



London Borough of Hammersmith & Fulham

Licensing Committee Minutes

Thursday 14 January 2010

PRESENT

Councillor Victoria Brocklebank-Fowler (Chairman)
Councillor Adronie Alford
Councillor Steve Hamilton
Councillor Alex Karmel
Councillor Greg Smith
Councillor Eugenie White
Councillor Michael Cartwright
Councillor Wesley Harcourt

Officers:

Nick Austin, Assistant Director, Public Protection And Safety
Oliver Sanandres, Safety and Licensing Manager
Adrian Overton, Licensing Officer
Lisa White, Licensing Officer
Jon Gorst, Principal Environmental Services Lawyer
Alex Russell, Environmental Services Lawyer
Owen Rees, Committee Services

1. **MINUTES**

RESOLVED THAT:

The minutes of the meeting held on 7 December 2007 be confirmed and signed as an accurate record of the proceedings.

2. **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Aherne, Dickenson, Donovan, Ivimy, Robson, and Scott-Russell.

3. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

4. **REVIEW OF APPEALS AND CASE LAW UPDATE**

Jon Gorst, Principal Environmental Services Lawyer, gave the Committee a verbal briefing on Legal Services' involvement with the Licensing Committee and the Licensing Service. He said that Legal Services had involvement in advising on

applications received, advising Sub-Committees when they were reaching their decisions, and in defending the Council's decisions when they were appealed, and advising the Council was taken to judicial review.

With regard to case law, there had been few significant changes to case law since the Committee's last meeting (in December 2007). The most significant was the Thwaites case, which had had particular implications for the status and application of Section 182 Guidance, and on the reasoning used when applying conditions.

With regard to appeals made against decisions of the Licensing Sub-Committee, there had been 9 appeals made since the last Committee meeting (in December 2007). The Council had won a majority of the appeals brought, and won orders for costs in some cases. However, as appeals to the magistrates court gave applications a re-hearing, determined applicants could always bring an appeal, even though the Sub Committee's decision had been sound and well-supported.

Alex Russell, Environmental Services Lawyer, informed the Committee of recent appeals that had been of particular interest and relevancy. With regard to one case, he noted how the appellant had used the time between the initial sub-committee decision and the appeal hearing to reduce the quantity of anti-social behaviour and disruption occurring at the premises, and, in so doing, gained the upper hand in the appeal. The Committee heard that an appeal was not like a judicial review of the council's decision but a complete re-hearing, so that the magistrates had to hear all the evidence subsisting at the time of the appeal hearing.

Other examples given included an application to open a lap-dancing venue. The application had been highly controversial, and the Council had received almost a thousand representations against it. Many of the representations, however, had been on moral grounds. The Sub Committee cannot take morality into consideration, and had had to reach its decision on the basis of the law alone; an appeal against the decision was subsequently withdrawn.

The Committee also heard an account of a personal licence application that the Sub-Committee had refused, and the subsequent appeal against its decision. The court had upheld the Sub-Committee's decision. This was an example of where the Section 182 Guidance suggested that a different test should be applied, rather than that set out in the Act itself. A decision by magistrates had been quashed in a judicial review as a result of them applying the test in the Guidance and not the Act. The Committee were informed that the list of relevant offences was currently subject to a public consultation.

Councillor Karmel asked whether appeals could be positive, allowing the Council and other bodies who had made representations to submit more evidence. Officers agreed that this could be the case, but added that licensees often behaved differently when under scrutiny.

RESOLVED THAT

The report be noted.

5. LICENSING REVIEW 2009

Oliver Sanandres, Safety and Licensing Manager, Adrian Overton, Licensing Officer, and Lisa White, Licensing Officer, gave a presentation that updated the Committee on developments in licensing since its last meeting in December 2007.

Officers began by describing the development of the Licensing Service in that period. These included the introduction of an online service, both for applicants and for interested parties, the achievement of ISO9001 accreditation and an increased focus on licensing enforcement, with night-time working, and monitoring of Temporary Event Notices (TEN).

With regard to licensing enforcement, Councillors asked why sub-committees did not see the results of Licensing Officers' inspection findings at Sub-Committee hearings. It was clarified that, at Sub Committee Hearings, the Licensing Officer's role was to present the application and the representations received about it; inspection was done primarily after licences had been granted, to ensure that the conditions of the licence were being met.

Officers also described a variety of joint working undertaken with the police, with whom a Memorandum of Understanding had been prepared for signature. Joint working included the Licensing Service's development of a training package for Hammersmith and Fulham police, which had later been adopted by the Home Office for national use; and the Service and the Police had also collaborated in the Safer London problem solving competition, and received third place.

The Licensing Service also worked closely with the Drug and Alcohol Team on promotional activities; coordinated the Pub Watch schemes within the borough; whilst also regularly attended meetings of Residents' Associations. With regard to the challenges facing the Licensing Service, debt recovery was identified as a particular problem, as, under the terms of the Licensing Act 2003, unpaid licence fees had to be pursued as a civil debt.

Other key areas of activity included the creation of the Cumulative Impact Policy for Fulham, which had required considerable supporting research, and the new Gambling Policy, which had fully incorporated the Government guidance into the policy. Future challenges identified included exploring a possible Cumulative Impact Area in Shepherds Bush, further engagement with the Police and retraining the Licensing Committee.

The Committee then received information on the number and variety of licensing applications received, including the number of applications heard by Sub-Committees; the figures showed that Fulham had had the greatest intensity of activity in the borough, which was reflected by the introduction of the Saturation Zone policy. The Committee also received figures on the quantity and type of enforcement activity undertaken by the Licensing Service, and on prosecutions made as a result.

Officers then outlined recent or upcoming changes to Licensing Law. These included a simplified process for applications for variation in a licence, an exemption for community premises from the designated premises legislation, the introduction of new regulations on prize gaming, and new powers to make drinking banning orders and to introduce alcohol disorder zones. It was also proposed that

the Licensing Authority would qualify as an Interested Party, though more guidance on this was awaited, and that the period in which the Police could object to a Temporary Event Notice be changed to 2 working days, rather than 48 hours.

Officers then informed the Committee of proposed changes to regulations on Sex Establishments. Under the current arrangements, lap dancing venues were regulated under the Licensing Act 2003. Objections must be on the basis of the Licensing Objectives, and location and other concerns could not be taken into account. Sex Shops and Sex Cinemas were dealt with separately under the 1982 Local Government (Miscellaneous Provisions) Act.

Under the proposed amended regulations, lap dancing venues would be reclassified as sex encounter venues and dealt with under the 1982 Local Government (Miscellaneous Provisions) Act. The change would enable Local Authorities to develop policies to control the number and location of such premises. The change would result in a higher fee being payable, the loss of grandfather rights for lap dancing venues, and annual reviews of licences issued. The change was subject to the adoption of the Police and Crime Act 2009 by the Council.

Officers then set out the process for revision of the Statement of Licensing Policy, which the Council was obliged to undertake in 2010. Consultation would be undertaken after May, and the policy agreed by the end of November. Potential issues to be considered included the incorporation of the Cumulative Impact Policy, policies on restrictions on the sale of drinks of over 5.5% a.b.v, and on nudity in licensed premises, and the treatment of Police Form 696.

Councillor Smith, Cabinet Member for Crime and Street Scene, noted that while changes could be made in the policy, the Council would still be circumscribed by the Licensing Act, which was skewed towards licensees. Given this legislative background, it would remain difficult for Councils to alter the current status quo substantially.

Councillor Karmel asked what measures officers were taking to communicate dissatisfaction with the legislation to the Department of Culture, Media and Sport (DCMS). Officers said that they regularly met with DCMS officials at the London Licensing Managers Forum, and that the dissatisfaction expressed by Councillors was also expressed at the most recent Licensing Conference. They noted that the legislation caused problems in all areas of its administration.

Councillor White said that the Council should take steps to develop a policy on sex establishments, adopting the Police and Crime Act powers when it was able to do so. Officers noted that the Council was still awaiting guidance on how sex establishments could be treated under the Act, and that the removal of existing premises could prove difficult.

RESOLVED THAT

The report be noted.

Meeting started: 7.03 pm
Meeting ended: 8.08 pm

Chairman

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