

Meeting of the

LICENSING COMMITTEE

Thursday, 27 April 2006 at 6.30 p.m.

A G E N D A

VENUE

Room C1, Town Hall, Mulberry Place, 5 Clove Crescent, London, E14
2BG

Members:	Ward Represented
Chair: Councillor Kevin Morton	East India & Lansbury;
Vice-Chair: Councillor Ray Gipson	Bow East;
Councillor Barrie Duffey	Mile End & Globe Town;
Councillor Alan Amos	Millwall;
Councillor Mohammed Abdus Salique	Mile End East;
Councillor Brian Son	Blackwall & Cubitt Town;
Councillor Marian Williams	Bow East;
Councillor Rajib Ahmed	East India & Lansbury;
Councillor Helal Abbas	Spitalfields & Banglatown;
Councillor Ataur Rahman	St Dunstan's & Stepney Green;
Councillor Lutfur Rahman	Spitalfields & Banglatown;
Councillor Motin Uz-Zaman	Mile End East;
Councillor Julia Mainwaring	Blackwall & Cubitt Town;
Councillor Betheline Chattopadhyay	Millwall;

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact:

Margaret Sampson, Democratic Services,

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LONDON BOROUGH OF TOWER HAMLETS

LICENSING COMMITTEE

Thursday, 27 April 2006

6.30 p.m.

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992.

Note from the Chief Executive

In accordance with the Council's Code of Conduct, Members must declare any **personal interests** they have in any item on the agenda or as they arise during the course of the meeting. Members must orally indicate to which item their interest relates. If a Member has a personal interest he/she must also consider whether or not that interest is a **prejudicial personal interest** and take the necessary action. When considering whether or not they have a declarable interest, Members should consult pages 181 to 184 of the Council's Constitution. Please note that all Members present at a Committee meeting (in whatever capacity) are required to declare any personal or prejudicial interests.

A **personal interest** is, generally, one that would affect a Member (either directly or through a connection with a relevant person or organisation) more than other people in London, in respect of the item of business under consideration at the meeting. If a member of the public, knowing all the relevant facts, would view a Member's personal interest in the item under consideration as so substantial that it would appear likely to prejudice the Member's judgement of the public interest, then the Member has a **prejudicial personal interest**.

Consequences:

- If a Member has a **personal interest**: he/she must declare the interest but can stay, speak and vote.
- If the Member has **prejudicial personal interest**: he/she must declare the interest, cannot speak or vote on the item and must leave the room.

When declaring an interest, Members are requested to specify the nature of the interest, the particular agenda item to which the interest relates and to also specify whether the interest is of a personal or personal and prejudicial nature. This procedure is designed to assist the public's understanding of the meeting and is also designed to enable a full entry to be made in the Statutory Register of Interests which is kept by the Head of Democratic Renewal and Engagement on behalf of the Monitoring Officer.

3. MINUTES

1 - 6

To confirm the minutes of the meeting of the Licensing Committee held on 17 November 2005 as an accurate record of the proceedings.

4. ITEMS FOR CONSIDERATION

4 .1 Determining Licence Applications in the Post Election Period

7 - 10

5. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

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Agenda Item 3

LONDON BOROUGH OF TOWER HAMLETS

At a meeting of the **LICENSING COMMITTEE**
held on **THURSDAY, 17th NOVEMBER 2005** at **6.30 PM** in **ROOM M72, THE TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON, E14 2BG**

PRESENT

Members of the Committee:

Councillor K. Morton (Chair)
Councillor R. Gipson (Vice Chair)
Councillor H. Abbas
Councillor R. Ahmed
Councillor A. Amos
Councillor B. Duffey
Councillor F. Miah
Councillor H. Rahman (from 6.50pm)
Councillor M. A. Salique
Councillor B. Son

Officers in Attendance

Michael Scott	Head of Planning
John Cruse	Licensing Section, Trading Standards
Paul Greeno	Legal Services
Margaret Sampson	Clerk to the Committee

1. APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillors Williams and L. Rahman and for lateness on behalf of Councillor H. Rahman.

Noted.

2. MEMBERS' DECLARATIONS OF INTEREST

There were no declarations of interest made.

3. MINUTES

The Clerk drew attention to two sets of minutes which had been tabled. These were the minutes of the meetings held on 6th and 13th July, which had been included in the agenda for a meeting that had been cancelled. Accordingly, the minutes were now being represented for approval.

RESOLVED

That the minutes of the meetings held on 6th July, 13th July, 16th August and 15th September 2005 be agreed as an accurate record of the proceedings and the Chair be asked to sign them.

4. ITEMS FOR CONSIDERATION

4.1 Licensing Act 2003: Review and Future (LC017/506)

Mr Cruse summarised the report which briefly touched on the impact of the Licensing Act 2003 and highlighted the key issues including developments related to the Gambling Act 2005.

With effect from 24 November 2005, the Local Authority in its role as a Licensing Authority, will be responsible for the renewal of licences for amusement with prizes machines in pubs but not clubs, though licences would only have to be considered as and when renewal was required. This scenario would last approximately one year, at which point the Gambling Act 2005 would take effect and authorisation would only be required where premises had more than two machines.

Other issues of note to consider included the role of the Responsible Authorities and the Licensing Committee under the Licensing Act 2003 and the consultation and policy requirements arising from the introduction of the Gambling Act.

Mr Cruse confirmed for Members that Amusement Arcades were covered by a separate regime and that there no public notification was required with regard to licences for amusement with prizes machines as it was purely an administrative function. The underlying principle was to ensure that premises were not seeking to operate a number of machines to the point of being predominantly gaming premises and the sale of alcohol was a secondary function.

Cafes, etc which may also have machines of this nature were also covered by a separate regime and Mr Cruse advised that the Council had a policy of not permitting such machines in these type of premises. It should be noted that a number of machines were actually video machines which were not covered by the legislation.

There was some concern that this seemed contrary to the spirit of the Licensing Act 2003 and would also be difficult to enforce. Mr Cruse assured Members that officers did indeed enforce the point that no amusement with prizes machines were located in cafes or shops that were freely accessible to children as these were premises that children were more likely to visit unaccompanied by an adult.

Mr Cruse further advised that if a premise was seeking to operate three or more such machines it would be for the Committee to question the applicant to establish need. The number of machines that premises could hold would be

dictated by available space, the question being whether the premises was trying to operate as a gambling premises that sold alcohol as opposed to a licensed premises that had several gaming machines.

It was considered unlikely that there would be many applications to consider as very few premises were likely to operate more than two machines and those that did already had such machines in place.

Mr Cruse advised that there were sufficient licensing officers in place to respond to the potential effects, should they occur, of the Licensing Act, and that this was also the view of the Police and the ASB unit. The Police view was that the ability to trigger reviews was helpful as the evidence required to do so was purely civil and therefore less onerous in terms of what was required.

The Courts also had the power to either fine an applicant or to suspend a licence for a period. An applicant could also lose their licence if there were repeated breaches of the licence conditions, if that individual was the Designated Premises Supervisor, the premises would have to close until such time a new DPS was approved.

Concern was expressed as to whether the individual Sub Committees were being consistent in their decision making and whether the Responsible Authorities were being consistent in their representations as there had been a number of occasions where an officer had not been present to advise the Sub Committee on the representations that had been made. It was felt that where a representation had been submitted, an officer should always be present to advise the Sub Committee.

Mr Cruse reported that approximately 85% of expected applications had been processed and that the overwhelming majority of applications with objections had been considered by Members. Only one or two applications had slipped. He was confident that the majority of licences would be issued by 24 November though some would be late due to the numbers that needed to be processed. This only related to licences that were deemed to have been granted and applicants had been contacted to that effect so that they were aware they had permission to continue trading.

Mr Greeno advised that the fact that different Sub Committees had granted differing hours of operation for similar premises was both recognised and permissible under the Licensing Act 2003 as it was accepted that not all premises would close at similar times. Applications were considered on an individual basis and concerned a number of varied issues, hence the variation in determinations.

Officers had been advised of only two appeals; one in regard to a technical issue which had been resolved and one which had been withdrawn.

The volume of applications within a very short timescale had caused a number of problems for the Statutory Authorities, particularly the Police and Environmental

Health, who had seen the vast majority of all applications received and there had been a number of occasions when representations had been resolved at a very late stage in the decision making process. The issue of officers not attending meetings when their department had made a representation had been raised with the individual service.

The fact that the Police licensing section had not always been able to contact the Safer Neighbourhood Teams due to the tight timescales governing the application process was recognised though communication between the various departments did improve as time went on.

Members expressed concern that there had been a number of occasions when there had been no Environmental Health officer present though representations had been made. There had also been several occasions when the officer who was present had not been briefed on the application that was being considered and could offer no information to the Sub Committee. It was felt that this gave credence to residents who queried the validity of the Sub Committee's decision.

Mr Cruse advised that the Committee would be required to consider reports on a number of licensing related issues at its future meetings and in response to a Members query, outlined the regulations governing the notification of applications.

There being no further comments, it was

RESOLVED

That in relation to Amusement with Prizes machines in premises that sell alcohol with an 'on-licence', applications or renewals for two or less machines are granted without reference to Members, while applications or renewals for more than two machines are referred to the Licensing Committee or a Sub Committee for determination by Members.

That the issues outlined in the report relating to the Licensing Act 2003 and the Gambling Act 2005, be noted.

4.2 Planning & Licensing

Michael Scott, Head of Planning, advised that it was not possible for Planning officers to comment on the vast majority of application being presented as the vast majority of existing premises did not have planning permission in place due to the number of years they had been operating.

The situation in Brick Lane would be similar to other areas in that there would be a wide variation between the permitted hours operating at individual premises depending on when planning permission had been granted. Some older premises may well have been granted operating hours in excess of those granted permission in recent years. The general rule of thumb with regard to closing times was midnight.

Only three planning applications had been received in the past twelve months from premises seeking to extend the hours of their planning permission and all had been refused, though none of these originated from the Spitalfields area.

Mr Greeno reported that the information contained in the Licensing Act 2003 and the guidance was contradictory. The majority view amongst licensing practitioners was that a licensing application could not be refused on planning grounds though there was an alternative view that if an Authority's Licensing Policy was written in such a way that supported a refusal on this basis, this could be done.

Where an applicant was believed to be applying for an extension of hours that was likely to take them beyond any planning permission in place, they were advised that planning permission should be sought and if they did not do so, that the matter may be subject to enforcement by planning officers.

Mr Scott advised that if there had been a change of use that had continued for over ten years, no enforcement action could be taken. This was not the case if premises continued to operate beyond the planning permission hours of use; if the planning permission hours were breached, the breach was maintained and did not become immune to the possibility of enforcement action.

There was some discussion regarding previous planning history in the general area of Spitalfields and the saturation policy referred to in the Licensing Act. The Chair noted that there may well be a need for this issue to be addressed in greater detail when planning training for new Licensing and Development Committee Members.

Whilst aware of Members concerns, Mr Scott reported that in his 15 months with the Authority, there had only been one complaint received regarding the late opening of a premise which had been investigated and resulted in no further complaint.

The Chair asked that Members of both Licensing and Development Committee be kept informed of any comments or court decisions around the issues raised and that this be included in Members induction training.

The Chair thanked both officers for their contributions and closed the meeting at 8pm.

CHAIR_____

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Agenda Item 4.1

Committee	Date	Classification	Report No.	Agenda Item No.
Licensing Committee	27 April 2006	Unrestricted	LC020/506	4.1
Report of: Interim Head of Democratic Renewal & Engagement		Title : Determining Licence Applications in the Post Election Period		
Originating Officer(s) : Margaret Sampson		Ward(s) affected: All		

1. SUMMARY

- 1.1 This report advises and recommends a process for the consideration and determination of licensing applications for which hearings may be required in the period between the Borough Elections and the first scheduled meeting of a Licensing Sub Committee in the Municipal Year 2006/2007.

2. RECOMMENDATIONS

- 2.1 That current Members of the Licensing Committee who are re-elected to office, following the Boroughl Elections held on 4th May 2006, may continue to consider licence applications until such time as Council appoints the membership of the Licensing Committee for the Municipal Year 2006/2007, at its Annual General Meeting on 24 May 2006; and
- 2.2 That the Corporate Director (Environment & Culture) be delegated authority to extend, where necessary, the limit in which a hearing is held in respect of applications that fall to be considered by the Licensing Sub Committee in the period between 4 May and 15 June 2006, to ensure that all such applications are considered no later than 30 June 2006 on the basis that it is in the public interest to do so and is in accordance with Regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).

LOCAL GOVERNMENT ACT, 2000 (SECTION 97) LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of "background paper"

Name and telephone
number of and address where
open to inspection

3. BACKGROUND

- 3.1 The Licensing Act 2003 Hearing Regulations detail specific timescales in which a hearing must be held to consider applications where relevant representations have been made. In respect of premises and personal licence applications for example, any application on which representations have been received, must be heard within 20 working days following the last day of consultation.
- 3.2 The Hearing Regulations do allow a discretion to be applied to these timescales but in limited circumstances and this has required officers to consider how best to manage applications that may need to be considered during the post election period, i.e. between the actual date of the Borough Elections on 4th May and the Council AGM which is scheduled for 24th May 2006 and for the period between the Council AGM and the first meeting of a Sub Committee.
- 3.3 Full Council appoints Elected Members to serve on its Committees and Panels for the period of the Municipal Year, (with the exception of any time limited appointments that may be made), which runs from one AGM until the next. In a year when Borough Elections are held, all Members of the Council 'retire' together four days after the date of election and incoming Members, irrespective of whether they are newly elected or have been re-elected, are accepted to be 'in office' from the same date.
- 3.4 Having sought legal advice to ensure that any proposal is in line with both the Licensing Act 2003 Hearing Regulations and the Local Government Act 1972, it is considered to be both reasonable and practical that current Members of the Licensing Committee who are re-elected to office may continue to consider licence applications until such time as Council appoints the membership of the Licensing Committee for the Municipal Year 2006/2007, at its AGM on 24 May 2006.
- 3.5 However, it is possible that insufficient Members of the Licensing Committee may be re-elected to office to allow a Licensing Sub Committee to be constituted. Should this be the case and to also cover the period between the Council AGM and the first meeting of a Licensing Sub Committee in the new Municipal Year, it is proposed to utilise Regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005 as amended.
- 3.6 Regulation 11 states that an authority may extend a time limit provided for in the Regulations for a specified time period where it considers this to be necessary in the public interest. Accordingly, it is proposed that the Licensing Committee delegates authority to the Corporate Director (Environment & Culture) to duly extend the time limit by which any hearings that would be due to be heard in the period between 4 May (Borough Election) and the 15 June (first scheduled Sub Committee) until the latter date at the earliest and in any event, no later than 30 June 2006.
- 3.7 The public interest criteria for this would be met on the basis that any licensing application not heard within the proscribed timescales, would otherwise deemed to have been refused. It is not considered to be in the public interest of either an applicant or anyone making a representation, not to have their representations considered by Members. However, it is also in the public interest to have those

Members appointed to serve on Licensing Committee to be fully trained in the licensing process before considering any applications presented to them.

3.8 It should be noted that the above proposals relate solely to premises and personal licence applications and cannot be applied to any application to review a licence. Similarly, it will be very difficult to consider applications for a Temporary Event if it is required to be heard in the period between the AGM and the first Licensing Sub Committee meeting due to the extremely short timeframe in which they have to be considered. This is due to the fact that both these functions are Member level only decisions and cannot be delegated to officers.

3.9 The proposals outlined above are considered to be the most reasonable and practical means by which the Authority can continue to carry out the licensing functions with which it is charged.

4. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (Legal)

4.1 Legal Services have been actively involved in giving advice on this matter. Indeed, the report sets out advice that has been given. There are no other legal comments that therefore are required to be added.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1

6. ANTI-POVERTY IMPLICATIONS

6.1 There are no immediate anti-poverty implications arising from the report.

7. EQUAL OPPORTUNITY IMPLICATIONS

7.1 There are no immediate equal opportunity implications arising from the report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no immediate SAGE implications arising from the report.

9. RISK ASSESSMENT

9.1 Failure to put in place arrangements to enable licensing applications to be heard is likely to result in an undue burden for local courts in terms of appeals. It may increase the pressure on officers (as appeals may be more demanding in terms of time than ordinary hearings) and is likely to reflect badly on the reputation of the Council.

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