

Committee: Licensing Committee

Date: Tuesday 9 June 2015

Wards: All

Subject: Licensing Sub Committee - Hearing Procedure

Lead member: Councillor Jeff Hanna – Chair of Licensing Committee

Contact officer: Chris Pedlow – Senior Democratic Services Officer 0208 545 3616

Recommendations:

- A. To consider and approve the proposed Licensing Sub Committee Hearing – ‘Summary of Procedure’ as detailed in Appendix A
 - B. To seek the Licensing Committee’s endorsement for a holistic review of the processes and paperwork associated with Licensing Sub Committee Hearings, run by Democratic Services, in consultation with Legal and the Licensing Team and the Chair of Licensing, with a report on the outcomes of the review and a draft amended Licensing Sub Committee Hearing procedure being brought before the Licensing Committee on 20 October 2015
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of this report is to address the concerns raised by Members on the processes associated with Licensing Sub Committee Hearings and their understanding of them following the views expressed at the February 2015 Licensing Committee.
- 1.2. The purpose of this report is also to seek the Licensing Committee’s approval for a more in-depth review into general ‘paperwork’ and internal process relating to Licensing Sub-Committee Hearing procedure.

2 DETAILS

- 2.2. Following the concerns raised by the Licensing Committee Members over the consistency of arrangements and procedures surrounding Licensing Sub-Committee Hearings, a brief examination has occurred to see why these concerns may have arisen.
- 2.3. A key aspect that may have caused some of these inconsistencies is that currently within any Licensing Sub Committee agenda and reports pack, two sets of procedures are included for the meeting. The first is on the second page of the agenda and is called Summary of Procedure and the second is contained midway through the officer’s ‘Procedure to be followed at the hearing’.
- 2.4. In trying to understand the rationale behind the current situation, it appears to relate to how the Council disseminates information to the parties and how at times this appears to be duplicated.
- 2.5. Looking directly at the issue of the current procedures, I have reviewed the Notice that includes the procedural guidance for meetings, which is a

statutory requirement that must be sent out 10 working days in advance of the meeting to all parties involved in the Hearing (with the exception of Councillors) to warn them about the date of the hearing. Part of this Notice pack contains the 'Procedure to be followed at the hearing', so members of the public and the statutory authorities are aware of how the hearing works. The Notice also contains a copy of the information involved, namely a copy of the report, the application and all representations made.

- 2.6. All parties including Councillors also receive a copy of the agenda including the officer's report, the application and all representations made. It appears that the Summary of Procedure is included within the agenda for the Councillors benefit and to aid them and especially the Chair through the hearing.
- 2.7. The Licensing Act 2003 does contain specific Hearings regulations, in the form of the Licensing Act 2003 (Hearings) Regulations 2005, The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005, and The Licensing Act 2003 (Hearings) (Amendment) Regulations 2014, including cover paperwork/ Notice requirements, but it is down to individual Councils to meet these requirements. However having briefly looked at the information contained within other neighbouring Council's Licensing Sub Committees report and agenda, they all differ greatly.
- 2.8. What it does highlight is that there is a need for a holistic review by Democratic Services, in consultation with Licensing and Legal into the processes and paperwork used for the Licensing Sub Committee Hearings.
- 2.9. Questions to be considered as part of the scope of the proposed review would include, but are not exclusively limited to:
- How does Merton's current processes and paperwork differ from our other local Councils namely Sutton, Richmond and Kingston and can we learn anything from them?
 - What are the statutory requirements for information to be included within the Agenda and the report pack for Hearings and how do these differ for different hearings (i.e. standard and late TENs, Reviews, variations and new premises licence applications)?
 - What are the statutory requirements for information to be included within the Notice for the Hearing sent by the all interested parties in advance of the hearing?
 - What are the regulations on publishing the hearing procedures?
 - Would it be of benefit to Members especially to have a basic script for the Chair to help them manage the meeting?
 - Can we improve our processes for publishing additional information?
 - Can we reduce the sheer volume of paperwork printed for the hearings to comply with the statutory requirements and to achieve efficiencies?

- Can we utilise email further for disseminating information to parties involved in the hearing (i.e. notices and their responses)?
 - How does data protection affect interested parties representations being published?
 - Can we improve the reports presented to each Hearing?
- 2.10. Many of the elements of the review's scope are internal processes, but to ensure that Members views are sought it is proposed that the Chair of Licensing is involved within the review.
- 2.11. In terms of the current sets of paperwork it is proposed that they remain in their current form until the review has taken place, with exception of an amendment to Summary of Procedure (Appendix A) which clarifies for Councillors how decisions are formally announced at the hearings. This proposed changed came out of feedback from a number of Licensing-Sub Committee Chairs.
- 2.12. It should be noted all the Council's current practices are legally sound, but the proposed review would occur to see if any improvement could be made.

3 ALTERNATIVE OPTIONS

- 3.1. The alternative option is to remain with the current processes used for Licensing Sub-Committee Hearings

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Not applicable.

5 TIMETABLE

- 5.1. The review would be completed and a report would be produced for the next Licensing Committee on 20 October 2015

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The only financial and resource implication is would be small amount of officer time spent on the review. There are no property implications.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Council has a legal and statutory responsibility to dealt with all matters related to the Licensing Act 2003

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Not applicable.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Not applicable.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Not applicable.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Revised Supplementary Procedure

12 BACKGROUND PAPERS

12.1. The Licensing Act 2003

The Licensing Act 2003 (Hearings) Regulations 2005,

The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005,

The Licensing Act 2003 (Hearings) (Amendment) Regulations 2014

Proposed Review Summary of procedure

(Additional words in Bold and deleted word are crossed through)

Summary of procedure

1. Declarations of Interest
2. Welcome by Chair – remind parties that the hearing is being recorded & **emergency fire escape routes [if a large hearing]**
3. Chair asks parties if they **have a concern with** the accuracy of the Notice of Hearing and **ask the Licensing Officer** that all relevant Notices, Applications and representations have been **met and included in the agenda.**
4. Chair asks the parties if they have, since the issue of the notice, resolved any of the issues and if so to outline their proposed solution **or proposed conditions.** [If all issues are covered by this solution then go to stage 10, otherwise use the following procedure to address the remaining points].
5. Chair outlines procedure ~~as follows:~~ **(an example wording for this is shown below*)**
6. Applicant
 - Applicant’s brief statement clarifying their application **(including licensable activities, hours and proposed conditions)** and addressing any points of clarification raised in the Notice of Hearing
 - Applicants witnesses (if any) to speak on points of clarification raised in the Notice of Hearing.
 - Questioning of the applicant by other parties
 - ⁽¹⁾ Questioning of the applicant by members
7. Other parties [It is suggested that responsible authorities are taken first and then ~~public representations~~ **Interested Parties**]
 - Party’s brief statement clarifying their representation **(including conditions)** and addressing any points of clarification raised in the Notice of Hearing.
 - Party’s witnesses (if any) to speak on points of clarification raised in the Notice of Hearing
 - Questioning of the party by the applicant
 - If the party is a responsible authority then questioning of the party by other parties may be appropriate.
 - ⁽¹⁾ Questioning of the party by members
8. Other parties summarise their points
9. Applicant summarises their points
10. ⁽²⁾ Legal Officer asked for any comments
11. ⁽²⁾ Licensing Officer asked for any comments
12. Chair advises parties that the Licensing Sub-Committee will retire to consider the issues and take legal advice after which the public session will be resumed.
13. Licensing Sub-Committee retires to consider the issues and take legal advice
14. Licensing Sub-Committee reconvenes
15. Legal advice given in private session repeated in public by legal officer

16. **The Chair of the Licensing Sub-Committee will then present the decision of Licensing Sub-Committee and their reasons. [The Chair can invite the Legal Adviser to do this on his/her behalf] OR** – parties advised of the date when a determination will be made.
17. ~~The Chair will advise all~~ ~~Decision of sub-committee given~~ ~~parties advised that~~ a Notice of Determination will be sent to them – **in due course containing the decision and fuller reasons behind the decision.**
18. Close of hearing

(1) Members can ask any question of any party at any time but should normally try to do so at these points.

(2) Legal and Licensing Officers should be involved at any stage where members feel they can be of assistance but a particular point should be made of asking for their comments at this stage

(*)Applicant speaks first; then questioned by councillors, Responsible Authorities (RA) or Interested Parties (IPs); RAs speak next; then questioned by councillors, applicant, other RAs or IPs; then IPs speak next; then questioned by councillors, applicant, or RAs; RAs or IPs sum up; then Applicant sums up; then committee leaves to make determination; any legal advice provided to the committee is then explained; then decision is given with licensable activities, hours, conditions and reasons OR review decision with changes imposed and reasons.