

COUNCIL 09 JANUARY 2006

Chair:
Councillor Reg Rice

Deputy Chair:
Councillor Jean Brown

INTRODUCTION

- 1.1 This report covers three matters considered by the General Purposes Committee at our meeting on 19 December 2005. All these reports resulted in recommendations from the Committee to full Council to make amendments to the Council's Constitution.

**ITEMS FOR DECISION FROM THE COMMITTEE MEETING ON
19 DECEMBER 2005**

**2. AMENDMENTS TO SCRUTINY REVIEW AND CALL-IN
PROCEDURES**

- 2.1 We received a report on proposed changes to the procedures for Scrutiny Reviews and Call-In.
- 2.2 The proposals set out in Appendix 2 to this report are intended to expedite the consideration and practical implementation of recommendations from Scrutiny Reviews commissioned by the Overview and Scrutiny Committee (OSC). In each case there would be an implementation action plan which would assist OSC in monitoring the way recommended reforms are put into practice and in assessing outcomes and service improvements.
- 2.3 The most important procedural change would be to leave The Executive to make the final decision on recommendations from OSC arising from Scrutiny Reviews. In most cases there would be no need for a further report to full Council.
- 2.4 When this proposal came before us at our meeting on 24 October we did express concerns about leaving The Executive as the final arbiter of scrutiny recommendations in the event that there was any significant dispute about them with OSC.
- 2.5 We had asked for further consultation with Members and, following this, we are now recommending a new sub-paragraph 1(c)(x) in Part I.2 (Appendix 2 at page 3). This reads:

“In the event that The Executive does not accept one or more of the recommendations in the final report from the Overview and Scrutiny Committee, the Chair of the Overview and Scrutiny Committee has the

right to require that the matter in dispute shall be reported to the next available meeting of full Council for determination.”

- 2.6 We considered that this revised proposal preserves the balance between “Scrutiny” and “The Executive” and the robustness of the Scrutiny function. It would only come into play in a small minority of cases and so would not impede the measures to speed up Scrutiny Reviews generally. We noted that full Council would also remain the final arbiter of recommendations from Scrutiny Reviews about non-executive or regulatory functions.
- 2.7 There are proposals in paragraph 16 of Appendix 2 to bring the order of proceedings at OSC and Scrutiny Review Panels into line with the normal practice for other Committees. We also decided not to recommend any change to paragraph 1(b)(i) in Appendix 2.
- 2.8 Adopting all the above changes to Scrutiny Reviews would result in consequential amendments to the Constitution at Part I.1 (the Overview and Scrutiny Article) and Parts E.1 and E.7 (the functions and terms of reference of full Council). The text changes are set out in Appendices 1, 4 and 5 to this report.
- 2.9 We had previously asked for consultation with Members on the relatively minor amendments proposed to the Call-In procedure which were found to be acceptable. Most of these are clarifications or corrections but do not alter the substance of the existing procedure. We agreed to a late tabled proposal to amend paragraph 1 in Part I.3 (Appendix 3 at page 1) which would make it clear that the right to Call-In does not apply to an executive decision by way of an appeal hearing or a quasi-judicial procedure.
- 2.10 The most significant other points are:
- (i) To provide that whenever there is a valid Call-In, the Monitoring Officer or Director of Finance must submit a report to OSC advising whether the original decision of The Executive was inside or outside the policy/budget framework (see paragraph 6);
 - (ii) To make clear that it is the Members of OSC who determine whether the original decision of The Executive was inside or outside the policy/budget framework (see paragraph 10);
 - (iii) To delete the existing option for OSC to “fail to take any action” which is unnecessary since OSC will keep the option to “decide not to take any further action”.
- 2.11 All the recommended text changes are set out in Appendix 3 to this report.

WE RECOMMEND

That Council adopt the amendments to the Overview and Scrutiny provisions and the full Council provisions set out in Appendices 1, 2, 3, 4 and 5 to this report and that Parts I.1, I.2, I.3, E.1 and E.7 of the Council's Constitution be amended accordingly.

3. AMENDMENTS TO THE SCHEME OF DELEGATION ON PLANNING ENFORCEMENT

- 3.1 We received a report about the Scheme of Delegation to Officers and proposed amendments to ensure the effectiveness of Planning Enforcement action.
- 3.2 Haringey's Scheme of Delegation has a generally expressed delegation of "all enforcement action" to senior officers within the Planning and Enforcement Services. In a recent High Court case, involving Kirklees Council, a similar delegation was held to be ineffective. It was insufficiently clear to allow officers to authorise an application to the Court for an injunction to restrain threatened unlawful development.
- 3.3 Although the position at Kirklees was not entirely the same as in Haringey, we agreed that as a matter of precaution all the statutory powers with respect to enforcement, prosecution, injunctions, rights of entry and related matters should be set out expressly section by section in the same way as the other Planning functions in the schedule of specific statutory delegations.
- 3.4 It has always been the intention that such powers should be delegated to officers and so there will be no practical change to the scope of delegation or the general supervision by Members of the exercise of delegated powers. It is important that matters such as the authorisation of injunction proceedings are delegated to senior officers so that action can be taken speedily to prevent breaches of planning control. We noted that no action had been taken recently by Haringey officers which would be affected by the Kirklees case.
- 3.5 We were asked to recommend general changes to the description of the officers granted delegated powers. The reference to the vacant post of "Group Manager – Planning" should be removed and the two "Heads of Development Control" should be so described without reference to responsibilities for the "East" or "West" areas which may be the subject of re-organisation within the Service. These changes would have effect throughout the Scheme of Delegation.

- 3.6 We asked for an amendment to clarify the enforcement powers under section 43 of the Planning (Listed Building and Conservation Areas) Act 1990. All the proposed text changes are set out in Appendix 6 to this report.

WE RECOMMEND

That Council adopt the amendments to the Scheme of Delegation to Officers set out in Appendix 6 to this report and that Part F.7 of the Council's Constitution be amended accordingly.

4. AMENDMENTS TO THE CONSTITUTION RELATING TO LICENSING AND GAMING

- 4.1 We received a report on the proposed adoption of the Haringey Local Licensing Procedure Rules and changes to the Constitution which would be desirable to deal effectively with the new responsibilities for regulating gaming machines that have come to the Council from the Magistrates Court.
- 4.2 We noted that the Licensing Sub-Committees have been successfully conducting regular hearings of contested applications under the Licensing Act 2003 for at least 4 months under the Local Licensing Procedure Rules first approved by the Licensing Committee on 15 March 2005.
- 4.3 The content of these Rules is within the jurisdiction of the Licensing Committee. At its last meeting on 6 December, the Licensing Committee had made some minor amendments to the Rules and had then requested us to recommend to full Council the formal adoption of the Rules as part of the Council's Constitution. We noted that comparable procedural provisions, relating to matters coming before the Planning Applications Sub-Committee, are already incorporated into the Constitution.
- 4.4 The text of the Rules is set out in Appendix 7 to this report.
- 4.5 We were asked to consider the grant of a new delegated power to the Head of Legal Services to make arrangements to dispose of cases remitted by the Magistrates Court back to the Council after an appeal. While most appeal cases would be heard afresh by the Magistrates, in some cases the Court may regard it as appropriate for the Council to re-hear the matter but acting in accordance with the Court's "Direction" on a procedural point.

- 4.6 In such cases the practical arrangements would be within the jurisdiction of the Licensing Committee. However, a meeting of the full Committee would not be a convenient way of dealing with relatively minor procedural decisions. The better alternative would be for a formal delegation to the Head of Legal Services, acting in consultation with the Chair of the Licensing Committee, of the decisions on such arrangements.
- 4.7 We noted that the Chair of the Licensing Committee could always ask for the decision on the arrangements to be referred to that Committee in an important or sensitive case. The proposed delegation would not prejudice the right of Members of the relevant Licensing Sub-Committee to make the substantive decision on the appeal case at the end of the re-hearing.
- 4.8 The text of the proposed new delegation is set out at the bottom of Appendix 8 to this report under the heading “Licensing Act 2003 – section 181”
- 4.9 We considered a report previously before the last meeting of the Licensing Committee about the Council’s new responsibilities for regulating gaming machines, technically known as permits for “amusement with prizes” gaming machines under section 34 of the Gaming Act 1968. The new responsibilities relate to premises licensed under the Licensing Act 2003 for the sale of alcohol and they came to the Council from the Magistrates on the full coming into force of that Act on 24 November 2005.
- 4.10 We were advised that the Council would have a discretion whether or not to grant a permit for a gaming machine in each case but it could not pass a general resolution to prohibit all such machines in premises licensed to sell alcohol. We noted that the former practice of the Magistrates had been to grant permits for up to two gaming machines automatically without a hearing. We also noted that when the provisions of the Gambling Act 2005 come into force in 2007, premises licensed to sell alcohol will automatically be entitled to two gaming machines on compliance with a simple notification procedure.
- 4.11 In the light of the above, we approved the proposal to extend the existing delegated power of the Assistant Director, Enforcement so as to allow the grant of permits for one or two gaming machines. We required an amendment to this delegation to make it clear that it only applies to premises where alcohol is consumed on the premises at a proper bar. The recommended delegation in this form is set out in Appendix 9 to this report in the first item under section 34 of the Gaming Act 1968. Any applications for more than two gaming machines would come to Members for decision.

- 4.12 We noted that the Licensing Committee on 6 December had passed a general resolution to grant or renew permits for gaming machines only in respect of premises licensed for the sale of alcohol as described above or premises which are primarily amusement arcades. We were advised that the Council cannot refuse to renew permits for an existing amusement arcade except where there is clear evidence of non-compliance with the rules excluding under 18s, in which case officers would refuse renewal. Any applications for permits for a new amusement arcade would come to Members for decision.
- 4.13 The delegation to the Assistant Director Enforcement was proposed for amendment to reflect the above points. The changes are set out in Appendix 9 in the second item under section 34.
- 4.14 We were advised that the new jurisdiction for gaming machines must be exercised by the Council's 2003 Act Licensing bodies although there are distinct rules for this under the Gaming Act 1968. The terms of reference for the Licensing Sub-Committees in Part E.7 of the Constitution need to be amended to include this new jurisdiction.
- 4.15 The terms of reference also need to include the new jurisdictions to determine the rare applications for (i) permits for small lotteries under section 16 of the Lotteries and Amusements Act 1976, and (ii) orders to allow certain games to be played in premises licensed for the sale of alcohol under section 6 of the Gaming Act 1968.
- 4.16 All these recommended changes to the terms of reference of the Licensing Sub-Committees are set out in Appendix 10 at paragraphs (q), (r) and (s).

WE RECOMMEND

That Council adopt:

- (i) the "Haringey Council – Local Licensing Procedure Rules for Hearings under the Licensing Act 2003" set out in Appendix 7 to this report as a new Part C.9 of the Council's Constitution, and
- (ii) the amendments to the Scheme of Delegation to Officers set out in Appendices 8 and 9 to this report and that Part F.7 of the Constitution be amended accordingly, and
- (iii) the amendments to the terms of reference of the Licensing Sub-Committees set out in Appendix 10 to this report and that Part E.7 of the Constitution be amended accordingly.