

# London Borough of Hammersmith & Fulham

## ANNUAL MEETING OF THE LICENSING COMMITTEE

29 JUNE 2017



### Licensing Sub-Committee Procedure

### Report of the Director of Law

### Open Report

### Classification – For Decision

**Key Decision: NO**

**Wards Affected: None**

**Accountable Director: Tasnim Shakwat, Director of Law**

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## 1. EXECUTIVE SUMMARY

- 1.1 This report provides recommends that a standard procedure should be adopted when dealing with all licensing applications which need to be determined by the Licensing Committee and its Sub-Committees (the “Committee”) under the Licensing Act 2003 and the Gambling Act 2005 or any Acts which amend or vary these Acts.

## 2. RECOMMENDATIONS

- 2.1 That members of the Licensing Committee approve the suggested procedure specified in Appendix 1 or approve the procedure subject to any amendments the Committee wishes to make;
- 2.2 Once approved the procedure may be amended by the Director of Environmental Health in consultation with the Chair of the Licensing Committee.
- 2.3 The Committee is asked to confirm whether the approved procedure can be used as a template for other licensing applications considered by the Committee.

## 3. INTRODUCTION

- 3.1 The Committee determines a variety of licensing applications in relation to the grant, variation and review of applications and notices under the Licensing Act 2003 and the Gambling Act 2005.
- 3.2. All applications must be determined in accordance with The Licensing Act 2003 (Hearings) Regulations 2005 (as amended), but subject to this, the Licensing Authority is entitled to establish its own procedure for determining applications and for carrying out its functions under these Acts.

- 3.3 The Council has been following an informal procedure for many years but it was considered that it would be helpful to provide a more formal procedure so that the parties and their representatives will know what to expect at the hearing. **Appendix 1** sets out the suggested procedure which could be adopted by the Committee.
- 3.4 The Committee will need to decide whether they wish to adopt a time limit for each party to present its case before the Committee. If the Committee does consider a time limit would be helpful, the Committee will need to consider whether the ten minute time limit suggested in the procedure would be sufficient of whether they wish to extend or reduce the time limit.
- 3.5 There is no requirement for the Committee to allow the Parties to cross-examine any other party attending the hearing. However, it is often helpful to allow this to assess whether or not the application should be granted and whether there are any merits to the representations made. The Committee can grant permission for the parties to cross-examine the other parties if they wish to do so. It is suggested that this should be considered at the beginning of the hearing. If Committee wish to allow cross-examination, it is asked to consider whether a time limit of say five minutes should be imposed, so that the hearing proceeds at an efficient pace. The Chair would always have discretion to extend this limit if they consider it appropriate to do in any given case.
- 3.6 The Committee deals with a variety of licensing applications for lotteries; sex establishments and sexual entertainment venues; film classifications, marriage venues; non-medical poisons and scrap metal dealers to mention a few. This procedure could also be used as a template for other licensing applications if the Committee wishes to do so, subject to any variations which may be needed in light of the differing legislative requirements which may be applicable.

**4. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES**

- 4.1 There are no financial implications.

**5. COMMENTS OF THE DIRECTOR OF LAW**

- 5.1 The Licensing Committee is entitled to set its own procedure for determining licensing applications provided it complies with any legislation which may be applicable under the particular licensing regime.

**6. IMPLICATIONS FOR BUSINESS**

- 6.1 There are no business implications.

**7. PROCUREMENT AND IT STRATEGY IMPLICATIONS**

- 7.1 This is not applicable in this case.

**List of Appendices**

<b>Appendix Number</b>	<b>Description</b>
Appendix 1	Draft Procedure

## **APPENDIX 1**

### **PROCEDURE FOR LICENSING HEARINGS**

#### **1.0 Scope**

- 1.1 This procedure applies to all applications, representations, notices and requests for review and such other functions which are required to be determined or considered by the Licensing Committee and its Sub-Committees (“the Committee”) of the Council. This will include applications for the grant, variation and review of Premises Licences or Club Premises Certificates; Temporary Event Notices; Personal Licences and any other application, representation or notices which the Committee is required to determine under the Licensing Act 2003 and the Gambling Act 2005, or such other Acts or regulations amending the same.

#### **2.0 Representations**

- 2.1 Any person who wishes to make a representation regarding an application for a licence or who wishes to request a review of a licence should write to the Licensing Department at London Borough of Hammersmith and Fulham, Council Offices, 37 Pembroke Road, London, W8 or email the licensing Department on [licensing@lbhf.gov.uk](mailto:licensing@lbhf.gov.uk). Each representation and request for review should fully explain the nature of the points made and outline, in detail, the evidence relied upon to substantiate those points.
- 2.2 The Council is unable to accept anonymous representations or requests for review. Representations or requests for review will only be relevant if they relate to one or more of the four licensing objectives:
- (a) The Prevention of Crime and Disorder;
  - (b) Public Safety;
  - (c) The Prevention of Public Nuisance; and
  - (d) The Protection of Children from Harm.

- 2.3 Representations must be made in accordance with the time limits set out in the legislation.

#### **3.0 Arrangements for Licensing Hearings**

- 3.1 Licensing hearings will normally take place at the Town Hall, King Street, Hammersmith or such other venue as the Council advises. The hearing will normally take place before a Sub-Committee of the full Licensing Committee. The Sub-Committee will comprise three councillors but the hearing can proceed with two councillors as the quorum shall be two. The Sub-Committee will normally be advised by a legal officer and attended by a committee co-ordinator.
- 3.2 The hearing will take place in public. However, in exceptional circumstances, when the Committee considers that it is in the public interest, it may exclude the public from all or any part of a hearing.

- 3.3 If any person, who intends to be present at the hearing, has any special needs, (for example in connection with access, hearing, language or vision) it is appropriate that they be brought to the attention of the Council prior to the hearing in order that appropriate provision may be made.
- 3.4 The licensing hearing will normally be held within the period of 20 working days from the day when the consultation period ends. The Council will give appropriate notice of the hearing. The period of notice will depend upon the type of hearing, which is stated in The Licensing Act 2003 (Hearings) Regulations 2005. Expedited Reviews and Temporary Event Notices have different time limits.
- 3.5 A Notice of the hearing will be accompanied by:
- a copy of this procedure note;
  - confirmation that a party may be assisted or represented by a person whether or not that person is legally qualified;
  - confirmation that a party to the hearing may address the authority, give further information on a point on which the authority requires clarification and, if considered by the Council to be required, question another party to the hearing;
  - the consequences of not attending or being represented at a hearing (which normally will be that the hearing will proceed in the party's absence); and
  - a note of any particular points on which the Council wants clarification.
- 3.6 The Council's licensing officer will normally prepare a report for consideration by the Committee. This report will be sent to the parties and will be accompanied by the relevant documentary material that has been submitted by the parties.
- 3.7 All parties upon whom a notice of hearing has been served are required to give to the Council notice of:
- whether they intend to attend or to be represented at the hearing;
  - whether or not they consider a hearing to be unnecessary; and
  - whether they wish to request that another person appear at the hearing (other than their representative). If such a request is made, it should be accompanied by details of the name of that person and a full description of the points about which that person may be able to assist the Council.

This notice has to be given to the Council no later than the day indicated in the notice served.

### **Right to be represented**

- 3.8 A Party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

#### 4.0 **Procedure at the Hearing**

- 4.1 The Chair of the Committee will open the hearing by introducing the members of the Committee and will ask the parties present to identify themselves. The Chair will explain the procedure to be adopted.
- 4.2 The procedure of the hearing will take the form of a discussion, led by the Chair of the Committee, generally in line with the procedure specified below. However, the Chair has the discretion to amend the procedure as they consider appropriate.
- 4.3 The Licensing Officer will be asked to introduce the report and to provide any additional comments which may have arisen since the committee papers were published.
- 4.4 Each Party will then be asked to address the Committee and call any witnesses in support of their application, representation or notice. The usual order will be for the Applicant to go first, followed by the Responsible Authorities and then followed by the Other Persons, who have made valid representations to the Licensing Authority.
- 4.5 Each Party will address the Committee once, for a **maximum of ten minutes to present their case or representations**. During this time, the Party will be expected to explain their case and present any evidence in support, including factual; references to legislation, authorities and dealing with any conditions which might be proposed or under consideration. In exceptional cases the Chair may extend the time for each submission, where it is necessary for the determination of the case. **No extra time will be allowed for summing up Party's case or representations.**
- 4.6 The Committee will allow each Party an equal amount of time to present their case or representations.
- 4.7 **Cross-examination.** A Party will not normally be allowed to cross-examine the other Party, unless they have first requested and been granted permission to question the opposing party by the Committee.
- 4.8 Where cross-examination has been granted, that Party may cross-examine the other Party for a maximum of five minutes in total. Parties may not generally cross-examine a Party on the same side.
- 4.9 In summary, the procedure will generally be as set out below:-

##### **Firstly, the Applicant**

- Applicant (or their representative) will present their case or representations for a maximum of 10 minutes;
- the Committee will ask questions of the Applicant and their witnesses;
- If permitted, the Responsible Authorities and other Parties may cross-examine the Applicant and/or their witnesses for a maximum of 5 minutes;
- the Legal Adviser may ask questions, if appropriate, particularly regarding conditions.

### **Secondly, the Responsible Authorities (“RAs”)**

- Each RA (or their representative) shall make their representations - 10 minutes maximum
- Committee questions each of the RAs.
- Legal Adviser questions RAs, if necessary.
- The Applicant may cross-examine each of the RAs, if permission granted for a maximum of 5 minutes.

### **Thirdly, the Other Persons (“OPs”)**

- Each OP (or their representative) shall make their representations for a maximum of 10 minutes
  - Committee questions each of the OPs.
  - Legal Adviser questions OPs, if necessary.
  - If permitted, the Applicant may cross-examine each of the OPs, for a maximum of 5 minutes.
- 4.10 The Committee will normally retire to make their decision in private. Once a decision has been reached the Committee will normally return into open session and announce the decision. Alternatively, the Committee may make its decision within 5 working days of the close of the hearing.
- 4.11 If, during its deliberations, the Committee considers that it is necessary for any person present at the hearing to provide further information or clarification on a particular point the hearing will be reconvened to deal with that issue.
- 4.12 The Committee may allow the production of documentary or other evidence produced by a party in support of its case at the hearing provided all other parties give their consent. Even if new material is permitted, the hearing may need to be adjourned to allow time to consider it and for other parties to respond to it. Accordingly, any application to have new material considered should demonstrate exceptional reasons for its admission. It is, therefore important for parties to ensure that all evidence is submitted in writing as soon as possible and in accordance with the relevant timescales.
- 4.13 The Chair of the Committee may require any person attending the hearing who is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return or may permit the person to return only on such conditions as he may specify.
- 4.14 It should be noted that the Committee has no power to award costs to any party to the hearing.
- 4.15 When dealing with reviews, a Responsible Authority or Other Person will be the applicant and the procedure caters for this process.

## **5.0 Procedure following the hearing**

5.1 The Licensing Authority will notify the parties to the hearing of the decision in writing. Where required by the Licensing Act 2003, the Council will also notify the chief officer of the police even though the chief officer was not a party to the hearing. The decision notice will be accompanied by information regarding the right of the parties to appeal against the Council's decision.

## **6.0 Failure to attend the hearing**

6.1 If a Party has informed the Authority that he or she will not attend or be represented at the hearing, the hearing can proceed in his or her absence.

6.2 If a Party has failed to indicate whether or not he or she will attend or be represented at the hearing, the Committee may: -

(a) adjourn the hearing to a specified date, where it considers it is necessary in the public interest; or

(b) hold the hearing in the Party's absence.

6.3 Where the Committee holds the hearing in the absence of a Party, the Committee shall consider the application and/or any valid representations or notice, which, that Party has previously submitted, during the Committee's consideration of the application.

6.4 Where the hearing has been adjourned to a specified date, the Authority must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

**JUNE 2017**