

LICENSING COMMITTEE

AGENDA

2.30pm	Friday 11 March 2005	Havering Town Hall Main Road, Romford
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Members 13: Quorum 5

COUNCILLORS:

Conservative Group (6)

Peter Gardner (Chairman)
Alex Smith (Vice-Chairman)
Wendy Brice-Thompson
Edward Cahill
Georgina Galpin
Barry Oddy

Residents' Group (4)

Malvin Brown (Vice-Chairman)
Ivor Cameron
John Mylod
Owen Ware

Labour Group (3)

Graham Carr (Vice-Chairman)
Jeff Stafford
Harry Webb

**For information about the meeting please contact: Garry Chick-Mackay (01708) 432441
E-mail: garry.chickmackay@haverling.gov.uk**



NOTES ABOUT THE MEETING

1. HEALTH AND SAFETY

The Council is committed to protecting the health and safety of everyone who attends meetings of its Committees.

At the beginning of the meeting, there will be an announcement about what you should do if there is an emergency during its course. **For your own safety and that of others at the meeting, please comply with any instructions given to you about evacuation of the building, or any other safety related matters.**

2. MOBILE COMMUNICATIONS DEVICES

Although mobile phones, pagers and other such devices are an essential part of many people's lives, their use during a meeting can be disruptive and a nuisance. Everyone attending is asked therefore to ensure that any device is switched to silent operation or switched off completely.

3. CONDUCT AT THE MEETING

Although members of the public are welcome to attend meetings of the Committee, they have no right to speak at them. Seating for the public is, however, limited and the Council cannot guarantee that everyone who wants to be present in the meeting room can be accommodated. When it is known in advance that there is likely to be particular public interest in an item the Council will endeavour to provide an overspill room in which, by use of television links, members of the public will be able to see and hear most of the proceedings.

The Chairman of the meeting has discretion, however, to invite members of the public to ask questions or to respond to points raised by Members. Those who wish to do that may find it helpful to advise the Committee Officer before the meeting so that the Chairman is aware that someone wishes to ask a question.

PLEASE REMEMBER THAT THE CHAIRMAN MAY REQUIRE ANYONE WHO ACTS IN A DISRUPTIVE MANNER TO LEAVE THE MEETING AND THAT THE MEETING MAY BE ADJOURNED IF NECESSARY WHILE THAT IS ARRANGED.

If you need to leave the meeting before its end, please remember that others present have the right to listen to the proceedings without disruption. Please leave quietly and do not engage others in conversation until you have left the meeting room.

AGENDA ITEMS

1 CHAIRMAN'S ANNOUNCEMENTS

2 APOLOGIES FOR ABSENCE AND ANNOUNCEMENT OF SUBSTITUTE MEMBERS
(if any) - receive.

3 DECLARATION OF INTERESTS

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

4 MINUTES

To approve as a correct record the minutes of the meeting of the Committee held on 24 November 2004, and to authorise the Chairman to sign them.

5 PROCEDURE FOR HEARINGS UNDER THE LICENSING ACT 2003 – report to follow

6 URGENT BUSINESS

To consider any other item in respect of which the Chairman is of the opinion, by reason of special circumstances which shall be specified in the minutes, that the item should be considered at the meeting as a matter of urgency.

Stephen Evans
Chief Executive

MINUTES OF A MEETING OF THE LICENSING COMMITTEE
24 November 2004 (7.30pm – 8.25pm)
Haverling Town Hall, Romford

Present: Councillors Peter Gardner (in the Chair), Malvin Brown, Ivor Cameron, Graham Carr, Georgina Galpin, John Mylod, Barry Oddy, Alex Smith, Frederick Thompson, Owen Ware and Harry Webb

Apologies for absence were received from Councillors Wendy Brice-Thompson, Eddie Cahill and Jeff Stafford

Substitutes – Councillor Frederick Thompson (for Wendy Brice-Thompson)

There were no declarations of interest.

All decisions were agreed with no vote against.

* For part of the meeting.

4. MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held 7 September 2004 were agreed as a correct record and signed by the Chairman.

5. APPROVAL OF HAVERING'S DRAFT STATEMENT OF LICENSING POLICY

The Committee received the draft Statement of Licensing Policy which the Borough was required to produce under the Licensing Act 2003. The draft SLP had been put out to consultation, and a number of responses had been received. The Committee was requested to consider the draft SLP and the responses received during the consultation process, and to agree a finalised SLP to be put to Council for final approval.

A Member questioned whether the policy would effect the Council's work in relation to enforcement against fly-posting. It was explained that the policy would strengthen the work that was already being carried out in this area.

It was suggested by a Member that the encouragement of chill-out areas could be open to abuse by licensed premises. It was explained that alcohol could not be sold or consumed during the chill-out period. The Committee noted that this had been included in order to lead to a phased dispersal of people in Romford Town Centre, as well as to allow people to sober up

Central Area Committee, 24 November 2004

before making their way home. In this way it was hoped that the level of public disorder could be decreased.

The Committee noted that the SLP would be open to amendment once it had been formally approved by Council, should trends develop which the Committee felt weren't adequately covered within the Policy.

RESOLVED

That the Statement of Licensing Policy as laid out in the report be agreed, and recommended to Council for final approval, subject to the following amendments –

- a. That the words 'inter alia' and 'of a London Borough' be removed from the third bulletpoint of paragraph 1.4.**
- b. That the words 'demands for licensed premises in that' be removed from paragraph LP18**
- c. That the wording of paragraphs 5.8 through to 5.11 be amended so as to widen the types of CCTV systems which could be used so as to ensure that the most suitable systems are used for each licensed premises.**

LICENSING COMMITTEE SUPPLEMENTARY AGENDA

2.30pm

**Friday
11 March 2004**

**Havering Town Hall
Main Road, Romford**

Late report

5 PROCEDURE FOR HEARINGS UNDER THE LICENSING ACT 2003

**For information about the meeting please contact: Garry Chick-Mackay (01708) 432441
E-mail: garry.chickmackay@havering.gov.uk**





MEETING	DATE	ITEM
LICENSING COMMITTEE	11 MARCH 2005	5

This report is submitted with the agreement of the Chairman as an urgent matter, pursuant to Section 100B(4) of the Local Government Act 1972

REPORT OF THE CHIEF EXECUTIVE

SUBJECT: PROCEDURE FOR HEARINGS UNDER THE LICENSING ACT 2003

WARD: ALL

SUMMARY

The Licensing Act 2003 provides guidance on how hearings into applications for licences made under the act are to be organised. A proposed hearings procedure (attached as Appendix 1) has been produced in order to comply with the Licensing Act 2003 (Hearings) Regulations 2005 (attached as Appendix 2 © Crown copyright acknowledged).

RECOMMENDATION

That the Committee considers the draft hearings procedure and, subject to any necessary amendments, adopts it for use at hearings arranged under the Licensing Act 2003, subject to the right of Members at individual hearings to agree variations where circumstances require.

REPORT DETAIL

1. The Licensing Act 2003 (Hearings) Regulations 2005 came into force on 7 February 2005. The regulations set out the means by which hearings under the Licensing Act 2003 may be heard by the Licensing Committee and its Sub-Committees
2. Regulation 7 provides that parties to the hearing shall be given prior notice of any issues of clarification which the Licensing Authority may require. In order to consider whether there are any issues of clarification to be requested, it is suggested that the Chairman of the Sub-Committee meet with the Clerk and/or Legal Advisor in advance to the hearing. These issues will then be advised to applicants and others in order to allow them to address the issues in their submissions at the hearing.
3. Regulation 9 provides that a hearing may be dispensed with, if all parties agree that a hearing is unnecessary.
4. Regulation 20 allows that, should a party to a hearing not attend, the Licensing Authority may decide to hold the hearing in the absence of that party, or to adjourn the meeting if necessary.
5. Regulation 22 requires the Licensing Authority to explain the procedure to be followed at the hearing, and to consider requests for permission for another person to appear at the hearing.
6. Regulation 23 requires that the hearing take the form of a 'discussion'. There has so far been no clear explanation of what is meant by this, and it seems likely that this will be more clearly defined through the development of case law. Regulation 23 also states that a hearing will not include cross-examination of parties, unless the Licensing Authority considers that it is required. This will have to be considered on a case by case basis.
7. Regulation 24 allows for each party to have an equal period of time in which to state their case. Regulation 25 allows for the Licensing Authority to remove a person from the hearing if they are behaving in a disruptive manner. Should a person be so removed, such a person would have the right to submit any information in writing that they would have been entitled to give orally.
8. The Committee may wish to note that there are limitations on who is defined as an interested party and thus, who may make representations. The following groups are considered to be interested parties:
 - People living in the vicinity of the premises, or bodies representative of them.
 - Businesses operating in the vicinity of the premises, or bodies representative of them.

As such, Members will be unable to make representations on an application unless they are acting in a representative capacity for example, on behalf of their Ward organisation. This should be made clear by the Member, in order that their representation be considered as valid.

9. The draft hearings procedure includes a list of potential conflicts of interest, under which Members may be excluded from considering an application. This includes Members who have considered an application for the premises at Regulatory Services Committee in the previous 12 months, Ward Councillors for the Ward in which the premises applying for the application is based, and Ward Councillors for a Ward which is likely to be affected by the application.

Financial Implications and risks: There are none.

Legal Implications and risks:

The relevant legislation governing this procedure is The Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005. It sets out certain guidelines to be followed at the hearing but states at Section 21 that the authority shall determine the procedure to be followed at the hearing.

In addition to this care has been taken to ensure that the procedure accords with the Human Rights Act 1998 (HRA 1998) and the principles of Natural Justice. in order to minimise the risk of challenge on those grounds..

There is also a risk of litigation resulting from a too narrow or wide interpretation of the term "vicinity" relating to the exclusion of objectors.

Human Resources Implications and risks: There are none.

Equalities and Social Inclusion implications: There are none.

Staff Contact:	Garry Chick-Mackay
Designation:	Committee Officer
Telephone No:	(01708 432441)
E-mail address	garry.chickmackay@haverling.gov.uk

STEPHEN EVANS
Chief Executive

Background Papers List

PROCEDURE FOR HEARINGS UNDER THE LICENSING ACT 2003

1. Members of the Sub-Committee:

- 1.1 The Sub-Committee shall comprise 3 members of the Licensing Committee, with a quorum of 2 members.
- 1.2 Members of the Licensing committee must be excluded from hearing an application where they:
 - 1.2.1 have considered an application in respect of the premises in the previous 12 months as a Member of the Regulatory Services Committee; or
 - 1.2.2 are a Ward Councillor for the Ward in which the premises, subject to the application, are located; or
 - 1.2.3 are a Ward Councillor for a Ward which is likely to be affected by the application or;
 - 1.2.4 have a personal interest in the application.

2. Roles of other participants:

- 2.1 The Legal Advisor is not a party to the hearing. The role of the Legal Advisor is to provide legal advice relating to the application and submissions.
- 2.2 The Clerk is not a party to the hearing. The role of the Clerk is to record the hearing and the decisions of the Sub-Committee, and ensure efficient administration

3. Preliminary meeting:

- 3.1 Prior to the hearing, the Sub-Committee Chairman will meet with the Legal Advisor and/or Clerk to determine whether further clarification is required of any issues contained in an application or a submission.
- 3.2 During this preliminary meeting no decisions will be made or discussions held regarding the substantive merits of the application or submissions.

4. Location and seating positions:

- 4.1 All hearings will be heard at the Havering Town Hall unless otherwise directed.
- 4.2 Interpreters will be provided by the Council if required, and requested in advance of the hearing.

5. Notification of attendance:

The Chair will enquire of the parties who is in attendance and the parties will indicate their names and who they represent.

6. Preliminary matters:

6.1 Prior to the commencement of the hearing the Chair of the Sub-Committee will orally inform the parties whether their applications to have certain people attend the hearing (e.g. witnesses) have been granted or refused. Note this relates to people other than those attending on behalf of a party in the capacity as a representative of the party.

6.2 Prior to the commencement of the hearing the Chair of the Sub-Committee will outline the procedure to be followed at the hearing.

7. Introduction of the application:

7.1 The Licensing officer will outline:

- 7.1.1 details of the application and relevant representations received from the parties;
- 7.1.2 relevant legislation ;
- 7.1.3 relevant Licensing Policy; and
- 7.1.4 the time limit in which the Council must reach a determination.

8. Documentary evidence:

8.1 Documentary or other information in support of applications, representations or notices should be provided to the Sub-Committee at least 7 clear working days before the hearing. If this information is produced at the hearing it will only be taken into account by the Sub-Committee if the Sub-Committee and all the parties consent to its submission. Permission to have this information included in the hearing should be requested at the beginning of the hearing before any oral submissions have been made.

8.2 Statements made by people in support of a party's representation who are not present at the hearing, must be signed by the maker, dated and witnessed by another person. The statement must also contain the witness's full name and occupation.

9. Submissions:

9.1 The chairman will invite each of the parties at the hearing or their representative sequentially to address the Sub-Committee and call any person/s to whom permission has been granted to appear. Each party will be allowed a maximum period of 10 minutes in which to address the Sub-Committee and call persons on his/her behalf.

9.2 This 10 minute period is where each party has the opportunity to orally address the Sub-Committee and clarify any points in which the Sub-Committee has sought clarification prior to the hearing. This 10 minute period should be uninterrupted unless a member of the Sub-Committee or Legal

Advisor considers that the speaker is making submissions that are irrelevant, frivolous or vexatious.

9.3 Members of the Sub-Committee may ask questions of any party, at any time during the proceedings. Time taken in dealing with a Member's question will not be taken into account in determining the length of time available to the party in question to make their representation.

9.4 The sequence in which each of the parties will be invited to address the Sub-Committee will normally be in the order of:

- the Chief Officer of Police;
- the Fire Authority;
- the Health and Safety at Work Enforcing Authority;
- the Local Planning Authority;
- the Local environmental Health Authority;
- the Local Weights and Measures Authority;
- the Authority Responsible for the Protection of Children from Harm;
- a navigation or other authority responsible for waterways; and
- any other party that has submitted representations in respect of the application, certificate, notice or other matter appearing before the Sub-Committee;
- the party that has submitted the application, certificate, notice or other matter appearing before the Sub-Committee.

9.4.1 On the discretion of the Sub-Committee the above order may be varied.

10. Cross-Examination:

Where witnesses have been permitted by the Sub-Committee to speak at the hearing on behalf of a party, permission must be sought from the Sub-Committee before another party can ask the witness questions. This process of questioning is normally referred to as cross-examination. The Sub-Committee will allow cross-examination only where it is necessary to assist it in considering the representations or application.

11. Relevance:

11.1 Information submitted at the hearing must be relevant to the applications, representations, or notice and the promotion of the licensing objectives. The Sub-Committee is entitled to exclude any information it considers to be irrelevant whether presented in written or oral form. The licensing objectives are:

- 11.1.1 The prevention of crime and disorder;
- 11.1.2 Public safety;
- 11.1.3 The prevention of public nuisance; and
- 11.1.4 The protection of children from harm.

12. Failure of parties to attend the hearing:

If a party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing the Sub-Committee may either adjourn the hearing or hold the hearing in the party's absence. Where the hearing is held in

the absence of a party, the Sub-Committee will still consider the application, representation or notice submitted by that party.

13.Adjournments and extension of time:

13.1 The Sub-Committee may adjourn a hearing to a specified date or extend a notice period except where it must make a determination within certain time limits in the following specific applications:

- 13.1.1 Applications for conversion of existing licences where the Sub – Committee must make a determination within 2 months of the application first being received. In default of a decision being made the application will be treated as being granted;
- 13.1.2 Applications for variation of existing licences where the Sub-Committee must make a determination within 2 months of the application first being received. In default of a decision being made the application will be treated as being rejected;
- 13.1.3 Applications for conversion of existing club certificates where the Sub-Committee must make a determination within 2 months of the application being first received. In default of a decision being made the application will be treated as being granted;
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- 13.1.5 Applications made by holders of justices' licences for personal licences must be determined within 3 months of the application first being received. In default of a decision not being made within this period the application will be treated as being granted;
- 13.1.6 Review of premises licences following closure orders where the Sub-committee must make a determination within 28 days of receiving notice of the closure order.

14.Sub-Committee's determination of the hearing:

14.1 At the conclusion of the hearing the Sub-Committee will deliberate in private accompanied by the Clerk and the Legal Advisor who will be available to assist the Sub-Committee with any legal problems but will not participate in any decision making of the Sub-Committee.

14.2 The Sub-Committee will normally make its determination and announce its decision at the end of the hearing.

14.3 Where all parties have notified the Sub-Committee that a hearing is not required the Sub-Committee must make its determination within 10 working days of being given notice that the hearing is not required.

15. Power to exclude people from hearing:

15.1 The public are entitled to attend the hearing as spectators. However, the Sub-Committee may exclude any person from the hearing including any person assisting or representing a party where:

15.1.1 it considers that the public interest would be best served by excluding the public or the individual person from the hearing; or

15.1.2 that person is behaving in a disruptive manner. This may include a party who is seeking to be heard at the hearing. In the case where a party is to be excluded, the party may submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave the hearing.

16. Recording of proceedings:

A written record of the hearing will be produced and kept for 6 years from the date of the determination of the hearing.

17. Power to vary procedure:

The Sub-committee may depart from following any of the procedures set out in this document if it considers the departure to be necessary in order to consider an application, notice or representation.

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 - a navigation or other authority responsible for waterways; and
 - any other party that has submitted representations in respect of the application, certificate, notice or other matter appearing before the Sub-Committee;
 - the party that has submitted the application, certificate, notice or other matter appearing before the Sub-Committee.
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