

Crawley Borough Council

Report to Licensing Committee

Wednesday 2nd September 2015



Licensing Sub-Committee Hearing Procedure Revision

Report of the Head of Economic and Environmental Services – PES/192

1. Purpose

- 1.1 The Council as Licensing Authority must establish a Licensing Committee to carry out its functions in accordance with the provisions of the Licensing Act 2003 (the Act).
- 1.2 Each Licensing Committee may establish one or more sub-committees and may regulate its own procedure with regards to proceedings of the Licensing Committee and any sub-committee hearings.
- 1.3 The purpose of the report of this report is to consider and recommend to Council the revised Licensing Sub-Committee Hearings Procedure for inclusion in the Constitution.
- 1.4 The current adopted procedure forms part of the Councils Constitution and has been in operation since the introduction of the Act some ten years ago.
Copy attached at Appendix A.
- 1.5 Recently the procedure document has been revised to reflect the current format which is now used as standard by each Licensing Sub-Committee.
A Copy of the revised procedure is attached as Appendix B.

2. Recommendations

2.1 That the Licensing Committee:

Request Full Council to approve the revised Licensing Sub-Committee procedure attached at Appendix B for inclusion in the Constitution.

3. Reasons for the Recommendations

- 3.1 The revised procedure is required to simplify and reflect the Council's current Licensing Sub-Committee Procedure for proceedings as regulated within the Act.

4. Background

- 4.1 The Council as licensing authority is the relevant authority with regards to the determination of functions in accordance with the provisions of the Licensing Act 2003 (the Act).

- 4.2 The Act states each licensing authority must carry out its functions with a view to promoting the licensing objectives and must establish a licensing committee consisting of at least ten but no more than fifteen members of the authority.
- 4.3 All matters relating to the discharge by a licensing authority of its licensing functions are referred to its licensing committee and accordingly that committee must discharge those functions on behalf of the authority.
- 4.4 Each Licensing Committee may establish one or more Licensing Sub-Committees consisting of three members of the Committee and may arrange for the discharge of its functions to a Sub-Committee established by it or by an officer of the licensing authority.
- 4.5 The Council has delegated functions under the Licensing Act to the Licensing Committee, the Licensing Sub-Committee and officers, details of which can be found in the Council's Constitution.
- 4.6 The Act also allows the Council in its function as Licensing Authority to determine certain applications in accordance with the provisions of the Act.
- 4.7 Where an application for a premises licence or club premises certificate has been made lawfully, and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions;- this decision process has been delegated to officers.
- 4.8 However, where relevant representations are made, the authority must hold a hearing to consider such applications.
- 4.9 The determination of these applications **are delegated to the Licensing Sub-Committee.**
- 4.10 Each application must be considered by the Licensing Sub-Committee on its own merits and in accordance with the licensing authority's Statement of Licensing Policy together with reference to any supporting guidance issued by the Secretary of State under section 182 of the Act.
- 4.11 Where a hearing is required, the Licensing Act 2003 ('Hearings) Regulations 2005, 'the Regulations' make provision about the proceedings of Licensing Committees and their Sub-Committees.
- 4.12 Subject to the Regulations each Licensing Committee may determine its own procedure for such proceedings and that of its Sub-Committee.
- 4.13 The current adopted procedure forms part of the Councils Constitution and has been used since the introduction of the Act some ten years ago.
- 4.14 This documented procedure has been revised of late to reflect the current format which is now adopted as standard by Licensing Sub-Committees.
- 4.15 The revised document was required to simplify and reflect the Council's current procedure for proceedings as regulated within the Act.

5 Description of Issue to be resolved

- 5.1 The Licensing Committee is asked to consider the revised documented procedure for Licensing Sub-Committee proceedings and recommend it for adoption and inclusion in the Council's Constitution.
- 5.2 The revised Procedure once adopted will be applicable throughout any Licensing Sub-Committee hearing.
- 5.3 The procedure will have effect on all those taking part in referral proceedings in accordance with the Act.
- 5.4 The revision was necessary to simplify and reflect the Council's current procedure for proceedings as regulated within the Act.

6 Information & Analysis Supporting Recommendation

- 6.1 The revised procedure has been recently tested and found to be successful.
- 6.2 Recent Sub-Committee members have found the revised procedure easier to use.

7.1 Implications

- 7.1 There are no additional financial or staffing implications. Legal implications have been dealt with in the main body of this report.

8. Background Papers

- 8.1 The Licensing Act 2003,
The Licensing Act 2003 (Hearings) Regulations 2005.

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Appendix A

LICENSING APPEAL PROCEDURE

Context for the Proposed Licensing Committee Procedure

In Outline, the procedure for the meeting itself would be:

1. Introductions.
2. Presentation of report by Officer.
3. Presentation by Applicant.
4. Presentation by other consultees.
5. Questions asked by Members to all, through the Chair.
6. Questions asked by others, through the Chair.
7. Summing up by Applicant.
8. Committee leaves to determine application. Legal advice sought if necessary.
9. Committee returns to give decision.

Detail

Preparation for the Meeting

Prior to the meeting all consultees (for example, objectors) will have been contacted and advised put their observations in writing. Consultees will be informed that a maximum of 3 speakers, broadly in support of the application and a maximum of 3 speakers, broadly opposed to the application will be permitted to address the meeting. Also, that those speakers will be selected on a “first come, first served” basis, and that speaking time is limited to 3 minutes per person. Those who will be permitted to speak will be given a copy of the Order of the Meeting Procedure below. The speakers will be reminded that they must address only the issues which have been raised previously in writing, and that no additional information will be accepted at the time of the meeting, without the agreement of the Chair, prior to the meeting.

Lay Out of the Meeting Room.

The committee room will be laid out in such a manner that the “public gallery” is clearly separated from the consultees who have been selected to speak and from the Members of the Committee.

An usher will be provided. The usher’s role will be to identify the individuals who are to speak and to escort them to the appropriate table. Each table (including that of the members) will bear name boards and a copy of the procedure.

The usher will monitor the speaking time of each designated speaker and will signal to that person and the Chair when the time has expired.

The usher will also speak with anyone who causes an undue disturbance, in accordance with Council Procedure Rule 21. The Chair may direct that a person who persists in causing disturbance leaves the meeting.

In all cases, the meeting is run at the discretion of the Chair.

Licensing Committee Procedure

Introduction

- A. A legally qualified person will act as Clerk to the Committee and a Committee Administrator will minute the Committee's proceedings.

The Chair may require an employee of the Council to give advice or information at any time during the proceedings.

- B. Parties who may be heard in respect of any licensing matter before the Committee:-
- a. The applicant for the grant, renewal or transfer of a licence, permit or registration
 - b. Any person who wishes to object to, or support, the grant, renewal or transfer of a licence who has given three days' notice in writing to the Head of Planning and Environmental Services of his objection. (These persons should arrive no later than 15 minutes before the start of the meeting and produce a written note of what they intend to say for record purposes)
 - c. The holder of any licence the revocation of which the Committee is to consider.
 - d. The representative of the Chief Officer of Police.
 - e. The representative of the Chief Fire Officer
 - f. Any employee of the Council
 - g. Any other person the Chairman of the Committee may permit to speak.

- NB (1)** Parties may be heard in person (or their appointed representative).
- NB (2)** Parties may call witnesses to support their case.

- C. Procedure in respect of each report:

1. Speakers on the Report will be identified by the usher and escorted to appropriate seats.
2. Chairperson will welcome attendees. The Chairperson will state that reports are taken as read and will ask employees reporting whether there are any updates or clarifications before continuing.
3. Introduction by the Chairperson of the title of the report, followed by invitation to those permitted to address the Committee to introduce themselves.
 - Introduction of Officers who will speak in respect of the report.
 - Introduction of Statutory Consultees who will speak in respect of the report.
 - Introduction of Other Consultees (such as objectors or supporters) who will be permitted to speak in respect of the report.
 - Introduction of Applicant.
4. Presentation of report by officer.
5. Presentation by Applicant. The Chair will identify the usher and confirm that s/he will signal to the Applicant and the Chair when the time has expired. The time allowed for the presentation will be a maximum of 5 minutes, unless previously agreed between the Applicant and the Chair. e.g. if plans need to be viewed.
6. Presentation by Consultees. The time allowed for the presentation will be a maximum of 5 minutes per Consultee, unless previously agreed between the Consultee and the Chair. e.g. if statistics need to be presented.
7. Presentation by Other speakers. The Chair will identify the usher and confirm that they will signal to the speaker and the Chair when the time has expired. The

time allowed for the presentation will be a maximum of 3 minutes for an individual, or 5 minutes if speaking on behalf of a group, unless previously agreed by between the speaker and the Chair.

8. Question by members to all. These are to be questions (i.e. not statements or discussion) through the Chair.
9. Questions by
 - Officers
 - Consultees
 - Other speakers
 - Applicant.

Note that, these are questions (i.e. rather than statements or discussion) through the Chair. The person to whom the question is addressed will be clarified by the Chair and only that person will answer it.

10. Summing up by Applicant. The time allowed for the summing up will be a maximum of 5 minutes
11. The Committee will then consider written representations. The Committee may consider written representations only if a copy has been received by the Head of Planning and Environmental Services and forwarded to the applicant at least three days before the meeting unless the Chair rules that shorter notice may be given. Exceptionally, in the event of late and substantive submission of written material, the Licensing Committee reserves the right to defer consideration of the application to a later date in order for all parties to consider properly the issues raised.
12. Decision. The Members of the Licensing Committee will retire to consider their decision. Only the Clerk to the Committee and the Committee Administrator will retire with them.
13. The Members of the Licensing Committee will usually reach their decision and will advise the Applicant and attendees at the meeting and give their reasons for the decision. Exceptionally, the Committee may decide to defer consideration for presentation of further evidence or for receipt of further advice. In these cases Members would expect to convene as soon as possible once the necessary information comes to hand and will make their decision at the next available meeting date.
14. Speakers leave, if they wish.
15. Within 14 days of the Hearing, Applicants will receive written confirmation of the decision made, the reasons for it and details of any appeal rights open to them.

Procedure for Hearings under the Licensing Act 2003 (Hearings) Regulations 2005

1. The application and those persons present will be introduced by the Chair of the meeting.
2. The Legal Clerk will ask those present whether there are any applications to be considered in respect of requests for adjournment, the representation of any of the parties by another, the introduction of new material, or the cross examination of the applicant, the representative of a responsible authority or a party by any attendee at the hearing **(see note A)**.
3. The Committee or Sub Committee will deal with any such applications made.
4. The Legal Clerk will indicate whether the Committee or Sub Committee Members have previously asked for clarification of any aspect of the application or the representations received from any party.
5. A report will be presented by Crawley Borough Council's Licensing Officer. The report will contain details of the application and relevant written representations.
6. The applicant will make an oral presentation of his/her application, in person or by his/her representative (subject to the Committee or Sub Committee having given permission for such representation). The Legal Clerk will ensure that matters on which clarification has been sought from the applicant are addressed to the satisfaction of the Committee or Sub Committee Members.
7. The representatives of permitted responsible authorities present will make oral presentations of their previously submitted representations **(see Note B)**. The Legal Clerk will ensure that matters on which clarification has been sought from the responsible authorities are addressed to the satisfaction of the Committee or Sub Committee Members.
8. Other permitted parties will make oral presentations of their previously submitted representations, in person or by their representatives (subject to the Committee or Sub Committee having given permission for such representation) **(see Notes B and C)**. The Legal Clerk will ensure that matters on which clarification has been sought from the parties are addressed to the satisfaction of the Committee or Sub Committee Members.
9. Committee or Sub Committee Members will discuss the application and issues arising, under the supervision of the Legal Clerk. Parties may be asked to contribute to the discussion by the Legal Clerk or by the Committee or Sub Committee members.
10. The Committee or Sub Committee shall retire to consider the application and other written and oral representations made to them. The Committee or Sub Committee Clerk shall retire with the Committee or Sub Committee and shall take minutes of the discussion. The Committee or Sub Committee Members shall ask the Legal Clerk to retire with them or to join them at any time during the period of retirement if they wish to take legal advice. Legal advice given shall be repeated in summary form before all the parties and the applicant when the Committee or Sub Committee returns.
11. The decision shall be given within the time limit **(see Note D)**. The Committee or Sub Committee may ask the Legal Clerk to give the decision and the reasons on its behalf.

NOTES

Specific

- A** Applications for permission to cross examine any attendee at the hearing may also be made at a later stage in the hearing if the need to cross examine only becomes apparent during the hearing. Such late applications will be considered by the Committee or Sub Committee at the time at which they are made, or at some other suitable point in the hearing, as determined by the Legal Clerk. No cross examination of any attendee will be allowed without the permission of the Committee or Sub Committee.
- B** The responsible authorities are defined in the Licensing Act. Whether they are permitted to make representations is prescribed by the Licensing Act 2003 (Hearings) Regulations 2005.
- C** Parties who are permitted to give representations are prescribed by the Licensing Act 2003 (Hearings) Regulations 2005.
- D** The time by which the decision must be given is prescribed by the Licensing Act 2003 (Hearings) Regulations 2005.

General

1. Parties may not address in their oral presentations to the Committee or Sub Committee any material or matters not previously included in their written representations, without the express permission of the Committee/Sub Committee and, if present, the applicant, other interested parties and the representatives of the responsible authorities. Such permission will only be given in exceptional circumstances.
2. An equal amount of time will be given for parties to make representations. The amount of time, therefore, will be at the Chair's discretion, dependent on the number of representations requested.
3. By virtue of Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee or Sub Committee may exclude from all or part of the hearing any member of the public and/or any other person present at the hearing, including applicants, permitted responsible authorities, parties and their representatives, if the Committee or Sub Committee believes that the public interest in doing so outweighs the public interest in allowing the person(s) in question to remain.

Appendix B

Procedure for Hearings under the Licensing Act 2003 (Hearings) Regulations 2005

1. The Chair will advise those present of the procedure which will be followed.
2. The Chair will request that those persons present introduce themselves.
3. The Legal Clerk will ask those present whether there are any applications to be considered in respect of requests for adjournment, the representation of any of the parties by another, the introduction of new material, or the cross examination of the applicant, the representative of a responsible authority or a party by any attendee at the hearing (see note A).
4. The Committee or Sub Committee will deal with any such applications made.
5. The Legal Clerk will advise whether the Sub Committee had requested a briefing prior to the meeting and will indicate whether the Committee or Sub Committee Members have previously asked for clarification of any aspect of the application or the representations received from any party.
6. A report will be presented by Crawley Borough Council's Licensing Officer. The report will contain details of the application and relevant written representations.
7. The Sub Committee will ask the Licensing Officer any questions in relation to the report.
8. The applicant will make an oral presentation of his/her application, in person or by his/her representative (subject to the Committee or Sub Committee having given permission for such representation). The Legal Clerk will ensure that matters on which clarification has been sought from the applicant are addressed to the satisfaction of the Committee or Sub Committee Members.
9. The Sub Committee will ask the applicant any questions or for points of clarification in relation to their application.
10. The representatives of permitted responsible authorities present will make oral presentations of their previously submitted representations (see Note B). The Legal Clerk will ensure that matters on which clarification has been sought from the responsible authorities are addressed to the satisfaction of the Committee or Sub Committee Members.
11. The Sub Committee will ask the representatives of permitted responsible authorities any questions or for points of clarification in relation to their representation.
12. Other permitted parties will make oral presentations of their previously submitted representations, in person or by their representatives (subject to the Committee or Sub Committee having given permission for such representation) (see Notes B and C). The Legal Clerk will ensure that matters on which clarification has been sought from the parties are addressed to the satisfaction of the Committee or Sub Committee Members.
13. The Sub Committee will ask the other permitted parties any questions or for points of clarification in relation to their representation.
14. With the permission of the Chair, all parties will be able to ask questions of each other.
15. The applicant will be given the opportunity to provide any closing statements in relation to their application.
16. The responsible authorities will be given the opportunity to provide any closing statements in relation to their representation.

17. Other permitted parties will be given the opportunity to provide any closing statements in relation to their representation.
18. The Committee or Sub Committee shall retire to consider the application and other written and oral representations made to them. The Committee or Sub Committee shall ask the Committee Clerk to retire with the Committee or Sub Committee and shall take minutes of the discussion. The Committee or Sub Committee Members shall also ask the Legal Clerk to retire with them or to join them at any time during the period of retirement if they wish to take legal advice. Legal advice given shall be repeated in summary form before all the parties and the applicant when the Committee or Sub Committee returns.
19. The decision shall be given within the time limit (see Note D). The Committee or Sub Committee may ask the Legal Clerk to give the decision and the reasons on its behalf.

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