

---

## **LICENSING COMMITTEE**

---

TUESDAY, 21ST FEBRUARY, 2006 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, *Vacancy*

### **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 10 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: (PAGES 1 - 10)**

To approve the minutes of the previous meeting of the Licensing Committee held on 6 December 2005 (attached).

**6. EXTENDING THE DURATION OF THE LICENSING BODIES IN ELECTION YEAR: (PAGES 11 - 14)**

To recommend to full Council that it should continue the operation of the existing Licensing Committee until the Annual Meeting in order to ensure that the Council's statutory duties to hear Licensing applications are discharged and to continue in operation the Licensing sub-committees for the same purpose.

**7. HEARING PROCEDURE AND STANDARDISING HOURS POLICY: (PAGES 15 - 20)**

To seek members' views on (1) measures to speed the holding of hearings and (2) policy on standardising hours for licensed premises.

**8. MEMBER TRAINING FOR THE LICENSING ACT 2003: (PAGES 21 - 22)**

To report on the current position of Member training, and the need to train/re-train existing/new Members for the next municipal year.

**9. VERBAL FEEDBACK FROM THE ALG LICENSING CONFERENCE ON 6 FEBRUARY 2006.**

**10. ITEMS OF URGENT BUSINESS:**

To consider any new items admitted under item 2 above.

**YUNIEA SEMAMBO**  
**Head of Member Services**  
5<sup>th</sup> Floor  
River Park House  
225 High Road  
Wood Green  
London N22 8HQ

**NICOLAS MATTIS**  
**Principal Support Officer (Council)**  
Tel: 020-8489 2916  
Fax: 020-8489 2660  
e-mail: [nicolas.mattis@haringey.gov.uk](mailto:nicolas.mattis@haringey.gov.uk)

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

Councillors \*Haley (Chair), Patel (Vice Chair), \*Beacham, Bloch, H Brown, Dobbie, \*Floyd, Gilbert, Knight, Reynolds, \*Newton, Basu, E Prescott and \*Rice

\*Members present

**LC01 APOLOGIES FOR ABSENCE** (Agenda Item 1)

Apologies were received from Councillors Dobbie, Patel, Gilbert, Knight, Basu, H Brown, and E Prescott.

**LC02 URGENT BUSINESS** (Agenda Item 2)

None received

**LC03 DECLARATIONS OF INTEREST** (Agenda Item 3)

None received

**LC04 DEPUTATIONS/PETITIONS** (Agenda Item 4)

A request to address the Committee on behalf of the Ladder Community Safety Partnership Board (LCSPB) was received from Mr Ian Sygrave. This request was granted by the Committee.

**LC05 MINUTES** (Agenda Item 5)

**RESOLVED:**

That the minutes of the meetings held on 15 March 2005 be agreed and signed by the Chair.

**LC06 LICENSING DECISIONS AND THE RELATIONSHIP TO TOWN PLANNING CONTROLS** (Agenda Item 6)

The Chair invited Mr Sygrave to address the Committee. Mr Sygrave referred the Committee to the Haringey Statement of Licensing Policy in its reference (8.0 Planning) to planning permission. He highlighted that under 8.2 in the Policy, 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 purpose of planning control. Mr Sygrave pointed out that this rule had not been uniformly followed by Licensing Sub-Committees and that this had led to confusion. Mr Sygrave later stated that he, on behalf of the LCSPB, agreed with the advice submitted by Counsel to the Council in relation to the policy on planning permission. Mr Sygrave went on to suggest to the Committee that in addition to the advice given by Counsel, the Committee should also consider the following:

- i) That the Planning Service indicates *why* it has imposed restrictions on opening hours along with comments to the Licensing Authority once an

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

- application has been received.
- ii) Fully briefed planning officers (preferably the planning officer who has personally dealt with a given premises) to be present at each hearing.
  - iii) When an applicant's proposed new hours are longer than those permitted by planning, it should be made clear to the applicant exactly what is in terms of the planning/license relationship (and verified by Counsel).

The Chair confirmed to Mr Sygrave that he has requested planning officers to be present at each sub-committee in view of the information supplied by planning in respect of certain license applications.

The Chair invited the Legal Adviser, Terence Mitchison to present his Report to the Committee. Mr Mitchison highlighted to the Committee that the Council's current Licensing Policy was worded slightly wrong in the light of the law under the Licensing Act 2003 and ran the Committee through the recommended wording of the Policy, as advised on by Mr Philip Kolvin QC, and set out as follows:

- 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~~

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

~~to premises still to be constructed or altered for licensing purposes.~~

Mr Mitchison also stated that he would advise that the recommendation set out by the LCSPB be embraced too. The adoption of the new Policy would ensure that rightful appeals and unenforceable licenses were avoided and that the new wording of the policy was legally acceptable.

Councillor Takki Sulaiman, who was present at the Committee meeting, highlighted the relevance of these recommendations to the whole of the Borough and was concerned that gathering evidence of licensing decisions being enforced under the four licensing objectives was not robust.

Councillor Gina Adamou , who was present at the Committee meeting, raised her concerns that information from enforcement agencies does not reach Members of the committees and that this would avoid Members making blindfolded decisions. She echoed the recommendation that planning officers and police officers should be present at all committees.

Councillor Rice raised the issue that numerous premises along Green Areas, where licensing laws are prevalent, have had planning consents that were granted many years ago. He suggested that a more rigorous approach by Planning Development Control was needed that would ensure that planning consents were clear and focussed and in-line with modern arrangements, particularly under the new licensing laws. He suggested that it was also necessary for officers acting under delegated powers and making decisions on licensing should be responsible for communicating these in a proper fashion.

The Chair invited Mr Frixos Kyriacou, Team Leader, Planning Development Control to address the Committee. Mr Kyriacou stated that the provision of sale of alcohol in shops and supermarkets was not under the jurisdiction of Planning Control, but that if there was a change in use for a given premises, the Planning Control Team would intervene. They would also intervene if an extension of hours was being sought. Mr Kyriacou confirmed that the Planning Control Team would be able to provide information on these two factors. In respect to Councillor Sulaiman's reference to Planning Policy Statement 6, Mr Kyriacou stated that the policy focussed on town centres and that the Government advice was to focus on community effects of planning developments. This was achieved in Haringey, but Mr Kyriacou recognised that more needed to be done to reach a balance between communities and businesses.

There was a discussion amongst Committee members and officers that highlighted problems with gathering evidence on planning and licensing grounds and the Committee came to the conclusions that more information and evidence was required from the Planning team when applications are received and investigated for the benefit of sub-committee hearings. The Committee heard that whilst a full audit of information supplied and gathered by the Planning team was not possible in the short to medium term, it was felt that the team could work more closely with licensing, business organisations and

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

residents to ascertain specific concerns that can be presented to sub-committees in the interest of making robust decisions.

**RESOLVED**

The Licensing Committee agreed to the following recommendations:

- (i) That Members note and accept the advice given by Counsel.
- (ii) 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
- (iii) That Members request the General Purposes Committee to agree the commencement of the statutory consultation referred to in (ii).
- (iv) 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 (ii) above.
- (v) 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 except to add informatives to this effect.

**LC07 AMENDMENT AND ADOPTION OF THE LOCAL LICENSING PROCEDURE RULES** (Agenda Item 7)

The Chair invited the Legal Adviser, Terence Mitchison to present his Report to the Committee. Mr Mitchison explained to the Committee that the Council's current Local Licensing Procedure Rules at Rule 37 should be withdrawn from the Procedure Rules as part of the Council's Constitution.

Mr Mitchison then presented to the Committee a revised version of the Summary of Procedures to be used at each sub-committee hearing under the revised Local Rules and constitutional arrangements which the Licensing Committee was being asked to approve.

Mr Mitchison also sought to the Committee's approval for an additional resolution within the Council's Constitution at Part F.7, section 2, which provides to delegate to the Head of Legal Services, in consultation with the Chair of the Licensing Committee, power to make arrangements to deal with cases remitted to the Council by the Magistrates Court under section 181 of the Licensing Act 2003. This would be passed to the General Purposes Committee for ratification.

**RESOLVED**

The Licensing Committee agreed to the following recommendations:

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

- (vi) That Members review the operation of the Haringey Local Licensing Procedure Rules in the light of practical experience at Licensing Sub-Committee hearings.
- (vii) That Members approve the amendments to the Local Rules, presented to the Committee in its Report
- (viii) 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.
- (ix) That Members agree to use the Summary of Procedure, as presented the Committee, as a guide at Licensing Sub-Committee hearings.
- (x) 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.

**LC08 POLICY FOR GAMING ACT PROVISION UNDER THE LICENSING ACT 2003**  
(Agenda Item 8)

The Chair invited the Licensing Manager, Keith Betts, to present his Report to the Committee. Mr Betts explained that the essence of the Report was that the Licensing Authority, who were responsible for implementing the Gaming Act, will maintain the status quo in terms policy on AWP machines in premises that are not solely or wholly amusement centres. Mr Mitchison clarified to the Committee some of the provisions of the Gaming Act 2005 in relation to the powers of the Licensing Committee.

**RESOLVED**

The Licensing Committee agreed to the following recommendations to pass resolutions as follows; and to report these, for information, to Full Council:

- (xi) Section 34 Gaming Act 1968 permits will not be granted or renewed by the Council in respect of premises (a) that are not licensed for the supply of alcohol under section 18 of the Licensing Act 2003; or (b) that are hotels and or restaurants which serve alcohol only as an accompaniment to meals; or (c) which are not wholly or mainly used for the provision of amusements with prizes; and
- (xii) 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.
- (xiii) 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

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

- Policy in connection with the Gambling Act 2005, which is expected to come into force in 2007.
- (xiv) 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 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.

**LC09 ORAL REPORT ON EMBEDDED LEGAL RESTRICTIONS OF THE LICENSING ACT 1964** (Agenda Item 9)

Mr Mitchison gave an account of the embedded restrictions for the benefit of Members who had asked for clarity in respect of applications that had been received with references to previous Licensing Acts. Mr Mitchison's advice was as follows:

- Under the Licensing Act 1964 there were circumstances where a justice's on-licence could be extended to allow premises to open later than the general licensing hours i.e. after 11 p.m.
- The most common extension that has come before Haringey's Licensing Sub-Committees has been the so-called "supper hours certificate" or extension under s. 68 of the 1964 Act.
- This extension could be obtained by notice to the Police. It allowed the sale or supply of alcohol for an extra hour e.g. to 12 midnight but subject to the following conditions:
  - (i) it was only to persons taking table meals, and
  - (ii) in a part of premises set aside i.e. a restaurant area, and
  - (iii) only for consumption as part of the meal.
- The conditions set out above are now referred to as "embedded restrictions". Unless they were complied with, the sale or supply of alcohol after 11 p.m. was unlawful.
- When owners of premises were applying to convert their old justices' on-licences to new licences under the 2003 Act, they had a choice either:
  - (i) to convert only the rights they already enjoyed under their existing licences and/or certificates i.e. their "grand-father rights". This could be done without fear of objections or the Licensing Authority cutting down the existing rights save in exceptional cases where the Police objected for crime prevention reasons. Where a conversion included a certificate,



**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

- such as a supper hours certificate, then the relevant embedded restrictions became part of the new licence; or,
- (ii) to vary or extend their existing rights, for example, by expressly seeking to remove any embedded restrictions. If the embedded restrictions attached to a supper hours certificate were removed, then the premises could stay open for sale of alcohol until 12 midnight without limiting sales to persons taking restaurant meals.
- As a further possibility, suppose an owner applied to convert, and to extend the existing hours to 12 midnight, but did not include (or refer to) an existing supper hours certificate in the application for conversion. The extended hours sought would be incompatible with the existing embedded restrictions. In such a case, if the variation to extend the hours was granted, the new licence would be free of the embedded restrictions i.e. alcohol could be sold to anyone up until 12 midnight.
  - There have been cases where applications to convert and to extend the existing hours have expressly sought to “remove embedded restrictions” but without explaining what these are or why they should be removed. In such cases Licensing sub-Committees have refused to agree the removal.
  - If an applicant does explain what the embedded rights are and why they should be removed, the Licensing Sub-Committee should grant the removal unless Members consider it necessary to refuse having regard to the four Licensing Objectives.
  - Since we are now beyond the end of the period when applications to convert can be considered, it is less likely that embedded restrictions will come to Members’ attention.
  - When applications are made now for “new” premises licences, the applicants cannot benefit from “grand-father rights” including any former certificates or extensions. If there are objections, the Licensing Sub-Committee would consider the merits without being tied by any existing licence rights.
  - However, if there were future applications:
    - (i) to vary or extend a previously “converted” licence, or
    - (ii) to review a previously “converted” licence, and the case came before a Licensing Sub-Committee, the issue of embedded restrictions might arise as part of the definition of the current permitted licensable activities.
  - Members should note that there are several other types of embedded restriction apart from the supper hours certificate. For example, the “extended hours order” under s.70 of the 1964 Act permitted sale of alcohol until 1.00 a.m. to persons taking table meals which were followed by live entertainment. There were conditions imposed, similar to those attached to the supper hours certificate, together with

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

additional conditions preventing sale of alcohol to anyone entering the premises after midnight or less than 30 minutes before the end of the entertainment.

- If any cases arise where embedded restrictions of any kind appear to be an issue, then the applicant should always be asked to explain them fully so that Members can be properly advised about their effect.

**LC10 ORAL REPORT ON THE ROLE OF COUNCILLORS IN RESPECT OF RELEVANT REPRESENTATIONS TO LICENSING ACT 2003 HEARINGS**  
(Agenda Item 10)

The Chair reminded Members of the Licensing Committee that ward councillors could only make representations to the Licensing Committee and its sub-committee as a representative of an organisation or resident, making sure that any other personal and prejudicial interests are declared ahead of a hearing. Under the Licensing Act 2003, Councillors were not permitted to make representations in their capacity as ward councillors.

**RESOLVED**

That a note to all councillors be distributed from Legal Services to outline the correct procedures in respect of representations from councillors to the Licensing Committee and its sub-committees.

**LC11 COMMENCEMENT OF LICENSING ACT 2003** (Agenda Item 11)

The Committee agreed to seek Counsel's advice on whether Licensing Committee Members should participate in Appeals that took place as a result of decisions made under the Licensing Act 2003.

**RESOLVED**

That the Licensing Committee noted the information provided on applications received for premises licences under the Licensing Act 2003.

**LC12 ANNUAL ENTERTAINMENT LICENSES AND NIGHT CAFÉ LICENSES DEALT WITH BY WAY OF DELEGATED AUTHORITY** (Agenda Item 12)

**RESOLVED**

That the Licensing Committee noted the information provided on Licenses granted under delegated authority for terminating hours after 2am.

**LC13 ANNUAL ENTERTAINMENT LICENSES AND NIGHT CAFÉ LICENSES DEALT WITH BY WAY OF DELEGATED AUTHORITY** (Agenda Item 13)

**RESOLVED**

That the Licensing Committee noted the information provided on Licenses

**MINUTES OF THE LICENSING COMMITTEE**  
**6 December 2005**

granted under delegated authority for terminating hours of 2am or earlier

The meeting ended at 9.45pm

**Councillor BRIAN HALEY**  
Chair of Licensing Committee

Signed \_\_\_\_\_

Date \_\_\_\_\_

This page is intentionally left blank

Agenda item:

**Licensing Committee**

on

**21 February 2006**Report Title: **Extending the Duration of the Licensing Bodies in Election Year**Report of: **Head of Legal Services and Monitoring Officer**Wards(s) affected: **All**Report for: **Non-Key Decision and Recommendation to Council****1. Purpose**

1.1 To recommend to full Council that it should continue the operation of the existing Licensing Committee until the Annual Meeting in order to ensure that the Council's statutory duties to hear Licensing applications are discharged and to continue in operation the Licensing Sub-Committees for the same purpose.

**2. Recommendations**

2.1 That Members recommend to full Council the continuation of the appointments of all Members of the Licensing Committee from the Council Elections until the Annual Meeting on 22 May subject to:

- (i) individual Members being re-elected as Councillors
- (ii) the Licensing Committee, or any Emergency Sub-Committee it appoints, only having power to act for the purposes of determining contested applications that must legally be determined in the above period.

2.2 That Members recommend to full Council the grant of a special delegated power to the Chief Executive to appoint any additional Members of the Licensing Committee needed to increase its membership to 10 to be exercised only in the period between the Council Elections and the Annual Meeting.

2.3 That Members resolve to continue the appointments of all Members of the Licensing Sub-Committees from the Council Elections until the Annual Meeting subject to the same provisos as in paragraph 2.1 (i) and (ii) above.

Report Authorised by:

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

Contact Officer: **Terence Mitchison, Senior Project Lawyer, Corporate**  
(x 5936) [terence.mitchison@haringey.gov.uk](mailto:terence.mitchison@haringey.gov.uk)

### **3. Executive Summary**

This report explains the problems that may arise in the event that the Council is obliged to hold licensing hearings in the period between the Council Elections and the Annual Meeting when Council bodies would not normally meet. The Monitoring Officer recommends the continuation of the life of the existing Licensing Committee and its Sub-Committees.

### **4. Local Government (Access to Information) Act 1985**

4.1 The following background papers were used in the preparation of this report and can be inspected at Alexandra House 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

The Council's Constitution

### **5. Background**

- 5.1 Normally, none of the Council's Committees or Sub-Committees would meet in the period between the Council Elections and the Annual Meeting when new appointments are made to all Committees and other bodies.
- 5.2 There is a particular problem in connection with licensing decisions under the Licensing Act 2003. When an application is made it must be advertised for a period of 28 days and then, if there is an objection, there is a fixed period, generally 20 working days, within which the Council must hold a hearing into the application. These time limits may vary for different types of application.
- 5.3 In the event of applications being made in late March or early April that result in objections, there could be a legal obligation to hold hearings between the Elections and the Annual Meeting ("the interim period").
- 5.4 Strictly speaking, in these circumstances it will not be possible to defer a hearing until after the Annual Meeting when the Licensing Committee and its Sub-Committees had been appointed. No provision is made for this in the licensing legislation.
- 5.5 The Monitoring Officer recommends that in order to be as sure as possible that the Council can discharge its statutory duties, full Council should be asked to extend the duration of the appointments to the existing Licensing Committee so as to give it express power to act during the interim period.

- 5.6 Any extended appointments would be subject to the Member in question being re-elected on 4 May. It would also be subject to the Licensing Committee only having power to act for the purposes of determining any applications that the Council was legally bound to have determined during the interim period.
- 5.7 The Licensing Committee could determine applications after hearings itself or it could appoint an Emergency Licensing Sub-Committee with the requisite three Members to hear and decide contested cases. In either event, the only powers of the Licensing bodies would be to decide contested cases in the interim period. At, and after, Annual Council any such emergency arrangements would be replaced by the normal procedures for appointing licensing bodies.
- 5.8 Another potential problem is that a Licensing Committee must have a membership of at least 10 but no more than 15 Councillors. In the event that fewer than 10 of the current Members were to be re-elected, then the Committee itself could not continue to act at all during the interim period, even to appoint a Sub-Committee.
- 5.9 In order to avoid this problem, it is recommended that the Licensing Committee should now resolve to extend the appointments of its Licensing Sub-Committees (or at least those that have three Members) from the Council Elections until the Annual Meeting. This would be subject to the same provisos as in paragraph 5.6 above i.e. individual Members being re-elected and the Sub-Committee only having power to act where it is legally necessary to hold a hearing in the interim period.
- 5.10 These extended appointments to the Licensing Sub-Committees are within the jurisdiction of the Licensing Committee itself rather than full Council. They can validly be made now while the Committee has the requisite legal membership.
- 5.11 As a safeguard against the possibility that none of the Licensing Sub-Committees still have three Members after the Elections, and that the Licensing Committee itself has less than 10 Members, it is recommended that a special delegation be granted to the Chief Executive. This would be a delegated power to appoint any additional councillors needed to make up the membership of the Licensing Committee to 10. This delegation could only be exercised in the interim period. It must be granted by full Council. Accordingly, the Licensing Committee is asked to recommend such a delegation to the meeting of full Council on 20 March. The General Purposes Committee will be invited to make a similar recommendation when it meets on 2 March.

## **6 Recommendations**

- 6.1 That Members recommend to full Council the continuation of the appointments of all Members of the Licensing Committee from the Council Elections until the Annual Meeting on 22 May subject to:
- (i) individual Members being re-elected as Councillors
  - (ii) the Licensing Committee, or any Emergency Sub-Committee it appoints, only having power to act for the purposes of determining contested applications that must legally be determined in the above period.

- 6.2 That Members recommend to full Council the grant of a special delegated power to the Chief Executive to appoint any additional Members of the Licensing Committee needed to increase its membership to 10 to be exercised only in the period between the Council Elections and the Annual Meeting.
- 6.3 That Members resolve to continue the appointments of all Members of the Licensing Sub-Committees from the Council Elections until the Annual Meeting subject to the same provisos as in paragraph 6.1 (i) and (ii) above.

**7. Equalities Implications**

- 7.1 There are no specific equalities implications.

**8. Financial Implications**

- 8.1 There are no specific financial implications.

**9. Legal Implications**

- 9.1 The legal implications are set out in the main report.



Agenda item:

**Licensing Committee**

on

**21 February 2006**Report Title: **Hearings Procedure Timing and Standardising Hours Policy**Report of: **Head of Legal Services**Wards(s) affected: **All**Report for: **Non-Key Decisions****1. Purpose**

1.1 To seek Members views on (1) measures to speed the holding of hearings and (2) policy on standardising hours for licensed premises

**2. Recommendations**

- 2.1 That Members express their views on measures to speed the holding of hearings
- 2.2 That Members express their views on the standardisation of closing hours for licensed premises

Report Authorised by:

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

Contact Officer: **Terence Mitchison, Senior Project Lawyer, Corporate**  
 (x 5936) [terence.mitchison@haringey.gov.uk](mailto:terence.mitchison@haringey.gov.uk)

**3. Executive Summary**

3.1 At the request of the Chair, this report seeks the Committee's views on (1) measures to speed the holding of hearings and (2) policy on standardising hours for licensed premises

**4. Local Government (Access to Information) Act 1985**

5.1 The following background papers were used in the preparation of this report and can be inspected at Alexandra House 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

- (i) The Council's Local Licensing Procedure Rules
- (ii) The Council's Statement of Licensing Policy

**5. Background**

5.1 The Chair has asked for two issues to be discussed at this meeting of the Committee:

- (i) measures that could be taken to speed up Licensing Sub-Committee hearings so as to ensure that agenda business is completed on the evening, and
- (ii) the possibility of standardising late night closing hours for all licensed premises across the Borough or in certain areas.

**6. Timing of Licensing Sub-Committee Hearings**

6.1 The procedure for all hearings before Licensing Sub-Committees is governed nationally by the Licensing Act 2003 (Hearings) Regulations 2005, S.I. 2005/44, ("the Hearings Regulations) and locally by the Haringey Local Licensing Procedure Rules ("the Local Rules"). The summary version of the Local Rules is attached as Appendix 1 to this report.

6.2 The starting point for any discussion of the rules for licensing hearings is that this is a quasi-judicial procedure that must be governed by the "Rules of Natural Justice". These are Common law rules evolved by the Courts over the past century to ensure fairness in decisions made by public authorities which affect the important rights of individual citizens. They are supplemented by the Human Rights Act 1998 especially Article 6 which guarantees a right to a fair trial.

6.3 In practical terms the law requires that each party to a hearings must:

- (i) know the case against them and this includes the right not to be taken by surprise
- (ii) have the opportunity to present their own case fully
- (iii) have the right to call witnesses if necessary
- (iv) have the right to test hostile witnesses by asking questions.

- 6.4 The Hearings Regulations provide that parties to a hearing must each be allowed “an equal maximum time” to respond to points upon which the Council has asked for clarification, to question the opposing party and to address Members of the Licensing Sub-Committee. The Hearings Regulations also give Members the right to ask questions of the parties. These questions are reflected in the Local Rules
- 6.5 The Legal Service does not advise that the Hearings Regulations permit the imposition of an arbitrary time limit on hearings when the complexity of certain cases may require that a longer time be allowed to explore all relevant issues. If the Committee attempted to impose an absolute time limit or guillotine on the duration of all hearings by its Sub-Committees, it is possible that the legal rights of certain parties would be contravened. This could happen, for example, where the time limit prevented a party from cross-examining a witness or from making a closing address. It could constitute grounds for appeal to the Magistrates and for an award of costs against the Council.
- 6.6 Quite apart from these factors, Members of Licensing Sub-Committees might well feel reluctant to impose a fixed time limit in a case where they considered that the interests of justice genuinely required more time to allow extensive questioning or the testimony of many witnesses.
- 6.7 As an alternative to an absolute time limit, Members may wish to discuss the desirability of routinely applying the measures mentioned below, some of which are occasionally used at hearings already:
- (i) informing all parties of the Council’s “expectation” that each hearing will not continue beyond a specified time limit. But there would be an opportunity for any party to ask the Licensing Sub-Committee for an extension of time if this was genuinely necessary.
  - (ii) asking all parties before they address the Licensing Sub-Committee for their own estimate of the time they need for making their address. Usually a reasonably short time will be offered and the party will feel obliged to keep to it.
  - (iii) asking parties who have made similar relevant representations, for example local residents all objecting to the same application on nuisance grounds, to agree upon a single spokesperson or representative. Individual objectors with a different specific point could be asked to make it briefly.
  - (iv) asking parties to submit the main points of their case in writing before the hearing. Most objectors do this anyway in the form of the letters setting out their relevant representations. There might be some benefit in applicants having to submit a written response to objections and for this to be circulated to all parties before the hearing so as to save time on questions at the hearing.

## **7 Standardisation of Closing Hours**

- 7.1 The Licensing Act 2003 contains no presumption for or against later closing hours of licensed premises. What the Act does require is that an application must be granted in full unless there are relevant representations made against it. It is not open to a Council to impose a fixed closing time for all licensed premises in its area because it is impossible to impose any such condition on an application that has not been subject to an objection.
- 7.2 The Act requires Councils in carrying out their licensing functions to “have regard” to the statutory Guidance issued by DCMS (“the Department of Culture Media and Sport”). This Guidance has an important impact upon the Council’s own statutory Statement of Licensing Policy (“SLP”) which is another matter to which the Council’s Licensing bodies must “have regard” when reaching their decisions in individual cases.
- 7.3 Extracts from the DCMS Guidance about licensing hours are attached as Appendix 2 to this report. Extracts from the SLP are attached as Appendix 3.
- 7.4 The initial point to note is that both the Guidance (paragraph 3.29) and the SLP (paragraph 18.3) recognise that any decision on licensing hours must be taken on the basis of the individual merits of each application. This means that where there has been an objection to late hours, the Licensing Sub-Committee must consider what restrictions are “necessary” in the light of the weight Members attach to that specific objection.
- 7.5 The Guidance (paragraphs 3.29, 6.5 and 6.6) favours longer hours for the sale of alcohol to avoid concentrations of customers leaving premises simultaneously at a fixed closing hour. This reflected in the Council’s own SLP (paragraphs 18.1 and 18.2).
- 7.6 The Guidance also expressly disapproves of “zoning” i.e. setting fixed closing hours within a designated area. Furthermore, the Guidance is opposed to any attempt to engineer “staggered closing times which means allocating different closing times to different premises in an area. Members are referred to the Guidance at paragraphs 3.30 and 6.7 to 6.10 and to the SLP at paragraphs 18.4 and 18.5.
- 7.7 If the Committee tried immediately to introduce fixed closing hour for all premises in the Borough, or fixed closing hours in specific areas, that would be in conflict with both the Guidance and the SLP. It is highly likely that a decision based on such a fixed closing hour would be appealed successfully in the Magistrates Court.
- 7.8 Although the Committee could consider amending the SLP to incorporate a new policy on fixed closing hours, this would be subject to the statutory requirements for extensive public consultation taking into account, among other matters, the views of the licensed trade. A new policy in the SLP could depart from the Guidance but there would have to be very convincing local reasons for doing this and there would be a high risk of a High Court challenge by way of Judicial Review brought by commercial interests.

7.9 There would also be the problem, noted above, that such a policy on fixed closing hours could only be enforced in cases where there had been an objection and a hearing. It would not be possible to cut back now the closing hours already granted to the very large number of premises which have already obtained licences under the 2003 Act.

7.10 These difficulties increase the risk that a commercial interest could successfully challenge a new fixed closing hours policy by way of Judicial Review on the grounds that it was (a) inconsistent in its effects and thus irrational and (b) in conflict with DCMS Guidance without adequate justification.

7.11 As an alternative, Members will be aware that DCMS has recently announced a major Review of its own Guidance in the light of concerns expressed by Local Authorities, the Police and other representative bodies. If Members do have points to make about possible changes to the Guidance, they could be sent directly by officers to DCMS or possibly they could be conveyed through the ALG or LACORS.

## **8. Recommendations**

8.1 That Members express their views on measures to speed the holding of hearings

8.2 That Members express their views on the standardisation of closing hours for licensed premises

## **9. Equalities Implications**

9.1 There are no specific equalities implications

## **10. Financial Implications**

10.1 There are no specific financial implications

## **11. Legal Implications**

11.1 The legal implications are set out in the main report.

## **12. Use of Appendices**

12.1 Appendix 1 to this report is the Summary of the Haringey Local Licensing Procedure Rules

12.2 Appendix 2 to this report contains the extracts from the DCMS Guidance relating to closing hours.

12.3 Appendix 3 to this report contains similar extracts from the Council's Statement of Licensing Policy.

This page is intentionally left blank

**Licensing Committee - 21<sup>st</sup> February 2006**

<b>Report title: Member Training for the Licensing Act 2003</b>	
<b>Report of: The Lead Officer Licensing</b>	
<b>Ward(s) affected N/A</b>	
<b>1. Purpose</b>	<b>To report on the current position of Member training, and the need to train/re-train existing/new Members for the next municipal year.</b>
<b>2. Recommendations</b>	<ul style="list-style-type: none"> <li>(i) To task officers to complete an audit of Member training in respect of the Licensing Act 2003 in order to ascertain which members require re-training.</li> <li>(ii) To appoint James Button and Co as the preferred supplier of training instructions (either in-house or off-site) for existing and new members.</li> <li>(iii) To task members and officers to embark on a comprehensive training programme in line with the introduction of the Gambling Act 2005.</li> <li>(iv) Recommendations (i) to (iii) above to be completed in conjunction with the Training and Information Manager, Member Services.</li> </ul>
<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 Sub Committee under Licensing Act 2003 for a New Premises licence
<b>4. Access to information:</b>	<p>Local Government (Access to Information) Act 1985  Background Papers  The following Background Papers are used in the preparation of this Report:  <b>N/A</b></p> <p><b>The Background Papers are located at Enforcement Service, Civic Centre, High Road Wood Green N22</b></p>

## 5. REPORT

### Background

5.1 The last major round of training for members facilitated by the Licensing Service was undertaken between ? and ?, as a result of the new Licensing Act 2003.

5.2 All officers involved in the new Act (Environmental Services and Member Services) have been trained

5.3 James Button:

5.4 **James Button & Co., Solicitors**  
**Public Health Legal Information Unit**  
**7 Devonshire Drive**  
**Rowsley**  
**Matlock**  
**Derbyshire**  
**DE4 2HB**

5.5 **COSTS** = c£120pp off-site  
= c£?? in-house

5.6

## 6. RELEVANT REPRESENTATIONS (CONSULTATION)

- 6.1. .
- 6.2. .
- 6.3.

## 7.0 Interested Parties

No letters of representation have been received against this application.

## 8.0 Financial Comments

The fee which would be applicable for this application was **£190.00**