

LICENSING COMMITTEE

**Venue: Town Hall, Moorgate
Street, Rotherahm.**

Date: Monday, 7 February 2005

Time: 10.00 a.m.

A G E N D A

1. Appointment of Chairman.
2. Appointment of Vice-Chairman.
3. To determine if the following matters are to be considered under the categories suggested, in accordance with the Local Government Act 1972.
4. To determine any item which the Chairman is of the opinion should be considered later in the agenda as a matter of urgency.
5. Licensing Act 2003 - Miscellaneous Issues (report attached) (Pages 1 - 10)
- to consider the report of the Head of Neighbourhood Services concerning various issues relating to the operation of the Licensing Committee and its Sub-Committee.

ROTHERHAM METROPOLITAN BOROUGH COUNCIL**NEIGHBOURHOOD SERVICES**

7th February, 2005

To: The Licensing Board

1. Licensing Act 2003 - Miscellaneous Business

The purpose of today's meeting is to consider and determine four additional matters in relation to the Licensing Act 2003.

(i) **Delegation of Functions**

A table relating to the delegation of functions was approved by full Council on 22nd December 2004, and was included as part of this Authority's 'Statement of Licensing Policy'. A copy of the table is included at Appendix 'A' for Members' information.

Although the Scheme of Delegation has already been approved as part of the Licensing Policy, the provisions of the Licensing Act which allow the Licensing Committee to delegate functions, do not come into force until today, 7th February, 2005, and for this reason, it has not been possible for the Licensing Committee to formally delegate until today.

Recommended:- **That the scheme of delegation appearing at Appendix 'A' be approved.**

(ii) **Sub-Committees**

The scheme of delegation provides for some matters to be dealt with by sub-committee. This raises the question of whether the membership of the committees and the dates that the committees sit, can be pre-determined or, arranged in an ad-hoc manner.

The advantages of pre-determined sub-committees are that the licensing authority knows some time in advance that a particular sub-committee will be sitting on a particular day and this avoids the need to have to make numerous telephone calls in order to ensure that a quorate sub-committee is available for each sitting. In addition each Member of the sub-committee knows exactly when they are required to be available some time in advance and can therefore plan accordingly. This is particularly important as far as sub-committees under the new Act are concerned. Under the current arrangement the Licensing Board is still quorate if numerous Members fail to attend a meeting. That will not be the case with sub-

committees of three Members under the new Act where each Member will need to be in attendance for there to be a sufficient quorum. It is therefore vital that all three Members are in attendance. Pre-determined constitution can also ensure that each Member sits on a regular basis.

The disadvantages of pre-determined sub-committees are that they could be said to be inflexible and could lead to problems if particular sub-committees gain reputations for acting in a particular way. However, these criticisms can be remedied by interchanging the Members of each sub-committee whilst still setting out at the outset on what date each sub-committee of three pre-determined Members will be required to sit. Another disadvantage of pre-determined sub-committees is that if a particular sub-committee is scheduled to sit on a particular day but due to lack of matters to consider does not actually sit on that day, the Members of that sub-committee will not be called upon again until the next scheduled sitting of a sub-committee in which they are included. The situation would not arise if the constitution was decided as and when a sub-committee was required.

Members will also need to consider the provision for 'substitute' Members for each particular sub-committee.

The reason for this is that all three Members need to be able to sit in order for the sub-committee to be quorate. If one Member is ill or otherwise unable to attend this would mean that there was no quorum and accordingly the sub-committee could not sit. This situation would also arise if one Member was unable to sit as a result of having an interest. In these situations it would be necessary for a 'substitute' Member to sit in his or her place.

Recommended:- That the advantages of pre-determined sub-committees outweigh the disadvantages and are preferable to ad-hoc sub-committees. It is therefore recommended that the constitution of each sub-committee be pre-determined.

It is also recommended that provision be made for one 'substitute' Member per sub-committee and that for the reasons above, the 'substitute' be pre-determined.

(iii) **Hearing Procedure**

Attached at Appendix 'B' is a 'Full Hearing Procedure' for applications where representations have been received. This procedure has been developed as a result of the final regulations published by the Government on 14th January, 2005.

Recommended:- **Members are requested to consider and approve the document.**

(iv) **Fee for copies of entries from the Licensing Register**

The Licensing Act 2003 states that, if requested to do so by any person, a licensing authority must supply him/her with a copy of the information contained in any entry in its register in legible form.

A licensing authority may charge such reasonable fee as it may determine in respect of any copy supplied.

Members need to consider that the costs to the authority in producing such copies include officer time, costs of using the necessary equipment and stationary costs. It might not be that an individual requests a simple, one page copy of a licensing entry, but instead requests numerous copies of entries which would impact on officer time and other costs when preparing the request.

Members may wish to consider a fee structure that includes individual copies of entries, multiple copies (for example over five copies would invoke a higher charge) and a charge for a copy of the full register.

It might be that for the full register, the charge will be pence per copy/sheet plus cost of officer time at 'x' pounds per hour. This would be reasonable if the register runs to hundreds or thousands of pages, which it could do in all probability.

Recommended:- **Members are requested to direct officers accordingly and determine the above fees.**

APPENDIX A

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Recommended delegation of functions

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal Licence		If a police objection made	If no police objection made
Application for personal Licence with unspent Convictions		All cases	
Application for premises Licence/club premises Certificate		If a relevant representation made	If no relevant representation made
Application for provisional Statement		If a relevant representation made	If no relevant representation made
Application to vary premises Licence/club premises Certificate		If a relevant representation made	If no relevant representation made
Application to vary designated personal licence holder		If a police objection made	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence		If a police objection made	All other cases
Applications for Interim Authorities		If a police objection made	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.		Where matter referred by officer	All other cases
Decision to object when local authority is a consultee and not the lead authority		All cases	
Determination of a police representation to a temporary event notice		All cases	

FULL HEARING PROCEDURE FOR APPLICATIONS WHERE REPRESENTATIONS HAVE BEEN RECEIVED

1. The Chairperson welcomes the people who are present and introduces the Members. He/she will explain to the parties at the beginning of the hearing the procedure that it is proposed to follow, and shall consider any request made by a party under regulation 8(2) of The Licensing Act 2003 (Hearings) Regulations 2005 for permission for another person to appear at the hearing. Such permission shall not be unreasonably withheld.

Any members of the Sub-Committee having a personal or prejudicial interest in the application before them will declare this and take no further part in the hearing of the application. This is in addition to the declaration of any personal or prejudicial interest.

Any member of the Sub-Committee who wishes to either support or oppose the granting of the licence either personally or on behalf of his constituents must attend as either a supporter of the application or as an Objector and sit in the public gallery.

The Head of Legal Services and Monitoring Officer [or his/her representative] shall then outline the application.

2. Failure of a Party to Attend the Hearing

The hearing may proceed in the absence of any party who has informed the licensing authority that he/she does not intend to attend or be represented at a hearing.

Where a party who has not notified the licensing authority that he/she does not intend to attend or be represented at the hearing fails to attend, the Sub-Committee may, if it considers it to be necessary in the public interest, adjourn the hearing to a specified date. Any such adjournment will be notified to all the parties forthwith. Alternatively, the Sub-Committee may decide to proceed with the hearing in the party's absence.

Where it is decided to proceed in absence the Sub-Committee will consider the application, representations or notice (as applicable) made by the absent party.

3. Persons Behaving in a Disruptive Manner

Any person who is, in the opinion of the Sub-Committee, behaving in a disruptive manner may be required to leave. Any such person who is

asked to leave may be refused permission to return or may be allowed to return subject to any conditions the Sub- Committee may specify.

Any person so excluded may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

4. The Applicant's Case

The Applicant shall present his/her/their case first.

- [1] The Applicant or his representative presents his application for the licence.
- [2] The Applicant or his representative will then call the Applicant's first witness (which may include the Applicant) and/or provide evidence in support of the application.
- [3] The Objector(s) or his/her/their representative may then ask the Sub-Committee for permission to question the Applicant's witness (which may include the Applicant). Cross-examination will not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require. If cross-examination is permitted by the Sub-Committee, the Objector(s) or his/her/their representative may then question the Applicant's witness (which may include the Applicant).
- [4] The Chairperson or any member of the Sub-Committee may then ask questions of the Applicant and the Applicant's witness.
- [5] The Applicant or his representative will then be given a final opportunity of asking any further questions of the witness to clear up any points raised in the earlier questioning.
- [6] If the Applicant has numerous witnesses the above procedure shall be repeated for each of those witnesses

5. The Objector's (s') Case

When the above procedure has been completed the Objector(s) shall present his/her/their case.

- [1] The Objector or his representative will give their reasons for objecting to the application.

- [2] The Objector or his representative will then call the Objector's first witness (which may include the Objector) and/or provide evidence in support of the objection.
 - [3] The Applicant or his/her/their representative may then ask the Sub-Committee for permission to question the Objector's witness (which may include the Objector). Cross-examination will not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require. If cross-examination is permitted by the Sub-Committee, the Applicant or his/her/their representative may then question the Objector's witness (which may include the Objector).
 - [4] The Chairperson or any member of the Sub-Committee may then ask questions of the Objector and the Objector's witness.
 - [5] The Objector or his/her/their representative will then be given a final opportunity of asking any further questions of the witness to clear up any points raised in the earlier questioning.
 - [6] If the Objector has numerous witnesses the above procedure shall be repeated for each of those witnesses.
 - [7] If several objections have been received then unless the Objectors have agreed to present their objections jointly, the above procedure will normally be repeated for each individual Objector.
6. The parties will be allowed an equal maximum period of time in which to exercise their rights provided for in regulation 16 of The Licensing Act 2003 (Hearings) Regulations 2005.
7. The Applicant is asked by the Chairperson of the Sub-Committee whether, in the light of the objections, he/she wishes to amend the application since when they retire, Members will consider only the application before them at that time.

If the Applicant wishes to amend the application or indicates that he/she is prepared for Members to give consideration to an amended application if they are minded to refuse the original application, the Objectors will be given the opportunity to comment on the amended application.

8. Hearsay Evidence

Hearsay evidence shall be admissible provided that it is relevant. However, the weight to be attributed to the hearsay evidence shall be a matter for the Sub-Committee.

9. Representations and Supporting Information

At the hearing a party shall be entitled to—

(a) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d) of The Licensing Act 2003 (Hearings) Regulations 2005, give further information in support of their application, representations or notice (as applicable),

(b) if given permission by the authority, question any other party; and

(c) address the authority.

Members of the authority may ask any question of any party or other person appearing at the hearing.

In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

The authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to —

(a) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and

(b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

10. Closing Statement or Summary

Each party shall be given the opportunity to make a closing statement or to give a summary of their case.

- [1] By or on behalf of the Objector(s). The Objector(s) can summarise any points they wish to make and comment briefly on the Applicant's replies to questions.
- [2] By or on behalf of the Applicants. The Applicants can summarise any points they wish to make and comment briefly on the Objector's (s') replies to questions.

11. Conclusion

The Chairman will then ask the Head of Legal Services and Monitoring Officer [or his /her representative] whether there are any other matters to be raised or resolved before the hearing is closed. The Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. This will include at the discretion of the Sub-Committee their deliberations and their decision making.

If Members when considering the application are minded to grant a lesser period than that requested then the Applicant, the Officers of the Council and the Objectors can be asked for their views which will be taken into consideration.

If legal advice is given to the Sub-Committee by its legal advisor then this advice will be repeated in summary form by the legal advisor in public.

12. Determination of Applications

In the case of hearings relating to the following matters the Sub-Committee will give its determination at the conclusion of the hearing:

- police objections to temporary event notices;
- reviews of premises licences following closure orders;
- conversions of existing licences and existing club certificates
- applications by holders of existing justices' licences for the grant of personal licences.

In any other case the Sub-Committee will make its determination within a period of 5 working days beginning with the day or the last day on which the hearing was held.

13. Notification of Determination

Where the Licensing Act 2003 makes provision for the period within which a party must be notified of the Sub-Committee's decision, the notification will be given in accordance with that provision.

Where the Licensing Act 2003 does not make provision for the period within which a party must be notified of the Sub-Committee's decision, the notification will be given forthwith on making the determination.

14. Record of Proceedings

A permanent and intelligible record of the hearing will be taken and kept for six years from the date of the determination or, where an appeal is brought against the determination, from the disposal of the appeal.