

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

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- 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~~

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~~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

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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:

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- (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

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- 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,

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- 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

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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

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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 _____