

**MINUTES OF THE REGULATORY COMMITTEE  
THURSDAY, 24 NOVEMBER 2011**

Councillors Basu, Beacham, Brabazon, Demirci (Chair), Erskine, Mallett, Reid, Rice, Schmitz, Scott and Waters

Apologies Councillor Peacock

<b>MINUTE NO.</b>	<b>SUBJECT/DECISION</b>	<b>ACTION BY</b>
<b>REG13.</b>	<p><b>APOLOGIES FOR ABSENCE</b></p> <p>Apologies for absence were received from Cllr Peacock.</p>	
<b>REG14.</b>	<p><b>URGENT BUSINESS</b></p> <p>There were no new items of urgent business.</p>	
<b>REG15.</b>	<p><b>DECLARATIONS OF INTEREST</b></p> <p>There were no declarations of interest.</p>	
<b>REG16.</b>	<p><b>MINUTES</b></p> <p>It was agreed that the word 'clarified' in the opening line of the paragraph at the top of page 2 of the minutes of the meeting of the 26<sup>th</sup> May be replaced by 'asserted'.</p> <p><b>RESOLVED</b></p> <ul style="list-style-type: none"> <li>i) That the minutes of the meeting held on 12 September 2011 be approved and signed by the Chair.</li> <li>ii) That, with the agreed amendment that 'clarified' be replaced by 'asserted' in paragraph 2 of item REG05, the minutes of the meeting held on 26 May 2011 be approved and signed by the Chair.</li> </ul>	
<b>REG17.</b>	<p><b>CHAIR'S UPDATE</b></p> <p>The Chair advised that he attended regular meetings with senior officers in the Planning service and the Cabinet Member, in order to look at ways of improving the handling of planning applications, and asked Members of the Committee to pass on any comments or suggestions they wished to feed into this process. The Chair stated that it was intended that the Committee should feed into any further work on the governance review and any relevant policy-making processes.</p> <p>In response to a question from the Committee regarding s106 payments outstanding, the Chair advised that this was an issue he had raised with officers. The Committee requested that s106 monitoring be a standing</p>	

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report on the Regulatory Committee agenda, and it was agreed that this would be implemented. Marc Dorfman, Assistant Director, Planning, Regeneration and Economy, reported that s106 monitoring had previously been presented on an annual basis, which would be ready for the next meeting of the Committee, but that it would be possible to change this so that a report was produced on a quarterly basis as requested. In response to a question regarding unpaid s106 contributions, in particular at Hale Village, Mr Dorfman reported that permission had been sought from the Committee to renegotiate the s106 agreement in respect of this site, and that negotiations were ongoing. In response to further questions regarding Hale Village, Alexis Coleman, Legal Officer, provided an update; it was reported that work on the site-wide s106 agreement had been in progress since January 2011. A further update on this situation would be included in the report to the next meeting.

The Committee asked about the impact of the Localism Act on s106 contributions, in response to which Mr Dorfman advised that for future developments there would be stricter regulations regarding what constituted s106 obligations. April 2014 would be the trigger date for the introduction of new Community Infrastructure Levy (CIL), which would see s106 contributions apply to fewer circumstances (principally site compliance issues). Regulations were awaited in respect of the new Localism Act, which it was anticipated would give Planning Authorities the option to introduce the CIL system. Issues around the CIL were currently out for consultation. With regard to whether the Council should adopt the CIL approach, it was reported that this would be brought to the Regulatory Committee for discussion, as well as to Cabinet and public consultation. It was anticipated that a decision on this issue would be made in 2013.

In response to questions from the Committee regarding CIL, it was reported that the local authority would be able to state whether they wished for payment upfront, in set stages or when various trigger points were reached. It was also reported that Haringey were challenging the Mayor of London over the proposed Mayoral levy for strategic infrastructure, as it was felt that the level of contribution set for Haringey was excessive.

The Chair requested that officers ensure that the Committee had the opportunity to feed into the discussion regarding the introduction of CIL, in response to which Mr Dorfman confirmed that a report would be brought to the Regulatory Committee seeking advice on operational matters relating to the process.

**NOTED**

**REG18. THE POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011**

The Licensing Officer, Dale Barrett, advised the Committee regarding the Police Reform and Social Responsibility Act 2011, for which regulations were awaited.

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The Act was likely to affect the Licensing Act 2003 in a number of ways, including:

- Licensing Authorities to become responsible authorities in their own right, able to comment on applications and seek reviews.
- Removal of the vicinity test, so there was no need for someone to live or work in the vicinity of a premises to make representations on a licensing application.
- The Licensing Authority to become responsible for putting up notices and promoting applications.
- Reduction of the evidence threshold from that established by Thwaites case-law.
- Extension of TENs to up to 7 days, and addition of Environmental Health as a Responsible Authority for TENs applications.
- Fine to be doubled for persistent sale of alcohol to under 18s.
- Licensing Policy Statements to be updated 5 yearly rather than 3 yearly.
- New offences added to those relevant in the consideration of Personal Licences.
- Alcohol disorder zones to be replaced early morning restriction orders and late-night levies.
- Licensing Authorities to set their own fees for premises licences, up to a maximum level.
- Most changes not to be implemented until after the 2012 Olympics.
- Health bodies to become responsible authorities in their own right, to be consulted on licensing applications.

Regret was expressed that there had been no introduction of minimum alcohol pricing, but it was hoped that this would be looked at further in future.

The Committee noted that these changes would have very significant implications, and requested further information and training to ensure that Members fully understood them. Ms Barrett confirmed that it was necessary to wait for the publication of the guidance on the Act, and that as soon as this was available it would be circulated to Members. In response to a question regarding the early morning restriction orders, it was confirmed that the test for such orders was likely to be on the basis of public disorder, but that it was necessary to wait for the regulations to be issued for further details of this. It would also be necessary to wait for the regulations for guidance on how the licensing authority as responsible authority would operate without creating a conflict of interest and whilst maintaining the neutral role of the Licensing Officer.

**NOTED**

**REG19. CONSULTATION ON THE DEREGULATION OF REGULATED ENTERTAINMENT**

The Licensing Officer, Dale Barrett, advised the Committee of the Government's consultation on the deregulation of Regulated Entertainment. This was in addition to the Live Music Bill, which proposed permitting live music events of up to a 200-person capacity

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until 11pm, without the need for a licence. Further to this Bill, consultation had been commenced on the deregulation of all Regulated Entertainment with the exception of boxing, wrestling and sexual entertainment, up to a capacity of 5,000 people and with no cut off time or notification required to the licensing authority. It was proposed that sale of alcohol would still be licensable, but that BYO events would not require any form of licence. It was confirmed that the Council was inclined to support the Live Music Bill, but strongly opposed the proposals in respect of deregulation. The deadline for response to the consultation on deregulation was 3<sup>rd</sup> December.

The Committee expressed strong concern regarding the consultation, and it was felt that there would be a significant public reaction if the implications of what were being consulted on were more widely understood.

**NOTED**

**REG20. PLANNING ENFORCEMENT UPDATE**

Paul Smith, Head of Development Management, introduced the report on Planning Enforcement and took questions from the Committee. Members asked about the term 'not expedient', and its use in the report. It was reported that a judgement had to be made to determine when a breach had occurred, and how that breach should be responded to, as there was a range of options available and enforcement action was a discretionary measure. In the event that a breach was felt in an officer's professional view not to cause any harm, a decision may be made that it was not expedient to act. Marc Dorfman, Assistant Director, Planning, Regeneration and Economy, suggested that illustrative examples of 'not expedient' decisions could be brought to the next meeting for the Committee to look at. In response to questions from the Committee, it was confirmed that 'not expedient' decisions were only ever taken in respect of minor matters which would not have come to the Planning Sub Committee for consideration. The Committee commented that issues where planning permission was seen to have been exceeded caused significant local concern, and that not taking enforcement action in certain situations raised a number of issues.

The Committee asked what the reason was for the reduction in cases immune from enforcement action, in response to which Mr Dorfman advised that this was as a result of streamlined processes by Enforcement Officers, following concerns raised three years ago about a lack of enforcement action. It was confirmed that the period after which a case was immune from enforcement action was 4 years for building work and 10 years for change of use.

The Committee asked about the cases which were reported as being in the Crown Court for confiscation under the Proceeds of Crime Act, and how these would be promoted as a deterrent to others. Antonios Michael, Legal Officer, advised that confiscations would be made if evidence were found that benefits have been accrued by the defendant

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	<p>as a result of the illegal activity, but advised that this was a slow process due to the evidence-gathering required and could take up to 2 years. It was confirmed that a good news story would be issued if there was a positive result for the Council.</p> <p>It was suggested that the planning enforcement update might be made more strategic, and link in with the HMO licensing scheme as addressing HMOs was critical to regeneration issues. It was further suggested that, if enforcement action were to lead to a contribution to the Council from assets confiscated, this could be used to increase resources available for enforcement action. The Committee suggested that officers could speak to counterparts at the London Borough of Newham regarding their experiences with this. For information, Mr Michael advised that the Council would receive 18.5% of the value of assets seized under the Proceeds of Crime Act. Cllr Schmitz commented on arrangements for housing benefit paid to unlicensed HMOs to be returned to the Council, and it was agreed that he would circulate details of this to the rest of the Committee.</p> <p>Questions were raised regarding whether these issues were within the remit of the Committee, and it was agreed that clarification of the Committee's role in policy-making would be sought for future reference.</p> <p><b>NOTED</b></p>	<p>Clerk / Legal</p>
<p><b>REG21.</b></p>	<p><b>PERFORMANCE STATISTICS</b></p> <p>The Considered a report on Performance Statistics for development management, building control and planning enforcement. In response to a questions regarding what happened to those applications not determined within 13 weeks, it was report that these tended to be more complex cases, and that agreement would be sought with the applicants of such cases that determination could take longer than 13 weeks. As an example, an agreement had been entered into with Spurs that determination could take up to 2 years, and determination had actually been made within 18 months. The Committee requested that a spreadsheet showing the times of longer applications be provided for information in future.</p> <p>In response to a question regarding what happened when a caution was accepted, Mr Michael advised that this was an alternative to prosecution and where a caution was accepted, the site in question would be reverted to its original use and a follow-up visit undertaken to ensure that this had been complied with.</p> <p><b>NOTED</b></p>	
<p><b>REG22.</b></p>	<p><b>CERTIFICATES OF LAWFULNESS FOR EXISTING USE - CASES DETERMINED SINCE JANUARY 2009</b></p> <p>Paul Smith introduced a report on Certificates of Lawfulness, which looked at the work being done in this area and the decision-making processes. A procedure note of 2009 was appended to the report, which</p>	

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	<p>set out the criteria for the evidence required and details were also provided of certificates which had been revoked following discovery of false evidence. It was reported that changes in procedure had been implemented in 2009 after concerns that evidence was not being sufficiently robustly challenged.</p> <p>The Committee asked whether it would be possible for past enforcement notices to be made available online, in response to which Mr Smith advised that decisions could certainly be made available, but that not all supporting documentation could be published for reasons of confidentiality. In response to a question from the Committee, Mr Smith advised that all evidence submitted was tested, for example utility companies were contacted regarding the validity of bills submitted as evidence. The rigor of the tests administered had been increased, and staff had received training from Internal Audit on identifying false documents.</p> <p><b>NOTED</b></p>	
<b>REG23.</b>	<p><b>DELEGATED DECISIONS</b></p> <p>The Committee considered a report on decisions made under delegated powers between 26 September 2011 and 30 October 2011.</p> <p><b>NOTED</b></p>	
<b>REG24.</b>	<p><b>APPEALS</b></p> <p>The Committee considered a report on appeal decisions determined by the Department for Communities and Local Government during September 2011.</p> <p><b>NOTED</b></p>	
<b>REG25.</b>	<p><b>MEMBERSHIP OF PLANNING AND LICENSING SUB COMMITTEES</b></p> <p>The Committee considered a report on a change to the membership of the Planning Sub Committee, with effect from 1 January 2012, following the amendment of the membership of the Regulatory Committee approved by Full Council on 21 November 2011.</p> <p><b>RESOLVED</b></p> <ul style="list-style-type: none"><li>i) That it be noted that Cllr Hare will replace Cllr Reid as Member of the Regulatory Committee as confirmed by Full Council on 21 November 2011.</li><li>ii) That the variation of the Membership of the Planning Sub Committee, with effect from 1 January 2012, by the appointment of Cllr Hare to fill the vacancy arising from Cllr Reid no longer sitting on the Regulatory Committee be agreed.</li></ul>	

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<p><b>REG26.</b></p>	<p><b>NEW ITEMS OF URGENT BUSINESS</b></p> <p>There were no new items of urgent business.</p>	
<p><b>REG27.</b></p>	<p><b>DATES OF FUTURE MEETINGS</b></p> <p>The Committee considered agenda items and action points relating to future meetings, and the following comments were made:</p> <ul style="list-style-type: none"> <li>• Concerns had been raised regarding the timescales within which responses were received from Planning; in response, Mr Dorfman advised that timescales were not a matter for Committee deliberation but advised that targets for response times were in place and performance against these targets was monitored on a regular basis. The Committee noted this, but requested that a continued focus on performance be maintained.</li> <li>• It was suggested that the wording of consultation documents could be reviewed for clarity, as comments had been made it was not always easy to understand what was proposed. Mr Dorfman agreed that this would be looked at, and suggested that the Tottenham consultation document be circulated to Committee Members so that they could provide feedback on how clarity could be improved.</li> <li>• It was confirmed that issues with the availability of consultation documentation for Licensing applications had now been resolved and that all the necessary documents were now available online.</li> <li>• Members asked about how Councillors were briefed on relevant changes in legislation. Mr Dorfman advised that a planning legal update was circulated to members of the Planning Sub Committee on a monthly basis, and it was agreed that this should now be circulated to all Members.</li> <li>• The Chair asked Committee Members to advise him of any issues they wished raised with senior officers.</li> </ul> <p>Future dates of Regulatory Committee meetings were noted:</p> <p>Tuesday 21 February 2012 Thursday 12 April 2012</p> <p>The meeting closed at 21:10hrs.</p>	<p>M Dorfman</p> <p>Planning</p> <p>All</p>

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CLLR ALI DEMIRCI

Chair