



London Borough of Hammersmith & Fulham

Licensing Committee Minutes

Wednesday 6 July 2011

PRESENT

Committee members: Councillors Colin Aherne, Adronie Alford, Victoria Brocklebank-Fowler (Chairman), Michael Cartwright, Marcus Ginn, Peter Graham, Wesley Harcourt, Lucy Ivimy, Caroline Needham, Tom Crofts and Daryl Brown

Other Councillors: Councillor Greg Smith, Cabinet Member for Resident Services

Officers: Nick Austin, Assistant Director, Public Protection and Safety, Valerie Ellison, Head of Commercial Services, Sanji Manju, Trading Standards Manager, Lewis Aldous, Lisa White, Adrian Overton, Licensing Officers, Jon Gorst, Senior Environmental Services Lawyer, and Owen Rees, Committee Coordinator.

1. MINUTES

RESOLVED THAT:

The minutes of the meeting held on 12th October 2010 be confirmed and signed as an accurate record of the proceedings.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Carlebach, Hamilton, Karmel, and Thorley.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. ANNUAL LICENSING UPDATE

Valerie Ellison, Head of Commercial Operations, introduced the report, which set out licensing activity in the 2010-11 municipal year, planned activity for the 2011-12 year and future developments in licensing law and practice. She drew the Committee's attention to the section on training for Licensing Committee members. She said that officers had prepared a training pack to issue to new members, and that this would replace a formal training session. Members would also be invited to consult with licensing and/or legal officers as necessary.

Councillor Needham and Cartwright suggested that new members should attend a Licensing Sub-Committee as an observer. The Committee agreed that new members should be invited to attend a Licensing Sub-Committee before they were invited to sit as a Sub-Committee member.

The Committee then received 3 short presentations on aspects of the report

Shepherds Bush Cumulative Impact Policy

Adrian Overton, Licensing Officer, presented to the Committee on the introduction of the Shepherds Bush Cumulative Impact Zone, which had been agreed by the meeting of Full Council on 29 Jun 2011. The introduction of the zone required premises to explain, should they seek to extend licensable activities, why this would not have an effect, removing the onus on those making representations to do so. The zone had been designed based on extensive research and field observation, and was designed to have a positive impact on the area, by giving sub-committees greater powers to prevent further disruption.

Rebalancing the Licensing Act

Lewis Aldous, Licensing Officer, gave a presentation on the measures within the Police Reform and Social Responsibility Bill, which was currently at the Third Reading stage in Parliament. The measures sought to strengthen the ability of local authorities, the police and residents to meet the licensing objectives. Changes included licensing departments becoming responsible authorities, health authorities receiving the same status, and instituting a need for applicants to consider the local area in their application, together with a number of smaller measures, including changes to the TEN process and an abolition of the proximity requirement for representations.

The Chairman asked officers to outline the changes to the TEN process. Lewis Aldous said that the Bill would add an expedited 5 day application process for TENs, but with the police able to turn down an application made under that process without recourse to a Sub-Committee; the 10 day process would also remain in place, with the addition of Environmental Protection as a responsible authority able to make an objection. Nick Austin, Assistant Director of Public Protection and Safety, said that the shorter process would enable applications to be made at shorter notice, benefiting community events and responsible licensees, without sacrificing the current safeguards.

Councillor Aherne suggested that the elimination of vicinity could be a mistake, meaning that authorities could receive large volumes of representations from people who lived a long way from the premises under consideration. Councillor Smith said that he appreciated those concerns, but that the current rules prevented people from making representations with regards to premises that were more than 0.5 miles from their home or place of business. He said that it would be open to a Sub-Committee how much weight they chose to put on any given representation.

Nick Austin said that the Statement of Licensing Policy could be amended in the light of any legislative change, giving guidance on the relevance of representations.

The Chairman asked about the proposed Early Morning Restriction Orders, and how this would operate. Lewis Aldous said that the orders would enable a licensing authority to set a time period during which a licensable activity would not be allowed to be carried out in a given area. Should such an order be imposed, existing premises with hours that extended beyond that time would be required to vary their licence to conform with the order. Nick Austin said that a strong evidence base would be required for the imposition of such an order, which if drawn on a borough-wide basis, might adversely affect premises that were operating responsibly at present.

Licensing Action Group and Cocaine Swabbing

Lisa White, Licensing Officer, gave a presentation on the work of the Licensing Action Group (LAG). The LAG, which was scheduled to meet fortnightly, brought together officers from licensing and the responsible authorities, to plan work and to monitor premises jointly. She also outlined the cocaine swabbing officers undertook, whereby licensing officers checked for traces of cocaine on licensed premises, and the steps taken when it was found.

Councillor Graham asked if the rate of detection high, and Councillor Crofts asked what measures were taken when cocaine was repeatedly detected. Lisa White said that the rate of detection was high, and that a Drug Indication Notice was issued to premises, as well as the Police being advised. However, Licensing officers had no powers of sanction against a premises in this area.

Councillor Cartwright said that alcohol misuse was likely a larger cause of crime in the borough than cocaine use. Councillor Smith said that the operations aimed to reduce the use of cocaine, rather than necessarily hold the licensee directly responsible for its use. He added that while cocaine use of the type detected may not be as significant in causing associated crime as alcohol, it was a significant part of the high end drugs trade, which was a source of crime in itself, and which the Council and Police were seeking to combat.

Legal Update

Jon Gorst, Senior Environmental Services Lawyer, updated the Committee on individual cases, and case law of interest. He noted that the report had been reformatted following the Committee's request of the previous year. Cases described included The Morrison, which had been the subject of a Section 161 closure notice, and which was the subject of a current appeal, The Raven, which had been the subject of a successful application for review of the licence by the Council's Environmental Protection Service, Booty Supermarket, which had been the subject of a successful application for review of the licence following the detection of counterfeit and contraband alcohol on the premises, and which was the subject of a current appeal, and Supersave, which had been the subject of a successful application for review of the licence following the failure of two test purchases.

He noted the limitations on the power to suspend a licence, whereby an appeal would mean that the suspension of the licence would be lifted until the appeal had been heard.

He also set out the 2 appeals that had been decided during the municipal year. Firstly, he described the appeal made in relation to NISA Local, which had been decided in the local authority's favour. The applicant had applied to extend their hours for off-sales to 24 hours per day, and appealed the Sub-Committee's decision to agree the extension. The court had found against the appellant, with the volume of evidence of street drinking in the area a crucial factor in its decision. The Council had received considerable support from the Police and local residents in contesting the appeal, and considered this crucial to its success.

Secondly, he described a judicial review brought by Prime Foods Ltd against the decision to revoke its licence as the licence holder was insolvent, under Section 27 of the Licensing Act. The judicial review had upheld the Council's decision. However, a recent High Court case, Beechan Pizza vs Coventry City Council, had found that if an insolvent company was subsequently reinstated, its licence should be reissued, and that it should be considered that the licence had never lapsed.

Finally, he described the outcome of Westminster City Council vs the Hope and Glory Public House, which had found in favour of the Council. The court's decision had placed emphasis on the reasoning of the Sub-Committee in hearing the application, stating that "the fuller and clearer the reasons for a decision...the more force they will carry."

Councillor Ginn asked about what the Council did when an issue like Beechan Pizza vs. Coventry City Council arose. Valerie Ellison said that the Council attended regional forums which were able to make collective representations on issues of concern, though the judgement in question was a recent one, and would probably be challenged in the courts. Nick Austin said that Licensing officers had done a great deal of work on fee collection and insolvent companies, though they were restricted by the limitations the Licensing Act placed on the Council's ability to collect debt on unpaid fees. The Council had raised the issue with the DCMS prior to the implementation of the Licensing Act and expected the amendments to the Act to address the issue.

Councillor Ginn asked whether the Council publicised the outcome of appeal hearings. Nick Austin said that appeal decisions were discussed within the licensed trade, and that licensees were keen to be treated fairly in comparison to other licensees.

Licensing and the Police

Police Sergeant Stuart Ratcliffe, Licensing Sergeant for Hammersmith and Fulham, updated the Committee on his work, including his participation in the LAG and the NISA Local appeal. He described the work he was doing to promote licensing to other police working in the area, including the Safer Neighbourhoods Teams, with the consequence of improved intelligence and evidence for

representations. He also said that he would be making a number of applications for review, which would come before the Sub-Committee in the following months.

The Chairman thanked PS Ratcliffe for his attendance, and noted the improved standard of evidence that Sub-Committees were receiving.

Councillor Ivimy said that residents were grateful for the work that had gone into the NISA Local appeal, and the outcome achieved. PS Ratcliffe said that resident input was crucial for appeal hearings, particularly given the time lapse from the Sub-Committee hearing and the different evidential standards. He asked that Councillors convey this to residents where appropriate.

RESOLVED THAT

The report be noted.

Meeting started: 7.00 pm
Meeting ended: 8.41 pm

Chairman

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