

Merton Council

Licensing Committee

Membership:

Councillors

John Bowcott (Chairman)
Steve Austin
Richard Chellew
Judy Saunders
Linda Scott
David Simpson
Gregory Udeh
Martin Whelton
Krysia Williams
Ron Wilson

A meeting of the Licensing Committee will be held on:

Date: 26 June 2007

Time: 19:15

Venue: Committee Rooms B & C

Merton Civic Centre, London Road, Morden, Surrey

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda and the decision making process contact democratic.services@merton.gov.uk or telephone 020 8545 3616

Licensing Committee

26 June 2007

1. Declarations of Interest ¹
2. Apologies for Absence
3. Minutes of the Meeting held on 14 May 2007 3
4. Delegation of Authority – Gambling Act 2007 hearing regulations 5

¹ Members are advised to make declarations of personal or prejudicial interests they may have in relation to any item on this agenda. Members may make their declaration either under this item or at any time it becomes apparent that they have an interest in any particular item. To facilitate the recording of declarations members are asked to complete the pro-form attached to this agenda and hand it to the Democratic Services Officer in attendance. If a Member believes that their interest is prejudicial they should leave the meeting while the item is discussed. If in doubt, Members are advised to seek advice from the Head of Civic and Legal Services prior to the meeting.

LICENSING COMMITTEE

14 MAY 2007

(19:00 to 19:15)

PRESENT: Councillors John Bowcott (in the Chair), Richard Chellew, Barbara Mansfield, Ron Wilson, Philip Jones, Judy Saunders, Martin Whelton and Krysia Williams.
Richard Nash (Licensing Manager) and Colin Millar (Democratic Services)

Apologies for absence were received from: Councillors David Simpson, Gilli Lewis-Lavender and Steve Austin

1 MINUTES OF THE MEETING HELD ON 25 APRIL 2007 (Agenda item 3)

RESOLVED: That the minutes of the meeting are agreed

2 FEES FOR GAMBLING PREMISES LICENCES INCLUDING MISCELLANEOUS FEES (Agenda item 4)

RESOLVED: That the fees outlined in appendix 2 to the report are agreed.

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Committee: Licensing Committee

Date: 26 June 2007

Agenda item: 4

Wards: All wards

Subject: Delegation of Authority – Gambling Act 2007 hearing regulations

Lead officer: Head of Civic and Legal Services

Lead member: Chair of Licensing Committee

Recommendations:

A That the Licensing Committee agrees the hearing procedure in Appendix 1 to be used for Gambling Act 2005 hearings.

B That the Licensing Committee agrees the following delegations

Licensing Sub-Committees

To exercise all of the powers in The Gambling Act (Proceedings of Licensing Committee and sub-committees) (Premises Licenses and provisional Statements) (England and Wales) Regulations 2007 (Statutory Instrument 2007 No 173) which may be exercised during the course of a hearing held under s162(12) or s201(4) of the Gambling Act 2005.

Head of Planning and Public Protection

Regulation 6(2)(b) – determination of whether a representation is vexatious or frivolous or will certainly not influence the determination of the application

Head of Civic and Legal Services

Regulations 4, 5 and 6 - arrangements to hold a hearing, issue of Notice of Hearing and accompanying documents to relevant persons.

Regulation 7(1) - where the need to postpone or arrange additional dates becomes apparent before the sub-committee convenes

Regulation 7(3) and (4) - issue of relevant notices

Regulation 14 - where the need to extend a time limit becomes apparent before the sub-committee convenes

Regulation 14(2) – issue of relevant notice

Regulation 15 – maintaining a record of proceedings

Regulation 17 – correction of clerical errors

1. Purpose of report and executive summary

1.1 To agree the hearing procedure to be followed at sub-committee meetings held under s162(1) and s201(4) of the Gambling Act 2005.

1.2 To agree a scheme of delegation for the effective exercise of the powers contained in the Gambling Act 2005 hearing regulations.

2. Details

2.1 The proposed hearing procedure is based on the Licensing Act hearing procedure although some of the detailed references are different to reflect differences between the Licensing and Gambling regulations and Acts.

2.2 Most of the powers exercisable under the Gambling Act 2005 hearing regulations are matters for the Licensing sub-committee acting within a procedure agreed by the Licensing Committee. However, certain of these matters need to be done prior to a hearing taking place and these are recommended to be delegated to officers. The Gambling Act 2005 hearing regulations are similar to those applying to Licensing Act 2003 hearings and the proposed delegations are similar to those agreed by Licensing Committee in respect of the Licensing Act 2003.

3. Alternative options

3.1 Notices of Hearing must advise parties of the procedure which will be followed at the hearing so the committee must put in place such a procedure. Nothing in that procedure may contravene any provision made in the Act or the regulations. Within these constraints the Committee may put in place any procedure it sees fit.

3.2 The Licensing Committee may choose to delegate its powers in any way it sees fit. Any powers not delegated will require a meeting of this Committee to be exercised.

4. Consultation undertaken or proposed

4.1 The Head of Planning and Public Protection has been consulted on the proposals in this report.

5. Timetable

5.1 The Licensing Act comes into effect on 1 September 2007 and the Authority needs to put in place proper procedures to hold hearings before that time

6. Financial, resource and property implications

6.1 The recommendations would put the arrangements for Gambling Act Hearings on a similar basis as exists for Licensing Act Hearings. It is not anticipated that the workload associated with Gambling Act hearings will add greatly to the current administrative requirement and no additional provision is being sought at this time.

7. Legal and statutory implications

7.1 Merton's Licensing Committee is established under s6(1) of the Licensing Act 2003.

7.2 s154(1) of the Gambling Act 2005 delegates authority to carry out the functions specified in Part 8 of the Gambling Act 2005 (which covers all of the matters discussed in this report) to this Licensing Committee.

- 7.3 Sub-committees and officers cannot exercise any power or do anything which the Licensing Authority is authorised to do under the Act or its associated regulations unless the Licensing Committee delegates that authority to them.
- 7.4 Any power delegated to the Licensing Committee by virtue of the Act and not delegated by the Licensing Committee to a sub-committee or officer can only be exercised by the Licensing Committee. In accordance with S10 of the Licensing Act 2003 the Licensing Committee may arrange for the exercise of any of its powers by its licensing sub-committees or officers of the authority and sub-committees may in turn sub-delegate powers to officers of the authority.

8. Human rights, equalities and community cohesion implications

- 8.1 Any person or body exercising authority on behalf of the Licensing authority must have regard to the rights granted to any person or body under The Gambling Act 2005 and the Human Rights Act 1998.

9. Risk management and health and safety implications

- 9.1 Given the resources available to some of the potential parties to hearings and the commercial considerations involved there is a likelihood of appeals against decisions which applicants consider not to be in their commercial interests. It is important that the adopted procedures of the authority are fair and legally robust in order that decisions can withstand any such challenges. Successful legal challenges could prove financially costly and damage the Council's reputation.
- 9.2 A proper scheme of delegation is necessary to establish that decisions have been made by a person or body with the power to do so. If the authority is unable to establish this point a challenge that the authority has acted ultra vires (acted without the power to do so) could succeed.

10. Appendices – the following documents are to be published with this report and form part of the report

- 10.1 Appendix 1 – Hearing Procedure

11. Contacts

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 - email: press@merton.gov.uk

- Tel: 020 8545 3181
- London Borough of Merton:
 - Address: Civic Centre, London Road, Morden, SM4 5DX
 - Tel: 020 8274 4901

12. Useful links

- 12.1 Merton Council's Web site: <http://www.merton.gov.uk>
- 12.2 Readers should note the terms of the legal information (disclaimer) regarding information on Merton Council's and third party linked websites.
- 12.3 <http://www.merton.gov.uk/legal.htm>
- 12.4 This disclaimer also applies to any links provided here.
- 12.5 The Gambling Act 2005
<http://www.opsi.gov.uk/ACTS/acts2005/20050019.htm>
- 12.6 Hearing regulations <http://www.opsi.gov.uk/si/si2007/20070173.htm>
- 12.7 Department for Culture Media and Sport information on the Gambling Act 2005 including links to further resources and information
http://www.culture.gov.uk/what_we_do/Gambling_racing/gambling_act_2005

Appendix 1 – Hearing procedures to be issued with Notices of Hearing for matters to be determined under s162(1) and s201(4) of the Gambling Act 2005

Procedure to be followed at the hearing

This document forms part of the notice of hearing

Regulations referred to in this procedure are reproduced under Note ⁽³⁾ at the end of the procedure

1. Declarations of Interest.
2. Welcome by Chair of the Licensing sub-committee and outline of the order of proceedings.
3. The Chair will advise parties⁽¹⁾ that the proceedings are being recorded.
4. The papers before the sub-committee comprise this Notice of Hearing and any applications or representations and include:
 - The application
 - Representations
 - List of parties to the hearing
5. Matters which the authority has raised in the Notice of Hearing as matters on which it will be seeking clarification at the hearing from a party under Regulation 6(1)(j).
6. Comments of Licensing Officers on any factual or technical aspects of the application or representations
7. Any other relevant matters and requirements
8. The Chair will ask parties if they are satisfied with the accuracy of the papers issued and the sub-committee will resolve any issues on this point.
9. The sub-committee will make any decisions required under Regulation 10 (failure of parties to attend hearing).
10. The Chair will ask officers and parties if there are any other procedural points to deal with and these will be resolved before proceeding.
11. The Licensing Officer will advise the hearing if any representations have been withdrawn since the issue of the Notice of Hearing.
12. The Chair will advise parties that if they introduce new documentary or other information in support of their application, notice or representation the consent of other parties to the consideration by the sub-committee of such information will be sought.
13. The sub-committee will determine the order in which parties (other than the applicant) will be heard and so advise those present.
14. The Chair will advise the parties that Under regulation 9(4) they may question other parties or persons representing other parties where the sub-committee considers that it is appropriate to do so. The Chair will also advise the parties that under regulation 9(5) cross-examination is not allowed unless the sub-committee feels that this is required for it to consider the matters before it. If parties wish to put

questions to other parties or their representatives they should seek the permission of the sub-committee and direct such questioning via the chair.

15. Applicant

- i) The applicant will be asked if there is anything they wish to add to or clarify about their application
- ii) The applicant will address the points for clarification raised by the authority in the Notice of Hearing
- iii) Witnesses notified by the applicant will address the hearing
- iv) If the sub-committee considers it necessary it may allow other parties to put questions to the applicant, the applicant's representative and witnesses notified by the applicant who have addressed the hearing
- v) The sub-committee members will put any questions to the applicant, the applicant's representative and witnesses notified by the applicant who have addressed the hearing
- vi) The applicant will be asked if they have any further points arising from points raised in questioning

16. Other parties⁽²⁾

- i) The party (party A) will be asked if there is anything they wish to add to or clarify about their representation or notice
- ii) Party A will address the points for clarification raised by the authority in the Notice of Hearing
- iii) Witnesses as notified by the Party A to address the hearing
- iv) If the sub-committee considers it necessary it may allow the applicant to put questions to Party A and witnesses notified by Party A who have addressed the hearing
- v) If the sub-committee considers it necessary it may allow other parties to put questions to Party A and witnesses notified by Party A who have addressed the hearing
- vi) The sub-committee members will put any questions to Party A and witnesses notified by Party A who have addressed the hearing
- vii) Party A will be asked if they have any further points arising from points raised in questioning

17. Repeat above stage for each subsequent party.

18. Licensing Officer to be asked if they have any comments

19. Other parties close by summarising their points.

20. Applicant closes by summarising their points.

21. The Chair will then ask the sub-committee's licensing and legal adviser if there are any further matters to be considered prior to a determination being made. If there are such other matters they will then be disposed of as appropriate.

22. If the sub-committee is not going to determine the application at the conclusion of the hearing it will so advise those present and inform them of the date and time that

their determination will be made in public. Determinations must be made in accordance with the provisions of regulation 13

23. If the sub-committee feels that it needs to go into private session to discuss any issues with its legal adviser it will advise those present that it will resume in public session at the conclusion of any such discussion when the advice it has received from its legal adviser will be read into the public record of the meeting.
24. At the conclusion of any private session the sub-committee will return to public session and the legal adviser will inform the hearing of any advice given in private session.
25. In cases where the sub-committee is not going to make its determination at the conclusion of the hearing it will then adjourn the meeting to a specified date and time. In all other cases it will discuss and determine the matter before it.
26. The Chair will advise parties to the hearing that they will be notified in writing of the determination, thank the parties for their attendance and close the meeting.

Where this procedure is silent the sub-committee may make such arrangements as necessary to ensure the rights of parties to hearings and for the proper discharge of its duties under the Gambling Act 2003 and any guidance or regulations issued by the Secretary of State.

Notes

¹ Regulation 6(1)(f) allows parties to be represented or assisted at the hearing by another person and does not require that person to be legally qualified. Any reference to a party in this order of procedure should be taken to include a reference to a person assisting or representing a party.

² Similar objections will be grouped together as far as possible and a common spokesperson sought. The regulations treat each objector as a party in their own right. If they do not agree to being grouped they will be treated as an individual party.

Extracts from the regulations

Information and documents to accompany the notice of hearing

6. —(1) The notice of hearing must be accompanied by information in writing explaining the following—

- (a) the consequences provided for under regulation 10(1) where a party informs the relevant committee that he does not wish to attend or be represented at the hearing, or fails to inform the relevant committee whether he wishes to attend or be represented at the hearing; (see 10(1) below)
- (b) the requirements imposed on the relevant committee in conducting a hearing as set out in regulations 8 and 9; (see 8 and 9 below)
- (c) the consequences provided for in regulation 10(2) where a party has indicated that he wishes to attend or be represented at the hearing, but fails to attend or be represented at the hearing; (see 10(2) below)
- (d) the procedure to be followed at the hearing; (this document)
- (e) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to attend or address the hearing;*

- (f) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to be assisted or represented by another person;*
- (g) the time limit and method, if any, by which a party should inform the licensing authority that he will want to call a witness to give evidence at the hearing, and the matters in relation to which he wishes that witness to give evidence;*
- (h) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to withdraw any representations;*
- (i) the time limit and method, if any, by which a party should inform the relevant committee that he is willing to consent to the application being determined without a hearing;*
- (j) the matters, if any, on which the relevant committee considers at the time that it will want clarification at the hearing from a party.

(*LBM criteria - The time limit in respect of regulations 6(1)(e) to 6(1)(i) is the day before the hearing at 17:00 and the information must be communicated to the Authority in writing, by telephone, fax or email to the contact points given in Notice of Response accompanying this Notice of Hearing).

Hearings to be public

8. (1) Subject to paragraph (2), the hearing must take place in public.

(2) A relevant committee may direct that all or part of a hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to

- (a) any unfairness to a party that is likely to result from a hearing in public; and
- (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

Proceedings of a relevant committee in conducting a hearing

9. (1) Subject to regulations 8 and 11, a relevant committee must permit a party to attend a hearing and be assisted or represented by any person whether or not that person is legally qualified.

(2) At the beginning of the hearing the relevant committee must explain the procedure that it proposes to follow in conducting the hearing.

(3) In conducting a hearing the relevant committee must ensure that each party is given the opportunity to

- (a) address the relevant committee on any matter that is relevant to the application or review, or any representations made on the application or review;
- (b) call witnesses to give evidence on any matter that is relevant to the application or review, or any representations made on the application or review;

(c) provide further information on, or explanation of, any matter on which the relevant committee has indicated that it will want further clarification under regulation 6(1)(j).

(4) In conducting a hearing the relevant committee must also

(a) permit any party to question any other party or person representing a party on any matter that is relevant to the application or review, or any representations made on the application or review, where the relevant committee considers that in all the circumstances it is appropriate to do so; and

(b) take into consideration documentary or other information in support of the application or representations produced by a party

(i) before the hearing; or

(ii) at the hearing, with the consent of all the other parties attending the hearing.

(5) Without prejudice to paragraphs (3) and (4), a hearing must be conducted so that it takes the form of a discussion led by the relevant committee, and the committee must not permit any cross-examination unless it considers that cross-examination is required for it properly to consider the application or representations made by any party.

Failure of parties to attend the hearing

10. —(1) A relevant committee may proceed with a hearing in the absence of a party or a party's representative if the party has—

(a) informed the committee that he does not intend to attend or be represented at the hearing (and has not subsequently advised the committee otherwise);

(b) failed to inform the committee whether he intends to attend or be represented at the hearing; or

(c) left the hearing in circumstances enabling the committee reasonably to conclude that he does not intend to participate further.

(2) If a party has indicated that he does intend to attend or be represented at the hearing, but fails to so attend or be so represented, the relevant committee may—

(a) adjourn the hearing to a specified date if it considers it to be in the public interest, or

(b) proceed with the hearing in the party's absence.

(3) Where the hearing proceeds in the absence of a party, the relevant committee must consider at the hearing the application or representations made by that party.

(4) Where, under this Regulation, the relevant committee adjourns the hearing to a specified date it must, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned.

Exclusion of disruptive persons

11. —(1) The relevant committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner, or in breach of conditions specified under this paragraph, to leave the hearing and may

(a) refuse to permit him to return, or

(b) permit him to return only on such conditions as the relevant committee may specify.

(2) The relevant committee may allow a person who is attending the hearing and in their opinion is behaving in a disruptive manner, or in breach of conditions specified under paragraph (1), to remain at the hearing only on such conditions as the committee may specify.

(3) Where a person is required to leave the hearing in accordance with paragraph (1), the relevant committee must—

(a) permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave; and

(b) take into account that information in reaching a determination of the application or review.

DECLARATION OF INTEREST

NAME : _____

DATE : _____

MEETING : _____

EXISTENCE OF INTEREST : PERSONAL / PREJUDICIAL

NATURE OF INTEREST : I have declared a _____ interest in

agenda item no. _____ because _____

SIGNED : _____

NOTE: Please hand this form signed and completed to the Democratic Services Officer present who will pass the original to the Head of Civic & Legal Services

ADVICE TO MEMBERS ON DECLARATIONS OF INTEREST

1. Do you have a *personal interest* in any matter on the agenda?

You will have a personal interest if (for example) :-

- (a) The report relates to something, which you have already registered on the Register of Interests. The Register of Interests will include your employment; business; corporate bodies (companies) in which you have shares (with a nominal value of over £25k or 1:100 of the share capital); contracts with the Council; paid directorships; land or property in which you have an interest (includes freehold, leasehold, tenancy or licence over 28 days) or any partnership or company in which you are involved, or
- (b) A decision on the matter may be regarded as affecting your well being or that of a friend or relative of yours to a greater extent than it will affect the well-being of others living/working in the Borough.

Note : A decision on the matter may be regarded as affecting the well being of one of the following; you; or your relative or your partner, or any employment / business / partnership / Directorship / company in which you or they have a share (exceeding £5k), bodies where you represent the Council, other public bodies, charity, bodies whose purpose is to influence the Council or Trade Unions or professional association.

2. If you have a *personal interest*

You should state this at the beginning of the meeting (or as soon as you realise you have one during the meeting). You need to state the item the interest relates to, the nature of the interest (i.e. that it is personal) and why you have a personal interest (i.e. the facts which give rise to the interest).

You may stay throughout the meeting, take part in the debate and vote unless the interest is also prejudicial.

3. When will a Member's *personal interest* also be *prejudicial*?

A personal interest will be prejudicial when the interest is such that it may reasonably be regarded by the public as significant enough that it is likely to prejudice judgement of the public interest.

However, it may not be prejudicial if it arises because of your involvement in another public authority, or any body to which you have been appointed by the Council, or the housing functions of the Council where you are a tenant/leaseholder (provided you are not in arrears of rent/service charge and the decision does not relate directly to your property); or the decision relates to school meals, travel, etc and you are a parent/governor at a school (unless your child attends that school); or the matter relates to Member's allowances. In these cases Members should consider whether there are any other facts which would still warrant declaring the interest as prejudicial.

4. If your *personal interest* is also *prejudicial*

The Member must state that as well as personal the interest is prejudicial and at the point the item is discussed should leave the room. The Member may return once that agenda item (or items) is concluded.