



CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** Committee held on **Wednesday 19th November, 2014**, Rooms 5, 6 & 7 - 17th Floor, City Hall.

Members Present: Councillors Tim Mitchell (Chairman), Heather Acton, Rita Begum, Melvyn Caplan, Nick Evans, Peter Freeman, Louise Hyams, Patricia McAllister, Jan Prendergast, Shamim Talukder and Aziz Toki

Apologies for Absence: Councillor Nickie Aiken, Councillor Susie Burbridge, Councillor Jean-Paul Floru and Councillor Angela Harvey

1 DECLARATIONS OF INTEREST

1.1 There were no declarations of interest.

2 MINUTES

2.1 The minutes of the Licensing Committee meeting held in open session on 9 July 2014 were agreed as a correct record and were signed by the Chairman.

3 GUIDANCE ON THE FILMING OF LICENSING SUB-COMMITTEE MEETINGS AND THE EXCLUSION OF THE PUBLIC FROM LICENSING SUB-COMMITTEE MEETINGS

3.1 Barry Panto, Senior Assistant Solicitor, introduced the report, addressing Members initially regarding guidance on the filming of Licensing Sub-Committee meetings. There had been requests received in written weeks to film the proceedings of Licensing Sub-Committee meetings. The Openness of Local Bodies Regulations 2014 that came into force on 6 August 2014 had caused some confusion in asserting that there is a right to film all local authority meetings. However, as set out in the appended guidance document to the report, the regulations do not apply to meetings which are dealing with applications under the Licensing Act 2003. Special rules needed to apply whenever a Sub-Committee was conducting a public hearing where evidence is given by the parties involved.

- 3.2 Mr Panto advised that the Openness of Local Bodies Regulations 2014 would technically apply to hearings in front of the Sub-Committee when Members were considering applications under any other legislation than the Licensing Act 2003, including the Gambling Act and sex establishment licences under the Local Government (Miscellaneous Provisions) Act 1982. Mr Panto explained that although the objectors to a sex establishment licence application were not entitled as of right to be heard under the 1982 Act, in practice they were usually heard if they wished to give evidence. However, the licensing authority is not allowed to reveal the name or address of any objector to the applicant without his or her consent. There would be considerable concern if anyone attempted to film such persons on the basis that they are free to do so in accordance with the Openness of Local Government Bodies Regulations 2014.
- 3.3 Mr Panto referred to the recommendation in the report that the Committee agree paragraph 16 of the guidance document to amend the Council's rules of procedure that apply to hearings before the Sub-Committee so as to include a detailed rules on the process for the determination of requests to film the proceedings. Paragraph 16 set out a number of points including that the filming and taking of photographs at any hearing of the Sub-Committee would not be allowed without the express permission of the Chairman, a request to film or take photographs or make a sound recording should be made as early as possible in advance of the hearing and all parties would be consulted regarding such requests.
- 3.4 The Chairman stated that he could see no problems in terms of councillors being filmed as they had been elected and were publically accountable. The dilemma related to the filming of other parties for Licensing Sub-Committee meetings. He had received an e-mail from Councillor Floru who was not able to attend the current meeting. Councillor Floru had chaired a recent application for a restaurant in Berkeley Street which had been filmed apart from the representations of the applicant who had specifically requested not to be filmed. Councillor Floru's particular concern was in the event that an unscrupulous production company edited footage in such a way that it appeared as though Members had not taken into account representations at a hearing. He questioned whether it was possible to view material before it was broadcast. The Chairman made the point that this would be complicated and would be out of keeping with rights to free speech. Councillor Floru had added that in his view if all parties to the application did not agree that it should be filmed then having cameras in the room should be avoided. The Chairman considered that one way to avoid the problem if certain parties did not want to be filmed was to only film Members of the Sub-Committee. Mr Panto responded on the point in Councillor Floru's e-mail that the parties had been consulted on the filming of the Berkeley Street application. He commented that where there could be some difficulty was if a party to an application under the Licensing Act 2003 legislation not only objected to their own representation being filmed but also objected to the entire hearing being filmed. Ultimately discretion, if Members were minded to amend the rules of procedure as recommended in Appendix A, would rest with the Chairman. Members had concerns regarding the potential filming of sex establishment

licence applications where parties had a right to remain anonymous. This was an anomaly that DCLG needed to address.

- 3.5 Mr Panto addressed Members on the second part of the report, the exclusion of the public from meetings and exempt information. The default position was that all Sub-Committee meetings are open to the public and that reports can be seen by the public. It was recognised however that there are some applications before the Sub-Committee where the Police may request that the public are excluded so as not to prejudice their investigation. These cases may involve possible prosecution of criminal activity by persons who are connected in some way with the premises under consideration. Mr Panto made the point that requests were most likely to be received from the Police in respect of review hearings and particularly expedited review hearings. The Police had in many cases in relation to expedited review hearings begun criminal investigations but not had sufficient time to complete them.
- 3.6 Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 states that the hearing shall take place in public but that the licensing authority 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. Mr Panto expressed the view from a legal standpoint that it should not be the case that the public should be excluded simply because of the nature of the evidence. The Regulations did not apply to sex establishment licences or gambling hearings. It was considerably less likely that the Police would request these applications to be heard in private but if such a request was made the Sub-Committee would have regard to the exempt information provisions contained in the Local Government Act 1972.
- 3.7 The Chairman stated that it was very much up to the parties concerned whether to make an application for the public to be excluded and for all Members of the Sub-Committee to consider it. In two recent cases, the Police had brought reviews which included graphic detail and criminal investigations were still continuing. Councillors had then questioned whether the evidence should be in the public domain, including on the Council's website. The Police had subsequently submitted a request for the applications to be heard in private and this request had been approved by the Sub-Committee. In theory an attempt could have been made for part or perhaps all of the hearings to have been dealt with in public without the papers being in the public domain. If the material was challenged, however, when it was not in the public domain then it would have been necessary for it to be heard in closed session. Going forward, it was recommended that the licensing service would seek to ascertain from the Police whether any of the evidence supporting the application needs to be excluded from public access. If the licensing service was not able to ascertain the views of the Police, the grounds for the review would be included in the licensing register but the application for review would not be attached. In addition, the report to the Sub-Committee would not be placed on the Council's website until the hearing or first hearing of the matter before the Sub-Committee so as to give the Police the opportunity to ask for the hearing to be conducted in private.

- 3.8 Councillor Caplan commented that it appeared to Members as lay people that there was always the potential for criminal investigations arising from expedited reviews. There were concerns about adding reports to the website. This should however be a Police decision rather than a Member or officer decision. Councillor Caplan and Councillor Acton both referred to the serious concerns raised by the disclosure of the name of the victim in one of the review cases. Peter Large, Head of Legal and Democratic Services, stated that it was particularly serious that the name of the victim was disclosed and officers would be as able as the Police to ensure this was avoided. The proposed protocol was designed to prevent this happening again. The issue of whether future criminal proceedings would be prejudiced was more difficult to judge. Police licensing officers needed to get guidance on this from their colleagues who were responsible for prosecutions. Councillor Caplan recommended that when the licensing service consulted the Police as to whether any of the evidence supporting the application should be excluded from public access, this should be a written request.
- 3.9 The Committee approved the recommendations in paragraph 16 and 25 of the guidance document relating to the filming of meetings and exempt information respectively. Councillor Evans also raised the point that papers for a review hearing often included a large number of pages of CRIS reports which were in most cases heavily redacted and not comprehensible. He questioned the value of including some of this information in the papers. The Chairman responded that it would be useful to Members if the Police were able to summarise the important information contained in these submissions for the Sub-Committee so that it was understandable. Councillor Evans added that having a large number of pages of CRIS reports increased the potential for the name of a victim to be disclosed publically if an error was made and information was not redacted.
- 3.10 **RESOLVED:** (i) That the recommendation in paragraph 16 of the guidance document be approved (to amend all the rules of procedure that apply to hearings before the Licensing Sub-Committee so as to include a detailed rule on the process for the determination of requests to film the proceedings);
- (ii) That the recommendation in paragraph 25 of the guidance document be approved (to adopt a protocol for the exclusion of the public when the Licensing Sub-Committee is dealing with a review application under the Licensing Act 2003 or any other applications where the Police express concern that public disclosure may prejudice the investigation or prosecution of crime); and,
- (iii) That the contents of the report be noted.

4 LICENSING ACT 2003 - STATEMENT OF POLICY REVIEW

- 4.1 Chris Wroe, Licensing Policy and Strategy Manager, introduced the report. A policy seminar had taken place in October setting out some of the themes of

the statement of policy review. The meeting had been well attended by Members of the Licensing Committee and he had received positive feedback. The report for the current meeting included the proposed timetable leading to the publication of the revised statement of policy document in June 2015. Mr Wroe was due to meet initially with interested parties, including amenity societies. The policy review was an item that would be discussed at the Entertainment Forum in December. There would be a drafting of consultation documents in November and December which would need to be signed off by Councillor Aiken, Cabinet Member for Cabinet Member for Public Protection, Licensing and Community Services in consultation with the Chairman of the Licensing Committee and Cabinet. The intention was to begin the formal public consultation in January 2015 and this would be for a twelve week period. A month had been scheduled to assess consultation responses, prepare a draft statement of the policy and arrange follow-up meetings. The draft statement of policy would then need the approval of Councillor Aiken in consultation with Councillor Mitchell and the Cabinet prior to Council considering whether to adopt the revised statement of policy. Mr Wroe informed Members that it was hoped that this would be an agenda item for the meeting of Council on 20 May 2015.

- 4.2 The Chairman advised the Committee that there was some flexibility built into the scheduling as the existing Statement of Licensing Policy was effective until January 2016. He added that the review of gambling policy would take place in the second half of 2015 after the updated Statement of Licensing Policy was due to be published.
- 4.3 **RESOLVED:** That the contents of the report be noted.

5 LICENSING APPEALS

- 5.1 The Committee received a report with the latest information in respect of the appeals that had been submitted in relation to decisions taken by the Licensing Sub-Committee. Mr Large, Head of Legal and Democratic Services, provided a summary of some of the significant decisions taken since the previous meeting of the Committee in July. The first was Avalon at Shaftesbury Avenue where the appeal was submitted by the landlord. The landlord had accepted that the Sub-Committee's original decision was correct at the time but now sought to run a restaurant at the premises until 1am rather than as a nightclub where a fatal shooting had taken place. The District Judge dismissed the appeal and the landlord had agreed to pay costs. The second was La Bodega Negra in Moor Street/Old Compton Street. This involved a bar area where alcohol was not ancillary to food within a restaurant for up to 12 people until 11pm. The Sub-Committee had found that there was not an exception to policy but at the appeal the District Judge had decided that it was an exception to policy taking into account that the premises was exceptionally well run and the numbers were limited to 12. The Chairman made the point that this was a matter to take into account when reviewing the licensing policy.

- 5.2 Mr Large also referred to the Amika case in South Molton Street. This had particular relevance in terms of what happens to the interim steps at an expedited review when the Sub-Committee decides to suspend the licence at the initial hearing and then subsequently revokes the licence at the full review hearing. The Appellant's legal advice was that the interim steps ceased to have effect after the Sub-Committee hearing where the decision was taken to revoke the licence. Amika was found to be operating and selling alcohol after the revocation of the licence which led to the Police seeking a Closure Order. The District Judge granted the Closure Order. The Appellant subsequently withdrew their appeal against the Sub-Committee's decision. The Gambling Act application submitted by Paddy Power at 195-197 Edgware Road was discussed. The Sub-Committee had received evidence which appeared to demonstrate that granting the application would add to vulnerable persons being harmed or exploited by gambling and had refused the application. A number of inconsistencies had been found in the evidence in the preparation for the appeal hearing, following a notice of appeal being lodged by Paddy Power. Counsel's advice was sought based on correspondence with the Appellant and the matter was referred back to the Sub-Committee for consideration. The Sub-Committee authorised settling the appeal on the terms proposed, including no costs being claimed by the Appellant. The Committee noted the weaknesses in the academic research and that as stated by the Chairman, academic gambling research was being commissioned over a five to six month period, being financed by Public Health, Manchester City Council and the Local Government Association which would feed into the next policy review. Councillor Acton stated that there had been a number of residents' representations for the original Sub-Committee hearing and concerns had been expressed to local ward councillors when the matter had subsequently been settled. She requested that an advisory note was produced to inform of the facts of the case. Hayley Davies, Litigation Appeals Manager, agreed to produce the advisory note.
- 5.3 Mr Large addressed Members on the Supreme Court hearing relating to the sex establishment licensing fees case. This had been scheduled for 13 and 14 January 2015. The Council would be represented by Nathalie Lieven QC with the involvement of David Matthias QC.
- 5.4 **RESOLVED:** That an advisory note be produced on the facts of the Paddy Power case at 195-197 Edgware Road.

6 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 6.1 The Chairman consented to a matter being raised by Councillor McAllister. She expressed concerns that the Licensing Sub-Committee meeting on 13 November had been cancelled due to lack of items and yet there were a number of applications on the agenda for the meeting on 20 November, including two reviews. The Chairman and Deirdre Hayes, Service Manager, Environmental Health Consultation & Licensing, advised that the Council was

bound by statutory timetables. There had been a number of applications listed originally for the 11 November meeting. However, it was likely that the issues which had caused objectors to make representations had been resolved and there had therefore been no need for the applications to be considered at the meeting. The Chairman commented that occasionally applications were moved several weeks in advance to avoid them being considered by Members in their own wards or if it was likely that there would be a large number of applications that were not resolved prior to a specific Sub-Committee meeting. Applications did not tend to be moved at a very late stage, particularly as applicants and residents would not necessarily be available on a different date. Councillor Caplan added that the cancellation of a Sub-Committee meeting, as had happened on 13 November, was a rare event. The Chairman also made the point that whilst there were two reviews scheduled for 20 November, Madame JoJo's and Escape Nightclub in Brewer Street were likely to be heard together.

7 FUTURE LICENSING COMMITTEE MEETING DATES

- 7.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 11 March 2015, Wednesday 15 July 2015 and Wednesday 18 November 2015. All meetings are scheduled for 10.00am.

8 MINUTES

- 8.1 **RESOLVED:** That under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from the meeting for the following item of business on the grounds that the report contains legal advice to the Authority which outweighs the public interest in the matter taking place in public.
- 8.2 The confidential minutes of the Licensing Committee meeting held on 9 July 2014 were agreed as a correct record and were signed by the Chairman.

The Meeting ended at 11.05 am

CHAIRMAN: _____

DATE _____