

**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.