rule 39 unless the Sub-Committee decide to waive compliance with any requirement(s) for a good reason. A petition shall also be treated as documentary evidence and Rules 30 to 33 shall apply.

#### Private Hearings and Confidential Evidence

41. In accordance with the Hearings Regulations, hearings shall take place in public unless a decision to the contrary is made under Rule 43 in any case.
42. Where a party or a witness consider that any giving of evidence, or part of any evidence, or part of a hearing, should be held in private, then the party or their witness shall make such request to the Chair at the commencement of the hearing.
43. The Sub-Committee may decide to exclude members of the public from any part of a hearing and/or treat any evidence as confidential where the Sub-Committee consider that the public interest in preserving the confidentiality of any evidence outweighs the public interest in that part of the hearing taking place in public.

44. For the purposes of Rule 43, a party, a witness and any person assisting or representing a party, may be excluded from any part of a hearing or from hearing or seeing any particular evidence. Where the Sub-Committee decide to hold part of a hearing in private, a party and/or his/her representative shall not be excluded except for very special reasons.
45. Where the Sub-Committee decide to hold part of a hearing in private, the officers of the Licensing Service will not be excluded except for very special reasons. The Committee Clerk and legal representative shall not be excluded.
46. Before making any decision under Rules 43 or 45, the Sub-Committee shall consider the advice of its legal representative.
47. Where any part of a hearing takes place in private, the hearing will be adjourned immediately thereafter for a period of time sufficient to enable the Committee clerk to prepare a fair summary of the evidence and proceedings heard in private. This summary will exclude all details that the Sub-Committee, acting with the advice of its legal representative, consider should remain confidential. Upon the resumption of the hearing, the summary will be read out publicly in the presence of all the parties.
48. Rules 41 to 47 shall apply as nearly as may be practicable to documentary evidence where, with the consent of the Sub-Committee, confidential details may be disclosed to the Sub-Committee but excluded from disclosure to the public or persons mentioned in Rule 44.
49. Rules 41 to 47 shall apply, as nearly as may be practicable, where a witness wishes to disclose his/her name and/or address or other details only to the Sub-Committee and Council officers but not to the public or persons mentioned in Rule 44.
50. Whenever any evidence or information has been treated as confidential under Rules 41 to 49, the Sub-Committee shall consider whether to alter the weight given to that evidence in accordance with Rule 58.

#### Commencement of the Hearing

51. At the commencement of each hearing the Sub-Committee shall follow this procedure but may omit or abridge any step or Rule as appropriate -



- (a) The Chair will introduce him/herself and invite the Members and officers to introduce themselves
- (b) The Chair will invite the parties to introduce themselves and their representatives (if any)
- (c) The Chair will invite Members to disclose any contacts they may have had before the hearing with the parties or lobbyists for them.
- (d) If any party fails to attend the hearing, the Sub-Committee shall decide whether to proceed with the hearing in the absence of that party or whether to adjourn the hearing to another date. The Sub-Committee shall have regard to Rules 24 and 25 and Regulations 12 and 20 of the Hearings Regulations in making such decisions.
- (e) The Chair will explain the procedure to be followed by reference to these Rules.
- (f) The Chair will suggest the order of the topic headings for discussion at the hearing and will then invite the comments of the parties. In the light of such comments the Sub-Committee will confirm the order of the topic headings or amend them.
- (g) The Chair will ascertain whether there are any requests by any of the parties to call a witness and the Sub-Committee will then determine any such request under Rule 29.
- (h) The Chair will ascertain whether there is likely to be a request from any of the parties to cross-examine a witness called by another party and, if so, the reasons given for seeking a cross-examination. The Sub-Committee will then determine whether to allow such cross-examination in the interests of establishing relevant facts.
- (i) The Chair will ascertain whether there are any requests by any of the parties to produce documentary evidence, including models etc., and whether there has been full compliance with Rules 30 to 37. In the event of any non-compliance these Rules, the Sub-Committee shall decide whether to admit the evidence and/or adjourn the hearing under Rules 33 and 38.
- (j) The Chair will ascertain whether there are any requests by any of the parties to treat any evidence as confidential or to hear any of the evidence, or hold any part of the hearing, in private. If so, the Sub-Committee shall decide the request under Rules 43 to 49.
- (k) In any case where the Licensing Service has informed a party that there are particular points on which the Sub-Committee will need clarification, the Chair will then invite the party to provide such clarification.

Procedure and Evidence at Hearing

52. In accordance with Hearings Regulations, the hearing shall take the form of a discussion led by the Chair. With permission of the Chair the other Members of the Sub-Committee may ask questions of the parties, their representatives and witnesses and may lead the discussion on specific topics or points.
53. The hearing shall follow the order of the topic headings determined under Rule 51 (f) unless there is a good reason to depart from this agreed by the Sub-Committee.
54. The Chair, or Member leading the discussion, shall endeavour to ensure that each party has a reasonable opportunity to explain their case under each topic heading. The parties, their representatives and witnesses have a duty to make their evidence and comments succinct and relevant to the issues under discussion.
55. A party shall not be permitted to cross-examine another party or their witness unless this has been allowed under Rule 51 (h). If a party has concerns relating to the evidence or comments of another party or their witness, this should be explained to the Sub-Committee so that the Chair can question the other party/witness about these concerns before completing that topic heading.
56. Where permission has been given to a party to call a witness, that witness may give evidence in one or more stages when the discussion covers the appropriate topic heading(s). Normally, a witness will be invited by the Chair to make a statement. The witness will then be subject to cross-examination by the other party/parties if this has been allowed under Rule 51 (h). Then the Sub-Committee may question the witness. A party shall not re-examine his/her own witness except with the consent of the Chair to clarify a significant point in earlier evidence.
57. At the end of each topic heading the Chair shall invite the Licensing Service or legal representative to make any comments that they may consider necessary. With the consent of the Chair, these officers may question parties or witnesses directly or put their questions through the Chair.
58. Strict legal rules of evidence shall not apply. However, in considering what weight to place on the evidence or comments of any party or witness, the Sub-Committee shall have regard to the extent to which information was: -

- (a) within a witness' direct knowledge, and
  - (b) clearly and specifically related to the points at issue in the hearing, and
  - (c) tested by questioning.
59. The Chair shall be responsible for the orderly conduct of the hearing. The Chair may require any person to be silent and may regulate the order in which persons speak at the hearing. The Chair will endeavour to prevent remarks which are repetitious or irrelevant or which amount to unsubstantiated offensive allegations against any person, present or not.
60. The Chair on his/her own motion may indicate the decision of the Sub-Committee on any procedural matter within the scope of these Rules notwithstanding that the decision is stated in these Rules to be that of the Sub-Committee. This is subject to the right of any Member, who makes an immediate request, to have the matter put to the vote of the Sub-Committee as a whole. Rule 66 will apply to such a vote.
61. In accordance with the Hearings Regulations, each party has the right to make a closing address to the Sub-Committee in order to summarise his/her case at the end of the hearing. Unless the applicant consents to a different order, the applicant shall have the right to make the final address.
62. Each party must be allowed an equal maximum period of time to make a closing address. Normally, the Chair will invite each party to state how much time that party will require. However, the Sub-Committee may fix a greater or lesser maximum time for each closing address provided that this is reasonable in relation to the weight and complexity of the issues at the hearing.

#### Decision Making

63. At the end of a hearing the Sub-Committee may confer publicly and announce its decision on the application(s) immediately.
64. Alternatively, the Sub-Committee may defer reaching its decision until a later time or date, in so far as this accords with the Hearings Regulations.
65. In any case, and whether or not Rule 64 applies, the Sub-Committee may retire with the Committee clerk and legal representative to another room to deliberate in private.

66. The Sub-Committee, if making a decision at that time, must reach their decision by a majority vote. The Licensing Committee, if making a decision at that time, must reach their decision by a majority vote but, in the event of an equality of votes, the Chair shall have a second, or casting, vote.
67. The decision(s) will then be summarised in writing and the Sub-Committee will return to the public meeting so that the Committee clerk can read out the decision(s) in the presence of all the parties and their representatives.
68. If the Sub-Committee require any clarification of matters of fact before reaching their decision(s), the Sub-Committee shall return to the public meeting and put questions to the parties, their witnesses or the Licensing representative in the presence of all the parties and their representatives.
69. If the legal representative gives legal advice on any point(s) material to the Sub-Committee's decision(s), this advice will be summarised and read out by the legal representative in public before the Committee Clerk reads out the decision(s).

#### Waivers and Irregularities

70. The Chair may agree to waive any of these Rules, including any time limit, in the case of any individual application where he/she considers that there is good reason to do so. Excepted from this power to waive are Rules 8 to 23 (inclusive). Any permanent variation of these Rules must be decided by the Licensing Committee.
71. Any irregularity arising from any failure to comply with any provision of these Rules before the Sub-Committee has made a determination shall not of itself render the proceedings void.
72. In any case of such an irregularity the Sub-Committee shall, if Members consider that any person may have been prejudiced as a result of the irregularity, take such steps as Members think fit to cure the irregularity before reaching a determination of the application(s). In any such case the Sub-Committee shall consult the legal representative before deciding upon any steps to cure the irregularity.
73. In any case where it appears after the Sub-Committee's determination that the decision has been vitiated by incorrect information or any procedural or legal error, the Legal Representative shall advise the Chair of this and of the steps

necessary to remedy the problem. With the consent of the Chair, the Sub-Committee may reconvene to take the steps advised and/or to amend its decision. With the consent of the Chair in an appropriate case, the Members of the Sub-Committee may signify their consent to any steps advised and/or any amended decision without reconvening in person. When the legal representative so advises, the parties affected shall be invited to a reconvened hearing or, where appropriate, to signify their consent to any steps proposed without attending in person.

Cases Remitted by the Magistrates on Appeal

74. On an appeal to the Magistrates Court, the Court may remit the case to the Council for it to determine in accordance with the Direction of the Court. The Chair of the Licensing Committee on legal advice may wish the Council to contest that Direction by further legal proceedings. If not, the Chair will receive advice from the Head of Legal Services on how to comply with the Direction of the Court and will be requested to agree the appropriate procedure. So far as possible, these Rules will apply to any further hearing with such modifications as are advised to secure compliance with the Direction of the Court.

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**APPENDIX 2**

**LICENSING SUB-COMMITTEE - SUMMARY OF PROCEDURE**

INTRODUCTION

1. The Chair introduces himself and invites other Members, Council officers, Police, Applicant and Objectors to do the same.
2. The Chair invites Members to disclose any prior contacts (before the hearing) with the parties or representations received by them
3. The Chair explains the procedure to be followed by reference to this summary which will be distributed.

NON-ATTENDANCE BY PARTY OR PARTIES

4. If one or both of the parties fails to attend, the Chair decides whether to
  - (i) grant an adjournment to another date, or
  - (ii) proceed in the absence of the non-attending party.Normally, an absent party will be given one further chance to attend

TOPIC HEADINGS

5. The Chair suggests the "topic headings" for the hearing.

In the case of the majority of applications for variation of hours, or other terms and conditions, the main topic is:

**Whether the extensions of hours etc. applied for would conflict with the four licensing objectives i.e.**

  - (i) the prevention of crime and disorder,
  - (ii) public safety,
  - (iii) the prevention of public nuisance, and
  - (iv) the protection of children from harm.

6. The Chair invites comments from the parties on the suggested topic headings and decides whether to confirm or vary them.

WITNESSES

7. The Chair asks whether there are any requests by a party to call a witness and decides any such request.
8. Only if a witness is to be called, the Chair then asks if there is a request by an opposing party to “cross-examine” the witness. The Chair then decides any such request.

DOCUMENTARY EVIDENCE

9. The Chair asks whether there are any requests by any party to introduce late documentary evidence.
10. If so, the Chair will ask the other party if they object to the admission of the late documents.
11. If the other party do object to late admission, the following criteria shall be taken into account when the Chair decides whether or not to admit the late documents:
- (i) What is the reason for the documents being late?
  - (ii) Will the other party be unfairly taken by surprise by the late documents?
  - (iii) Will the party seeking to admit late documents be put at a major disadvantage if admission of the documents is refused?
  - (iv) Is the late evidence really important?



- (v) Would it be better and fairer to adjourn to a later date?

THE LICENSING OFFICER'S INTRODUCTION

12. The Licensing Officer introduces the report explaining the existing hours,  
the hours applied for and the comments of the other Council Services or  
outside official bodies. This should be as "neutral" as possible between the parties.
13. The Licensing Officer can be questioned by Members and then by the parties.

THE HEARING

14. This takes the form of a discussion led by the Chair. The Chair can vary the order as appropriate but it should include:
- (i) an introduction by the Objectors' main representative
  - (ii) an introduction by the Applicant or representative
  - (iii) questions put by Members to the Objectors
  - (iv) questions put by Members to the Applicant
  - (v) questions put by the Objectors to the Applicant
  - (vi) questions put by the Applicant to the Objectors

CLOSING ADRESSES

15. The Chair asks each party how much time is needed for their closing address, if they need to make one.

16. Generally, the Objectors make their closing address before the Applicant who has the right to the final closing address.

THE DECISION

17. Members retire with the Committee Clerk and legal representative to consider their decision including the imposition of conditions.
18. The decision is put in writing and read out in public by the Committee Clerk once Members have returned to the meeting.

## Licensing Committee on 6<sup>th</sup> December , 2005

<b>Report title:</b> Policy for Gaming Act provisions under the Licensing Act 2003	
<b>Report of:</b> Director of Environmental Services	
<b>Ward(s) affected</b>	All
<p><b>1. Purpose</b></p> <p>1.1 The purpose of this report is to ;</p> <ul style="list-style-type: none"> <li>(a) Review the current policy on 'amusement with prizes' gaming machines (“AWP machines”) in premises that are not solely or wholly amusement centres.</li> <li>(b) Determine policy on applications to play certain games on licensed premises and the commercial provision of amusements with prizes.</li> </ul>	
<p><b>2. Recommendations:</b></p> <p>2.1 It is recommended that the Licensing Committee pass a resolution to the effect that:</p> <ul style="list-style-type: none"> <li>(a) Section 34 Gaming Act 1968 permits will not be granted or renewed by the Council in respect of premises (i) that are not licensed for the supply of alcohol under section 18 of the Licensing Act 2003; or (ii) that are hotels and or restaurants which serve alcohol only as an accompaniment to meals; or (iii) which are not wholly or mainly used for the provision of amusements with prizes; and</li> <li>(b) The Council will grant or renew Section 34 Gaming Act 1968 permits for a maximum of two amusement with prizes gaming machines on premises without the need for a hearing, but that if an applicant requests more than two such machines on premises, then a hearing before a Sub-Committee will be required.</li> </ul> <p>2.2 Each application for Orders under S.6 of the Gaming Act 1968 or for Permits under S16 of the Lotteries and Amusement Act 1976 shall be considered on its own merits and the facts as submitted, and that no formal policy in relation to applications made in these respects need be adopted at this point in time. In the coming year, the Authority will be required to submit a Statement of Gambling Policy in connection with the Gambling Act 2005, which is expected to come into force in 2007.</p> <p>2.3 The terms of reference of Licensing Sub-Committees in Part E.7 of the Council's Constitution should include an additional sub-paragraph reading “To determine the following: (a) applications for permits for two or more amusements with prizes gaming</p>	

machines; (b) applications for orders providing for the playing of certain games; (c) applications for permits allowing the provision of amusements with prizes where those amusements constitute a lottery and or gaming.” The General Purposes Committee and full Council should be requested to amend the Constitution accordingly.

**Report authorised by:** .....Director of Environmental Services

**Contact officer:** Keith Betts , Commercial Group Manager , Enforcement Service

**Telephone:** 020 8489 5525

### 3. Executive summary

- 3.1 The Licensing of 'fruit machines' properly known as Amusement With Prizes (AWP) machines is controlled by permits issued under section 34 of the Gaming Act 1968. The responsibility for AWP machines in alcohol licensed premises currently rests with the Licensing Justices in the Magistrates Courts. The responsibility for issuing such permits for non-alcohol premises such as takeaways, lies with the Local Authority. The present Haringey resolution is that we will not permit such machines in non-alcohol premises unless they are within proper amusement arcades.
- 3.2 With the transfer of alcohol licensing to Local Authorities under The Licensing Act 2003, the responsibility for issuing permits for alcohol licensed premises such as pubs and other bars, will rest with Haringey as Licensing Authority. This report advises of recommended changes to our policy to allow for AWP machines within alcohol licensed premises at a level currently allowed by the Magistrates. This position may be considered again at a future time when the full implications of the Gambling Act 2005 which is currently before Parliament, become clear.

### 3.3 Reasons for any change in policy or for new policy development

These changes are required as the Haringey Licensing Authority will become responsible for the issue of permits for AWP machines in premises licensed for the supply of alcohol, taking this function over from the Magistrates Court. In addition to that function, in relation to premises which are licensed for the supply of alcohol, the Licensing Authority will also assume responsibility for issuing orders under section 6 of the Gaming Act 1968 and for issuing permits under section 16 of the Lotteries and Amusements Act 1976. All three changes to the system are outlined below.

1. Section 34 permits for Amusement With Prizes machines, these are frequently known as 'fruit ' or 'slot' machines. There are two types:
  - 1a) The 'all cash' machine, which has a maximum stake of 30p and a maximum prize of £25. This type is commonly found in pubs, or arcades with an over 18 door policy; and
  - 1b) The "coin or token" machine, which has a maximum stake of 30p and a maximum prize of £5 cash or £8 non-cash. This is the type found in premises to which children have access.

2. Under S.16 of the Lotteries and Amusements Act 1976, local authorities have responsibility for granting amusements with prizes permits. S.16 permits allow the playing of certain games and lotteries for prizes, commercially, within specified money limits. It is not intended to be used for authorising gaming machines.
3. Section 6 of the Gaming Act 1968 entitles holders of 'justices' on licenses to apply to play certain games on their premises. Licence-holders are automatically entitled to play dominoes and cribbage (subject to any condition). Justices have the power to impose conditions or restrictions by order, concerning the playing of all games on licensed premises, to ensure that:
  - a. gaming for high stakes places does not take place, and
  - b. gaming does not become the main inducement for people attending the premises.

Members should note that Section 34 Permits and Section 6 Orders will not be allowed on hotel and restaurants which serve alcohol only with food.

#### **4. Access to information:**

##### **4.1 Background Papers:**

Licensing Act 2003 and S182 Guidance in respect thereof

Gaming Act 1968

The Background Papers are located at the Enforcement Service, Civic Centre, High Road, Wood Green, N22 8LE

To inspect them or to discuss the Report further, please contact Daliah Barrett on 020 8489 5103.

#### **5. Report**

##### Background

- 5.1 The Council currently has the responsibility for issuing AWP machine permits for premises that do not have a Justices' on-licence to sell liquor or are not registered club premises. The Council has a nil resolution passed by the Environmental Services Committee on 22<sup>nd</sup> November 1990 on this matter, and has agreed to only grant such permits to premises which are wholly or mainly used for the purposes of an amusement arcade or amusement centre.
- 5.2 However, this was considered at the time when Justices' on-licences under the Gaming Act 1968 took AWP machine permits outside of Council control. The position will now change under the Licensing Act 2003. The granting of a premises licence to supply alcohol will fall to the Council and with it will come the responsibility of granting or renewing AWP machines in pubs and other premises granted a premises licence authorising the supply of alcohol under the Licensing Act 2003

- 5.3 In respect of applications under Section 6 (of the Gaming Act 1968) and Section 16 (of the Lotteries and Amusements Act 1976), it is understood that these are seldom applied for at the Magistrates Court. There have only been a few in the memory of the staff at Highgate going back several decades. We therefore believe that no policy should be brought in at this time and that the matter should be considered at the time of making this Council's Statement of Gambling Policy under the reforms presently before Parliament.

## **RESOLUTION MAKING POWER**

- 5.4 Under the regime existing prior to the changes brought in by the Licensing Act 2003, the Council is empowered by the Gaming Act 1968 to pass a resolution to the effect that (a) it will not grant, (b) that it will not grant or renew, or (c) that it will only grant or renew subject to a condition limiting the number of machines in respect of specified premises.
- 5.5 The amendments to Schedule 9 of the Gaming Act 1968 have not conferred any additional resolution making powers on the Licensing Authority. Further, the resolution making powers that the Licensing Authority already has with respect to those premises over which the Council has always had jurisdiction (such as 'fish and chip' shops), have not been extended to cover the alcohol licensed premises over which the Licensing Authority has now been granted jurisdiction. Accordingly, the Licensing Authority does not have any power to pass a resolution banning AWP machines on alcohol licensed premises, or to set a limit on the numbers of AWP machines that it will permit in such premises. This position replicates that which exists in relation to premises used wholly or mainly for the provision of amusements by means of machines.
- 5.6 Under the new regime, the Licensing Authority will - on a case by case basis - be entitled to grant or reject applications for permits for AWP machines in alcohol licensed premises and to impose a condition specifying the maximum number of AWP machines allowed in the particular premises. In the circumstances, it is not possible for the Licensing Authority to pass a resolution with respect to AWP machines in alcohol licensed premises. This does not affect the resolution that has been passed in respect to other premises, such as 'fish and chip' shops.

## **CONSIDERATIONS**

- 5.7 The Council's current policy restricts the grant of such permits to premises which are wholly or mainly used for the purposes of an amusement arcade or amusement centre. These premises would have restrictions on entry to anyone under the age of 18 years and the policy was concerned to prevent young children from gaining access to these machines in fish and chip shops and the like.
- 5.8 At present the Magistrates routinely grant permits for 2 AWP machines. Applicants submit plans of the premises detailing where the machines are to

be sited and the Justices' automatically grant up to a maximum of 2 machines without the need for a hearing. If an applicant requests more than two then plans have to be submitted showing the location of the machines and a hearing is required.

- 5.9 In the circumstances, it is considered that the Council should resolve that Section 34 Gaming Act 1968 permits will not be granted or renewed in (a) premises which are not premises licensed for the supply of alcohol under section 18 of the Licensing Act 2003; or (b) premises which are not wholly or mainly used for the provision of amusements with prizes; or (c) premises which are hotels and or restaurants in which alcohol may only be supplied for consumption where such supply is ancillary to a meal.
- 5.10 It is also considered that the Council's approach should be that in relation to applications for AWP permits on premises licensed to supply alcohol under section 18 of the Licensing Act 2003 (except as regards in cases where such applications have been submitted by hotels and or restaurants which may only supply alcohol as an accompaniment to a meal) it will grant permits for a maximum of two AWP machines without the need for a hearing. If an applicant requests more than two AWP machines, then a hearing before the Sub-Committee will be required in order that the Licensing Authority may determine the application.
- 5.11 It is envisaged that the grant of permits for a maximum of two AWP machines will be dealt with at Officer level.

## **FEES**

- 5.12 There is a financial implication for the granting and renewing of S34 permits. It is a statutory fee of £32.00 per application, with a maximum of 2 machines per premises. Permits are renewable every 3 years. This figure can be adjusted by the Licensing Authority after 24<sup>th</sup> November 2005.
- 5.13 The authority is able to set its own application fee in respect of S34 permits. However , Section 16 Lotteries and amusement with prizes will remain at £32.00.
- 5.14 Section 6 applications do not carry a fee and can be requested in a simple letter format or as part of the application for an alcohol license under the 2003 Act.

## **CONCLUSION**

- 5.15 Members are asked to note that due to the legislative changes that have resulted in the transfer of responsibility for the issuing of permits for amusements with prizes machines in alcohol licensed premises from the Magistrates' Court to the Licensing Authority, Members are obliged to adopt a resolution allowing the granting or renewal of AWP permits in alcohol licensed (excluding those restaurants and or hotels where alcohol may only be served as an accompaniment to a meal) premises along with premises wholly or mainly used for the provision of amusements with prizes.

In addition to the above, it is open to members:

5.16 :

to change the present policy:

- (i) to allow for the issuing of permits for amusements with prizes machines in alcohol licensed premises (excluding those restaurants and or hotels where alcohol may only be served as an accompaniment to a meal) along with premises wholly or mainly used for the provision of amusements with prizes,
- (ii) to provide that permits for amusements with prizes machines will not be granted or renewed in alcohol licensed premises that have a requirement that alcohol may only be served with food,
- (iii) to further revise the classes of premises where permits are not to be granted or renewed,
- (iv) to grant or renew AWP machine permits in a specified class of premises subject to a condition limiting the number of machines permitted.

5.17 Applications for S.6 Orders and S.16 Permits can be decided on the merits of the case.

## **6.0 COMMENTS OF THE HEAD OF LEGAL SERVICES**

6.1 The legal service has been consulted and asks the Committee to note the recommended change to the terms of reference of the Licensing Sub-Committees, which is referred to at paragraph 2.3 herein.

## **7.0 COMMENTS OF DIRECTOR OF FINANCE**

7.1 The income generated from the granting of these permits will contribute towards the income target from licensing fees and charges, and will mainly be used to off-set expenses incurred in the issuing and renewal of permits.




**Licensing Act 2003 Sub-Committee on 06<sup>th</sup> December 2005**

<b>Report title: COMMENCEMENT OF LICENSING ACT 2003</b>	
<b>Report of: The Lead Officer Licensing</b>	
<b>Ward(s) affected</b>	
<b>1. Purpose</b>	
	To make Members aware of the Licensing Act 2003 applications received for premises licenses.
<b>2. Recommendations</b>	
	The Committee note the information contained in the report.
<b>Report authorised by: Robin Payne.....</b>	
	<b>Assistant Director Enforcement Services</b>
<b>Contact Officer: Ms Daliah Barrett</b>	<b>Telephone: 020 8489 5103</b>
<b>3. Executive summary</b>	
	For consideration by Licensing Committee under Licensing Act 2003.
<b>4. Access to information:</b>	
	Local Government (Access to Information) Act 1985 Background Papers The following Background Papers are used in the preparation of this Report: LICENSING ACT 2003
	<b>The Background Papers are located at Enforcement Service, Civic Centre, High Road Wood Green N22</b>

## 5. REPORT

### Background

5.1 The Licensing Act 2003 commenced with the transition period on 7<sup>th</sup> February 2005.

All current license holders were invited to apply for the conversion of their current license into the new regime.

To date Haringey has received 683 applications for Premises Licenses.

### 5.2 License Applications received.

Below is a detailed breakdown of the applications received from the different types of premises with the borough.

Pubs Bars and Nightclubs – 138

Applications to vary – 90.

Registered Members club - 31

Application to vary - 3

Off – Licenses - 62

Applications to vary – 6

Supermarkets & Convenience Stores -218

Applications to vary - 64

Restaurants - 150

Application to vary –20

Takeaways - 59

Applications to vary - 15

Sports Club - 6

Applications to vary - 2

Theatres and Cinemas - 3

Application to vary - 3

Village and Community halls - 4

Applications to vary - 1

Others (include snooker centres and Alexandra Palace which is multi-useage) 5

Applications to vary - 5 .

5.3 The borough has received over 30 applications for Premises wishing to sell alcohol on a 24hour basis.

The majority are grocery/convenience stores that would have traded on a 24 hours basis before this new Act, as they were able to do so under Planning.

Under the Licensing Act 2003 they are now able to sell alcohol in line with their trading hours.

Alexandra Palace also have the ability to provide the sale of alcohol and regulated entertainment on a 24 hour basis, but with conditions on notifying for each event going over the normal 2 am license granted.

The following stores have applied for 24hours for the sale of alcohol

Atakan Supermarket, 315-321 West Green Road, N15  
Tottenham News, 326 High Road N15  
Filiz Supermarket. 699 Seven Sisters Road N15  
Seven Sisters Supermarket, 145 High Road N15  
Emek Supermarket 485 High Road N17  
Solma Supermarket, 791 High Road N17  
Gurbets Supermarket, 604 Seven Sisters Road N5  
Anil Supermarket 542 High Road N17  
David Superstore 21 Broadway Parade N8  
Elbistan Supermarket, 13 Great Cambridge Road N17  
Supreme Supermarket, 503-505 Seven Sisters Road N15  
Sirwan Supermarket, 415-417 Lordship Lane N22  
Simsak Food Centre, 589-591 Green Lanes N8  
Gunaydin Supermarket, 126A West Green Road N15  
Sirwan Food Centre, 518-520 Lordship Lane London N22  
Star Liquors, 102 Stroud Green Road N4  
Somersfield 335-337 White Hart lane N17  
Harringay Foods, 475 Green Lanes N4  
Supermarket 708 High Road N17  
Sainsburys, Williamson Road N4  
Sainsburys, Muswell Hill N10  
Tottenham News 145 High Road N17  
Supersave, 68 West Green Road N15  
Hornsey Mini Market, 95 Tottenham lane N8  
Dilekkaya, 382 Green Lanes N4  
Yasmin 25 Lordship Lane N17  
Golds 208 Philip Lane N15  
Saltan Supermarket, 169 High Road N17  
Tesco South Tottenham, High Road N17 – 24hrs December only  
Olympic Social Club, 705-707 Seven Sisters Road N15

Roseview Hotel – sale of alcohol for 24hrs to guests and bona fide friends.

Various premises have Late Night Refreshments and operate until 5am.

## **6.0 Hearings.**

The Licensing Sub groups have heard over 30 cases since March 2005.

There have been some matters of concern with regards to the relationship between Planning and Licensing. This matter will be dealt with in a report from the Legal Team.

Out of the 30 hearings we have had 3 cases that have had appeals lodged against the Licensing Authority's decision in the Magistrates Court.

O'Neils, Muswell Hill N10

A resident Mr Thompson has lodged an appeal on various matters with regards the decision arrived at by the committee, this ranges from some of the paperwork not being included, to issues regarding our own Statement of Licensing Policy.

The Botany Bay – Philip Lane N15

The Applicants are appealing the refusal in spite of evidence from the Police showing that the current licensees were not conducting the pub in a good fashion.

The Hill – Muswell Hill Broadway N10

The hours were restricted by the committee and various conditions applied. The applicants feel disadvantaged by this and have appealed on this basis.

## **6.1 Hearing Decisions**

Attached are all the decisions made by the various committees.

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

The Licensing Act 2003 further requires the Council to publish a Statement of Licensing Policy that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

8.1 The London Borough of Haringey has made a number of policy decisions within this paper. The policies that are relevant to this application can be summarised as follows:

#### Licensing Objectives – Statement of Licensing Policy

"2.4 The Council acknowledges that the licensing function cannot be used for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. The new licensing controls do however play a key role in preventing crime and disorder in and around licensed premises , and they support this objective on the streets generally. Apart from the licensing function, there are a number of other measures available for addressing issues of unruly behaviour that can occur away from licensed premises; these include....."

"7.13 Under the Crime and Disorder Act 1998 local authorities must have regard to the likely effects of exercising their functions, and do all they can to prevent crime and disorder in their area. "

"7.14 The Council will have special regard to the local impact of licensing on related crime and disorder in the borough particularly when considering the location, impact, operation and management of all proposed licences/certificates, applications, renewals and variations of conditions. "

### **8.0 Planning**

"8.2 All premises that apply for a licence must have planning permission for the intended use and hours of operation or be deemed "lawful" for the purposes of planning control. The Licensing Authority will not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission."

### **9.0 Regulatory Services**

"9.1 Building regulations govern a variety of issues, which will directly contribute to the licensing objectives, including the means of escape, structural integrity, accessibility and public safety. Applicants are

reminded that Building Regulation approval and completion certificates are required for works under the Building Regulations to avoid contravention of those regulations."

### **13.0 The Prevention of Public Nuisance**

"13.7 In considering all licensed applications, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. The Licensing Authority will expect applicants to address the issues under prevention of public nuisance detailed in the Appendix."

### **18.0 Licensing Hours**

"18.3 The Council will deal with the issue of licensing hours on the individual merits of each application. When issuing a licence, stricter conditions with regard to noise control and/or limitations to opening hours may be imposed in the case of premises where relevant representations are made and that are situated in largely residential areas. Operating hours between 23.00 and 07.00 are considered to give greater potential for noise nuisance."

### **24.0 Conditions**

"24.1 The Council recognises that the only conditions that should be imposed on a licence are those that are necessary and proportionate to meeting the licensing objectives..."

"24.2 Where conditions are imposed they will be tailored to the individual style and characteristics of the premises and events concerned..."

## **PART B**

### **GUIDANCE FROM THE SECRETARY OF STATE**

The Secretary of State has issued Guidance on the implementation of the Licensing Act 2003, which the Council must take into account in considering applications.

National guidance regarding control of areas outside the premises is as follows:

"3.11 Statements of policies should make clear that licensing is about regulating the carrying on of licensable activities on licensed premises,

by qualifying clubs and at temporary events within the terms of the 2003 Act, and that the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres."

"7.45 In the context of preventing public nuisance, it is again essential that conditions are focussed on matters within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder...cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises....Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law.

National guidance regarding public nuisance is as follows:

"7.39 The 2003 Act requires licensing authorities following receipt of relevant representations...to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licenses and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable."

National guidance regarding licensing hours is as follows:

- "3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration."
- "6.5 The Government strongly believes that fixed and artificially early closing times promote...rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously....It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public."
- "6.6 The aim of the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should be avoided."

National guidance regarding non-duplication of other regimes is as follows:

- 3.53 "Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. *For example*, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are "necessary" for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with



licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary.”\*

## **PART C**

### **COMMENTS ON LOCAL AND NATIONAL POLICY**

#### **Hours of Operation and Public Nuisance:**

Chapter 6 of the Secretary of State’s Guidance recommends that Local Authorities do not set up a series of zones in their areas within which closing hours are reduced. No such zones have been set up within the Borough of Haringey. The Guidance also states that 'staggering' closing times for premises in an area would only serve to replace current peaks of disorder after 11pm with a series of smaller peaks.

The London Borough of Haringey acknowledges that the Government’s Guidance attached to the Licensing Act 2003 states that it believes that fixed and artificially-early closing times are a key cause of disorder and disturbance, when large numbers of customers are required to leave premises simultaneously. The

Guidance goes on to state that this puts pressure on fast food outlets and transport facilities which, in turn, produces friction and gives rise to disorder and peaks of noise and other nuisance. It advises that licensing authorities should recognise these problems when addressing issues such as hours of operation and should aim to reduce the concentrations and achieve a slower dispersal of people from licensed premises through longer opening times.

However, the Guidance is aimed nationally and there will be some areas in some towns and cities where parts of it may not apply. There may be situations in which the imposition of conditions on premises licences would not in itself, resolve the issue of disturbance to residents from late night premises. Conditions may include trying to ensure that customers leave quietly but licensees will have little or no control of their customers once they leave the close vicinity of the premises. The area is extremely densely populated with residential dwellings above and next to most licensed premises. Generally throughout the borough, ambient noise levels fall significantly between 11pm and midnight and noise from even well behaved customers leaving licensed premises after midnight does disturb residents.

Actions that during the day would have little adverse environmental effect, such as car doors shutting and conversations, can have the opposite effect after midnight, disturbing local residents and breaking their sleep.

The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.

Each application will be considered on its own merits.

### **Interpretation of "Vicinity":**

The term "vicinity" is used within the Licensing Act 2003 on a number of occasions and, in particular, with reference to those "interested parties" who may lodge objections to applications for premises licences and who may make representations concerning existing premises licences. Section 13(3) defines an "interested party" as being "a person living in the vicinity, a body representing persons living in the vicinity, a person involved in a business in the vicinity or a body representing those persons.

However, the Act does not define the term "vicinity" and debate in both the House of Lords and the House of Commons similarly failed to produce a definition. Paragraph 5.33 of the Guidance states that the licensing authority should consider whether the individual's residence or business is likely to be directly affected by disorder or disturbance occurring or potentially occurring on those premises or immediately outside the premises.

### **Operating Schedules: Conditions**

In all applications relating to premises licences the London Borough of Haringey expects applicants to specify methods by which they will promote the four licensing objectives in their operating schedules.

In relation to “the prevention of crime and disorder” this may, *for example*, be promoted by employing registered door supervisors, ensuring staff have attained relevant BIIAB qualifications, i.e. the Drugs Awareness Certificate, the Barperson’s National Certificate, the Professional Barperson’s Qualification etc., incorporating a search policy into the entry conditions of the premises, restrictions on the irresponsible use of “happy hours” and other drinks promotions.

In relation to “public safety” this may, *for example*, be promoted by ensuring that staff have the appropriate training, ensuring that safe capacity limits are set and that there is no overcrowding, that fire-fighting equipment is checked regularly, and that certificates required by the Council are available by the relevant date.

In relation to “the prevention of public nuisance” the London Borough of Haringey will take particular care to ensure that residents are not disturbed late at night. However, before refusing a licence on these grounds the Council will consider whether such disturbance may be avoided by the application of conditions.

In the case of every premises licence application Council will consider whether the sound from music and/or customers may escape from the premises, noise from ventilation and other mechanical plant is minimal, steps are taken to ensure patrons and staff leave the premises quietly (including the prominent display of notices to this effect), arrangements are made for patrons to park their cars in a manner that does not disturb or inconvenience local residents and arrangements are made to minimise noise from taxis. Conditions may be imposed to satisfy these considerations. The Council will also consider whether applicants have made sufficient arrangements to ensure that any waste, bottles etc, from the premises do not cause any detrimental environmental effect in the vicinity. Page 63 of the Government’s National Alcohol Harm Reduction Strategy states that: “Under the Licensing Act 2003, the premises

The operating schedule can also require licensees to deal with litter”. Where relevant, the Licensing Committee may place conditions on a Premises Licence to ensure waste, bottle etc., are disposed of properly.

In relation to “the protection of children” this may, *for example*, be achieved by ensuring children are not admitted to premises on days when adult entertainment is provided, that “proof of age” cards complying with the Home Office approved Proof of Age Standards Scheme (PASS), such as those promoted by the Portman Group, are required for the supply of alcohol, and that children are not admitted, or allowed to remain on, premises after a certain time.

**Maximum capacities:**

The type of entertainment offered in licensed premises and the closing hour of premises permitted to provide alcohol to the public often have a direct link to crime and disorder, public nuisance and public safety. *For example*, there is generally more likelihood of crime and disorder and public safety problems occurring in a music and dance venue permitted to sell alcohol and open until 3am than there is in

a quiet back street pub that provides no regular regulated entertainment and closes at 11pm.

The Council accepts that a lot of the problems that may occur in late night licensed premises may be controlled by good management practices.

However, controlling the numbers of customers allowed into the premises will also assist in promoting the following three licensing objectives:

- (1) *the prevention of crime and disorder*
- (2) *public safety*
- (3) *the prevention of public nuisance*

Where a fire safety certificate for premises includes a capacity condition the Council will not normally set a capacity by way of a licence condition. However, if the fire certificate was granted for premises when their future use was not known, the Council will consider setting a new capacity condition having regard to the licensable activity proposed. The Council will also consider setting a capacity condition where this may be beneficial in preventing crime and is order or nuisance. Such a capacity may be lower than that set by the fire safety certificate. This section of the Police Statement will be reviewed when the Regulatory Reform (Fire Safety) Order 2004 becomes "live" and replaces the *Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997*.

Where no Fire Safety Certificate is in existence for premises wishing to supply alcohol to customers after 11pm and/or where regulated entertainment is provided, the Council, in partnership with the London Fire and Emergency Planning Authority, will seek to attach a capacity condition to the premises licence.

Under these circumstances the capacity limits will be set primarily on the basis of how many people can leave the premises safely and quickly in an emergency. However, as stated in paragraph 10.3, a lower capacity limit may be set where this may be beneficial in preventing crime and disorder and public nuisance issues.

**Responsible Authorities:**

Section 13(4) of the Act lists a number of "Responsible Authorities" who may make comments regarding Premises Licence applications and who may apply for an existing licence to be reviewed. One of those "Responsible Authorities" is defined in the Act as:

"a body which:

- (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
- (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters."

Paragraph 3.41 of the Secretary of State's Guidance states that:

"A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. In most cases, this may be the Area Child

Protection Committee. However, in some areas, the Committees involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department."

## **PART D**

### **ADDITIONAL OBSERVATIONS**

The Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

In making its decision, the Committee is also obliged to have regard to national Guidance and the Council's own Licensing Policy.

Of course, the Committee must also have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) Grant the application as asked
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the whole or part of the application.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

As to the objections raised:

*Terminal hours:* The premises are close to a residential area. The Committee should take account of national guidance and the Council policy on terminal hours and take such steps as it considers are necessary to promote the licensing objectives. The Committee must consider whether there is any evidence that the alleged nuisance in the vicinity is connected with the premises in question. The Committee must also be aware that it is only the extension in hours from the current hours to the later times proposed that is at issue. Members must consider whether there is evidence that any nuisance arising from granting the licence will be increased by later opening hours.

*Parking provision:* This matter is relevant only to the extent that the use of the residential roads for parking could give rise to public nuisance. It is likely that noise from customers with cars will add materially to the general background noise in this area.

*Noise from premises.* The Committee should consider what, if any, conditions are necessary to prevent public nuisance from noise from the premises.

*Planning:* The Committee is directed to national guidance on the issue of planning. It is considered that planning should be in place before the licence application is determined.

**LIST OF ANNUAL ENTERTAINMENTS LICENCES WITH TERMINATING  
HOURS AFTER 2AM. TO BE DEALT WITH UNDER DELEGATED  
AUTHORITY BY MEMBERS APRIL 2005/NOV 2005**

**Odeon Cinema**

Fortis Green Road, N10

The Premises can remain open until:

2.00am on the mornings following Sunday to Thursday nights

3.00am on the mornings following Friday and Saturday nights

Applicant: Liz Foster – Odeon Ltd

**Opera House**

2 Chestnut Road, Tottenham, N17

The Premises can remain open until:

4.00am on the mornings following Monday to Thursday nights

8.00 am on the mornings following Friday and Saturday nights

4.00am on the mornings following Sunday nights

Applicant: Mr S R Webster

**The Prince Arthur**

158 Broad Lane, Tottenham, N15

The Premises can remain open until:

2.00am on the mornings following Monday to Thursday nights

4.00am on the mornings following Friday and Saturday nights

Applicant: Dennis Mannion

**Café Loco**

266 Muswell Hill, N10

The Premises can remain open until:

2.00am on the mornings following Monday to Wednesday nights

3.00am on the mornings following Thursday, Friday and Saturday nights

11.00pm on Sunday nights

Applicant: Catherine Sheeran

**Catch22**

Wellington Terrace, Turnpike Lane, N8

The Premises can remain open until:

2.00am on the mornings following Sunday to Tuesday nights

1.00am on Friday and Saturday

2.00am on Sunday before Bank Holiday

Applicant: Tina Whelan

**Bar Latina**

669 High Road, Tottenham, N17

The Premises can remain open until:

2.00am on the mornings following Monday to Thursday

4.00am on the mornings following Friday to Saturday

2.00am on Sunday nights

Applicant: Nicky Price

**The Blackboy PH**

268 West Green Road, Tottenham, N15

The Premises can remain open until:

Midnight Sunday to Wednesday

1.00am on the mornings following Thursday nights

3.00am on the mornings following Friday and Saturday nights

Applicant: Fairbairns Smith & Co

**Charlie Browns**

242 High Road, Wood Green, N22

The Premises can remain open until:

*First Floor*

12.30am on the mornings following Sunday nights

Midnight Monday and Tuesday nights

1.00am on the mornings following Wednesday nights

2.00am on the mornings following Thursday nights

4.00am on the mornings following Friday and Saturday nights

*Ground Floor*

12.30am on the mornings following Sunday nights

2.00am on the mornings following Monday to Thursday nights

4.00am on the mornings following Friday and Saturday nights

Applicant: Cevat Burmali & Hasam Fikret

**Cineworld – The Movies**

Shopping City, High Road, Wood Green, N22

The Premises can remain open until:

1.00am on the mornings following Sunday nights to Thursday nights

3.00 on the mornings following Friday and Saturday nights

Applicant: Cine-UK

**Club N10**

272 Muswell Hill Broadway, N10

The Premises can remain open until:

2.00am on the mornings following Sunday nights

3.00am on the mornings following Monday to Saturday nights

Applicant: Angelo Kyrianidis- Club N10 Ltd

**Golden Stool**

89-91 High Road, Tottenham, N15

The Premises can remain open until:

11.00pm Sunday to Thursday nights

6.00am on Friday and Saturday nights

Applicant: Edward Kessie

**Showcase Cinemas (Formerly Hoyts)**

Sprouter's Corner, 180 High Road, Wood Green, N22

The Premises can remain open until:

1.00am on the mornings following Sunday to Thursday nights

3.00am on the mornings following Friday and Saturday nights

Applicant: Hoyts Cinemas Ltd



**The Swan**

363 High Road, Tottenham, N17

The Premises can remain open until:

11.00pm Monday to Wednesday nights

3.30 am on the mornings following Thursday, Friday & Saturday nights

1.00am on Sunday

Applicant: Paul Bruce

**Rudolphs**

750 High Road, Tottenham, N17

The Premises can remain open until:

2.00am on the mornings following Monday to Thursday nights

5.00am on the mornings following Friday and Saturday nights

Applicant: Anthony George Walker

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**LIST OF ANNUAL ENTERTAINMENTS LICENCES WITH TERMINATING  
HOURS AFTER 2AM. TO BE DEALT WITH UNDER DELEGATED  
AUTHORITY APRIL 2005/NOV 2005**

**Club K.O**

9A The Broadway, Wood Green, N22

The Premises can remain open:

Midnight Monday and Tuesday nights

1.00am on the mornings following Wednesday and Sunday nights

2.00am on the mornings following Thursday nights

4.00am on the mornings following Friday and Saturday nights

Applicants:

Tracy Morphey – Young & Smith (020 7709 8788)

**Odeon Cinema**

Fortis Green Road, N10

The Premises can remain open until:

2.00am on the mornings following Sunday to Thursday nights

3.00am on the mornings following Friday and Saturday nights

Applicant:

Liz Foster – Odeon Ltd (020 7321 0404)

**Opera House**

2 Chestnut Road, Tottenham, N17

The Premises can remain open until:

2.00am on the mornings following Monday to Thursday nights

8.00 am on the mornings following Friday and Saturday nights

2.00am on the mornings following Sunday nights

Applicant:

Mr S R Webster (079 5653 7694)

**The Prince Arthur**

158 Broad Lane, Tottenham, N15

The Premises can remain open until:

2.00am on the mornings following Monday to Thursday nights

4.00am on the mornings following Friday and Saturday nights

Applicant:

Dennis Mannion (079 5654 8308)

**Café Loco**

266 Muswell Hill, N10

The Premises can remain open until:

2.00am on the mornings following Monday to Wednesday nights

3.00am on the mornings following Thursday, Friday and Saturday nights

11.00pm on Sunday nights

Applicant:

Catherine Sheeran (020 84444 3370)

**Catch22**

Wellington Terrace, Turnpike Lane, N8

The Premises can remain open until:

2.00am on the mornings following Sunday to Tuesday nights

1.00am on Friday and Saturday

2.00am on unday before Bank Holiday

**Licensing Act 2003 Sub-Committee on 06<sup>th</sup> December 2005**

<b>Report title: Annual Entertainment Licences and Night Café Licences dealt with by way of delegated Authority.</b>	
<b>Report of: The Lead Officer Licensing</b>	
<b>Ward(s) affected</b>	
<b>1. Purpose</b>	<b>To make Members aware of the Licenses granted under delegated authority.</b>
<b>2. Recommendations</b>	<b>The Committee note the information contained in the report.</b>
<b>Report authorised by: Robin Payne.....</b> <b>Assistant Director Enforcement Services</b>	
<b>Contact Officer: Ms Daliah Barrett</b>	<b>Telephone: 020 8489 5103</b>
<b>3. Executive summary</b>	<b>Licences have been awarded to the premises listed in the attached schedule. The licences have been awarded under delegated powers in that there were no objections, the closing times for the premises are no later than 2.00am, and they are comparable to other licensed premises in the vicinity.</b>
<b>4. Access to information:</b>	Local Government (Access to Information) Act 1985 Background Papers The following Background Papers are used in the preparation of this Report: DELEGATED AUTHORITY <b>The Background Papers are located at Enforcement Service, Civic Centre, High Road Wood Green N22</b>

## 5. REPORT

### Background

5.1 The Licensing Act 2003 commenced with the transition period on 7<sup>th</sup> February 2005.

All current license holders were invited to apply for the conversion of their current license into the new regime.

To date Haringey has received 683 applications for Premises Licenses.

### 5.2 License Applications received.

Below is a detailed breakdown of the applications received from the different types of premises with the borough.

Pubs Bars and Nightclubs – 138  
Applications to vary – 90.

Registered Members club - 31  
Application to vary - 3

Off – Licenses - 62  
Applications to vary – 6

Supermarkets & Convenience Stores -218  
Applications to vary - 64

Restaurants - 150  
Application to vary –20

Takeaways - 59  
Applications to vary - 15

Sports Club - 6  
Applications to vary - 2

Theatres and Cinemas - 3  
Application to vary - 3

Village and Community halls - 4  
Applications to vary - 1

Others (include snooker centres and Alexandra Palace which is multi-useage) 5  
Applications to vary - 5 .

5.3 The borough has received over 30 applications for Premises wishing to sell alcohol on a 24hour basis.

The majority are grocery/convenience stores that would have traded on a 24 hours basis before this new Act, as they were able to do so under Planning.

**Page 3**

Under the Licensing Act 2003 they are now able to sell alcohol in line with their trading hours.

Alexandra Palace also have the ability to provide the sale of alcohol and regulated entertainment on a 24 hour basis, but with conditions on notifying for each event going over the normal 2 am license granted.

The following stores have applied for 24hours for the sale of alcohol

Atakan Supermarket, 315-321 West Green Road, N15  
Tottenham News, 326 High Road N15  
Filiz Supermarket, 699 Seven Sisters Road N15  
Seven Sisters Supermarket, 145 High Road N15  
Emek Supermarket 485 High Road N17  
Solma Supermarket, 791 High Road N17  
Gurbets Supermarket, 604 Seven Sisters Road N5  
Anil Supermarket 542 High Road N17  
David Superstore 21 Broadway Parade N8  
Elbistan Supermarket, 13 Great Cambridge Road N17  
Supreme Supermarket, 503-505 Seven Sisters Road N15  
Sirwan Supermarket, 415-417 Lordship Lane N22  
Simsak Food Centre, 589-591 Green Lanes N8  
Gunaydin Supermarket, 126A West Green Road N15  
Sirwan Food Centre, 518-520 Lordship Lane London N22  
Star Liquors, 102 Stroud Green Road N4  
Somersfield 335-337 White Hart lane N17  
Harringay Foods, 475 Green Lanes N4  
Supermarket 708 High Road N17  
Sainsburys, Williamson Road N4  
Sainsburys, Muswell Hill N10  
Tottenham News 145 High Road N17  
Supersave, 68 West Green Road N15  
Hornsey Mini Market, 95 Tottenham lane N8  
Dilekkaya, 382 Green Lanes N4  
Yasmin 25 Lordship Lane N17  
Golds 208 Philip Lane N15  
Saltan Supermarket, 169 High Road N17  
Tesco South Tottenham, High Road N17 – 24hrs December only  
Olympic Social Club, 705-707 Seven Sisters Road N15

Roseview Hotel – sale of alcohol for 24hrs to guests and bona fide friends.

Various premises have Late Night Refreshments and operate until 5am.

## **6.0 Hearings.**

The Licensing Sub groups have heard over 30 cases since March 2005.

There have been some matters of concern with regards to the relationship between Planning and Licensing. This matter will be dealt with in a report from the Legal Team.

Out of the 30 hearings we have had 3 cases that have had appeals lodged against the Licensing Authority's decision in the Magistrates Court.

O'Neils, Muswell Hill N10

A resident Mr Thompson has lodged an appeal on various matters with regards the decision arrived at by the committee, this ranges from some of the paperwork not being included, to issues regarding our own Statement of Licensing Policy.

The Botany Bay – Philip Lane N15

The Applicants are appealing the refusal in spite of evidence from the Police showing that the current licensees were not conducting the pub in a good fashion.

The Hill – Muswell Hill Broadway N10

The hours were restricted by the committee and various conditions applied. The applicants feel disadvantaged by this and have appealed on this basis.

## **6.1 Hearing Decisions**

Attached are all the decisions made by the various committees.



- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

The Licensing Act 2003 further requires the Council to publish a Statement of Licensing Policy that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

8.1 The London Borough of Haringey has made a number of policy decisions within this paper. The policies that are relevant to this application can be summarised as follows:

#### Licensing Objectives – Statement of Licensing Policy

"2.4 The Council acknowledges that the licensing function cannot be used for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. The new licensing controls do however play a key role in preventing crime and disorder in and around licensed premises , and they support this objective on the streets generally. Apart from the licensing function, there are a number of other measures available for addressing issues of unruly behaviour that can occur away from licensed premises; these include....."

"7.13 Under the Crime and Disorder Act 1998 local authorities must have regard to the likely effects of exercising their functions, and do all they can to prevent crime and disorder in their area. "

"7.14 The Council will have special regard to the local impact of licensing on related crime and disorder in the borough particularly when considering the location, impact, operation and management of all proposed licences/certificates, applications, renewals and variations of conditions. "

### **8.0 Planning**

"8.2 All premises that apply for a licence must have planning permission for the intended use and hours of operation or be deemed "lawful" for the purposes of planning control. The Licensing Authority will not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission."

### **9.0 Regulatory Services**

"9.1 Building regulations govern a variety of issues, which will directly contribute to the licensing objectives, including the means of escape, structural integrity, accessibility and public safety. Applicants are reminded that Building Regulation approval and completion certificates are required for works under the Building Regulations to avoid contravention of those regulations."

### **13.0 The Prevention of Public Nuisance**

"13.7 In considering all licensed applications, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. The Licensing Authority will expect applicants to address the issues under prevention of public nuisance detailed in the Appendix."

### **18.0 Licensing Hours**

"18.3 The Council will deal with the issue of licensing hours on the individual merits of each application. When issuing a licence, stricter conditions with regard to noise control and/or limitations to opening hours may be imposed in the case of premises where relevant representations are made and that are situated in largely residential areas. Operating hours between 23.00 and 07.00 are considered to give greater potential for noise nuisance."

### **24.0 Conditions**

"24.1 The Council recognises that the only conditions that should be imposed on a licence are those that are necessary and proportionate to meeting the licensing objectives..."

"24.2 Where conditions are imposed they will be tailored to the individual style and characteristics of the premises and events concerned..."

## **PART B**

### **GUIDANCE FROM THE SECRETARY OF STATE**

The Secretary of State has issued Guidance on the implementation of the Licensing Act 2003, which the Council must take into account in considering applications.

National guidance regarding control of areas outside the premises is as follows:

"3.11 Statements of policies should make clear that licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act, and that the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres."

"7.45 In the context of preventing public nuisance, it is again essential that conditions are focussed on matters within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder...cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises....Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law.

National guidance regarding public nuisance is as follows:

"7.39 The 2003 Act requires licensing authorities following receipt of relevant representations...to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licenses and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities

focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable."

National guidance regarding licensing hours is as follows:

- "3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration."
- "6.5 The Government strongly believes that fixed and artificially early closing times promote...rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously....It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public."
- "6.6 The aim of the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should be avoided."

National guidance regarding non-duplication of other regimes is as follows:

- 3.53 "Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. *For example*, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are "necessary" for the promotion of that licensing objective and if already

provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary.”\*

## **PART C**

### **COMMENTS ON LOCAL AND NATIONAL POLICY**

#### **Hours of Operation and Public Nuisance:**

Chapter 6 of the Secretary of State’s Guidance recommends that Local Authorities do not set up a series of zones in their areas within which closing hours are reduced. No such zones have been set up within the Borough of Haringey. The Guidance also states that 'staggering' closing times for premises in an area would only serve to replace current peaks of disorder after 11pm with a series of smaller peaks.

The London Borough of Haringey acknowledges that the Government's Guidance attached to the Licensing Act 2003 states that it believes that fixed and artificially-early closing times are a key cause of disorder and disturbance, when large numbers of customers are required to leave premises simultaneously. The Guidance goes on to state that this puts pressure on fast food outlets and transport facilities which, in turn, produces friction and gives rise to disorder and peaks of noise and other nuisance. It advises that licensing authorities should recognise these problems when addressing issues such as hours of operation and should aim to reduce the concentrations and achieve a slower dispersal of people from licensed premises through longer opening times.

However, the Guidance is aimed nationally and there will be some areas in some towns and cities where parts of it may not apply. There may be situations in which the imposition of conditions on premises licences would not in itself, resolve the issue of disturbance to residents from late night premises. Conditions may include trying to ensure that customers leave quietly but licensees will have little or no control of their customers once they leave the close vicinity of the premises. The area is extremely densely populated with residential dwellings above and next to most licensed premises. Generally throughout the borough, ambient noise levels fall significantly between 11pm and midnight and noise from even well behaved customers leaving licensed premises after midnight does disturb residents.

Actions that during the day would have little adverse environmental effect, such as car doors shutting and conversations, can have the opposite effect after midnight, disturbing local residents and breaking their sleep.

The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.

Each application will be considered on its own merits.

### **Interpretation of "Vicinity":**

The term "vicinity" is used within the Licensing Act 2003 on a number of occasions and, in particular, with reference to those "interested parties" who may lodge objections to applications for premises licences and who may make representations concerning existing premises licences. Section 13(3) defines an "interested party" as being "a person living in the vicinity, a body representing persons living in the vicinity, a person involved in a business in the vicinity or a body representing those persons."

However, the Act does not define the term "vicinity" and debate in both the House of Lords and the House of Commons similarly failed to produce a definition. Paragraph 5.33 of the Guidance states that the licensing authority should consider whether the individual's residence or business is likely to be directly affected by disorder or disturbance occurring or potentially occurring on those premises or immediately outside the premises.

## **Operating Schedules: Conditions**

In all applications relating to premises licences the London Borough of Haringey expects applicants to specify methods by which they will promote the four licensing objectives in their operating schedules.

In relation to “the prevention of crime and disorder” this may, *for example*, be promoted by employing registered door supervisors, ensuring staff have attained relevant BIIAB qualifications, i.e. the Drugs Awareness Certificate, the Barperson’s National Certificate, the Professional Barperson’s Qualification etc., incorporating a search policy into the entry conditions of the premises, restrictions on the irresponsible use of “happy hours” and other drinks promotions.

In relation to “public safety” this may, *for example*, be promoted by ensuring that staff have the appropriate training, ensuring that safe capacity limits are set and that there is no overcrowding, that fire-fighting equipment is checked regularly, and that certificates required by the Council are available by the relevant date.

In relation to “the prevention of public nuisance” the London Borough of Haringey will take particular care to ensure that residents are not disturbed late at night. However, before refusing a licence on these grounds the Council will consider whether such disturbance may be avoided by the application of conditions.

In the case of every premises licence application Council will consider whether the sound from music and/or customers may escape from the premises, noise from ventilation and other mechanical plant is minimal, steps are taken to ensure patrons and staff leave the premises quietly (including the prominent display of notices to this effect), arrangements are made for patrons to park their cars in a manner that does not disturb or inconvenience local residents and arrangements are made to minimise noise from taxis. Conditions may be imposed to satisfy these considerations. The Council will also consider whether applicants have made sufficient arrangements to ensure that any waste, bottles etc, from the premises do not cause any detrimental environmental effect in the vicinity. Page 63 of the Government’s National Alcohol Harm Reduction Strategy states that: “Under the Licensing Act 2003, the premises

The operating schedule can also require licensees to deal with litter”. Where relevant, the Licensing Committee may place conditions on a Premises Licence to ensure waste, bottle etc., are disposed of properly.

In relation to “the protection of children” this may, *for example*, be achieved by ensuring children are not admitted to premises on days when adult entertainment is provided, that “proof of age” cards complying with the Home Office approved Proof of Age Standards Scheme (PASS), such as those promoted by the Portman Group, are required for the supply of alcohol, and that children are not admitted, or allowed to remain on, premises after a certain time.

## **Maximum capacities:**

The type of entertainment offered in licensed premises and the closing hour of premises permitted to provide alcohol to the public often have a direct link to crime

and disorder, public nuisance and public safety. *For example*, there is generally more likelihood of crime and disorder and public safety problems occurring in a music and dance venue permitted to sell alcohol and open until 3am than there is in a quiet back street pub that provides no regular regulated entertainment and closes at 11pm.

The Council accepts that a lot of the problems that may occur in late night licensed premises may be controlled by good management practices.

However, controlling the numbers of customers allowed into the premises will also assist in promoting the following three licensing objectives:

- (1) *the prevention of crime and disorder*
- (2) *public safety*
- (3) *the prevention of public nuisance*

Where a fire safety certificate for premises includes a capacity condition the Council will not normally set a capacity by way of a licence condition. However, if the fire certificate was granted for premises when their future use was not known, the Council will consider setting a new capacity condition having regard to the licensable activity proposed. The Council will also consider setting a capacity condition where this may be beneficial in preventing crime and is order or nuisance. Such a capacity may be lower than that set by the fire safety certificate. This section of the Police Statement will be reviewed when the Regulatory Reform (Fire Safety) Order 2004 becomes "live" and replaces the *Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997*.

Where no Fire Safety Certificate is in existence for premises wishing to supply alcohol to customers after 11pm and/or where regulated entertainment is provided, the Council, in partnership with the London Fire and Emergency Planning Authority, will seek to attach a capacity condition to the premises licence.

Under these circumstances the capacity limits will be set primarily on the basis of how many people can leave the premises safely and quickly in an emergency. However, as stated in paragraph 10.3, a lower capacity limit may be set where this may be beneficial in preventing crime and disorder and public nuisance issues.

**Responsible Authorities:**

Section 13(4) of the Act lists a number of "Responsible Authorities" who may make comments regarding Premises Licence applications and who may apply for an existing licence to be reviewed. One of those "Responsible Authorities" is defined in the Act as:

"a body which:

- (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
- (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters."

Paragraph 3.41 of the Secretary of State's Guidance states that:



"A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. In most cases, this may be the Area Child Protection Committee. However, in some areas, the Committees involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department."

## **PART D**

### **ADDITIONAL OBSERVATIONS**

The Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

In making its decision, the Committee is also obliged to have regard to national Guidance and the Council's own Licensing Policy.

Of course, the Committee must also have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) Grant the application as asked
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the whole or part of the application.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

As to the objections raised:

*Terminal hours:* The premises are close to a residential area. The Committee should take account of national guidance and the Council policy on terminal hours and take such steps as it considers are necessary to promote the licensing objectives. The Committee must consider whether there is any evidence that the alleged nuisance in the vicinity is connected with the premises in question. The Committee must also be aware that it is only the extension in hours from the current hours to the later times proposed that is at issue. Members must consider whether there is evidence that any nuisance arising from granting the licence will be increased by later opening hours.

*Parking provision:* This matter is relevant only to the extent that the use of the residential roads for parking could give rise to public nuisance. It is likely that noise from customers with cars will add materially to the general background noise in this area.

*Noise from premises.* The Committee should consider what, if any, conditions are necessary to prevent public nuisance from noise from the premises.

*Planning:* The Committee is directed to national guidance on the issue of planning. It is considered that planning should be in place before the licence application is determined.