

## **GENERAL PURPOSES AND LICENSING COMMITTEE**

Minutes of the meeting held at 7.30 pm on 16 February 2011

### **Present:**

Councillor Tony Owen (Chairman)  
Councillor Stephen Wells (Vice-Chairman)  
Councillors Ruth Bennett, John Canvin, Roger Charsley,  
Roxy Fawthrop, John Getgood, Will Harmer, Ian F. Payne,  
Charles Rideout, Colin Smith, Tim Stevens,  
Harry Stranger, Pauline Tunnicliffe and Michael Turner

### **Also Present:**

Councillors Kate Lymer and Catherine Rideout.

### **85 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS**

Apologies for absence were received from Councillor Nicholas Bennett, J.P., and Councillor Diane Smith.

Councillor Ruth Bennett attended as Councillor Bennett's alternate and Councillor Colin Smith attended as Councillor Smith's alternate.

### **86 DECLARATIONS OF INTEREST**

Councillor Charles Rideout declared an interest with regard to agenda item 8 – Executive Assistants: Annual Report 2010/11 in that his wife was an Executive Assistant.

Councillor Stephen Wells declared his usual interest with regard to agenda items 16 and 21 – Pensions Investments Sub-Committee Minutes.

Councillor Harry Stranger declared an interest with regard to agenda items 6 – Presentation Licensing Developments and 7 – Licensing Act 2003 – Review of Outcomes.

Councillor Ruth Bennett declared an interest in agenda with regard to agenda item 9 – Members' Allowances Scheme – Annual Report as she was the Deputy Mayor of the London Borough of Bromley.

### **87 CONFIRMATION OF MINUTES OF MEETING HELD ON 20TH OCTOBER 2010**

**RESOLVED** that the minutes of the meeting held on 20<sup>th</sup> October 2010 (excluding exempt information) be confirmed.

**88 CONFIRMATION OF MINUTES OF THE MEETING HELD ON  
1ST FEBRUARY 2011**

**RESOLVED** that the minutes of the meeting held on 1<sup>st</sup> February 2011 be confirmed.

**89 QUESTIONS FROM MEMBERS OF THE PUBLIC ATTENDING  
THE MEETING**

There were no questions from members of the public.

**90 UNADOPTED HIGHWAYS AT BICKLEY PARK**

The Chairman started proceedings by stating that he would like to take as much of the discussion on the item in public as was possible.

The Council's Legal Officer present advised that the action set out in the report had been triggered by complaints and comments from the general public and residents of Bickley Park as a result of the installation of gates on certain roads and recent closure of gates across St. George's Road. He said that the Council would be sending a pre-action protocol letter to the solicitors acting for Bickley Park which would give full and comprehensive details of the Council's case and the evidence to be relied upon. The solicitor's response would be carefully considered in consultation with the Chairman of the Committee, the Vice-Chairman and the Environment Portfolio Holder. The Council may or may not then institute proceedings. In conclusion the Legal Officer advised that the sole purpose of any proceedings was to obtain from the Court a definitive ruling as to whether the Bickley Park roads were highways and therefore open to the general public or private roads solely for the use of residents and their invitees.

Councillor Smith, a local member for the Bickley ward, stated that many Councillors carried the scars of dealing with similar situations as the one that had arisen concerning Bickley Park, but that the live and let live approach preferred by the Council when dealing with such situations had become untenable in recent months due to a decision by a third party to close the gates on St. George's Road, adjacent to St. George's Church. He informed the Committee that a number of residents living on the estate had a long history of expressing concern as to the status of their roads and there was an underlying opinion on their part that several officers of the Council had historically acted in an unhelpful and uncommunicative manner.

He advised that since becoming Portfolio Holder, he had moved the Department towards a more accommodating approach to related matters, a decision not to be over prescriptive, or dogmatic about things like signs. Nobody could predict what would happen in court and it was important to remember that this recommendation was merely a gateway report, not a commitment to pursue the legal route which could hopefully still be avoided. He stated that there clearly was uncertainty over the status of the Bickley Park

estate roads and added that he had urged residents to keep the gates open as a number of complaints from road users and even residents within the estate itself had been received. In summary he stated that, given the conflicting opinions of residents and officers' legal advice that, on the balance of probability, the roads were unadopted rather than private and the Council's duty as the relevant Highway Authority, the Council must seek a definitive declaration to end many years of uncertainty.

The Vice-Chairman advised that the law stated that the onus was on the highway authority to prove highway status. There had been continual correspondence between the Council and residents about the private road, public highway argument. There had been no evidence as to highway status provided by officers. He commented that there was a great deal of information contained in the confidential part of the report and he felt that all except one part of the information could have been released to the public. The Vice-Chairman stated that this was not a matter to be dealt with by the Rights of Way Sub-Committee. The evidence would be considered by the Director of Environment Services, the Chairman and Vice-Chairman of this Committee and the Portfolio Holder for Environment. He was unhappy about this as he would have preferred the Sub-Committee to have dealt with this matter. He would also be interested to know whether the gates being closed constituted an obstruction of the highway. The Vice-Chairman was concerned that any court ruling would constitute a "one size fits all" approach to every situation of this kind when in reality all had different issues and would need careful handling. Another issue was the various closes that ran off the estate roads and whether they were private roads or highways. It would be nice to come to a conclusion on this matter but the Vice-Chairman stated he was unhappy with the proposed solution.

Another Councillor stated that she had no angle of this matter and had not received any correspondence, complaints of otherwise for private roads in her ward. She had driven on the roads in question in Bickley and felt once was enough as they were quite rough surfaced. She felt the Council needed to gain closure in this matter as it was costing a fortune and she supported the recommendation.

A Member stated it was difficult to prove the usage of roads, walkers had proved private use but it had not been proven in court. Gating was understandable for reasons of maintenance and security. The Council needed the court ruling to get rid of the muddle. He hoped it would not be used as a "one size fits all" solution but that each situation would be looked at on its own merits. All this was costly for the Council and for residents.

The move to a definitive answer was welcomed by another member of the Committee. He was minded to support the recommendation but was concerned that gaining it would cause other residents to approach the Council about the private road/public highway issue. The officer responded that there were a small number of such roads in the Borough where similar claims for private status had been raised.

In response to a question the officer advised that the Council would have to follow pre-action protocol procedures including consultation. If these procedures were not followed the Court would censure the Council. The Council could go into negotiation with residents. Litigation would be the last resort.

The Vice-Chairman advised that Members had tried to instigate an action to communicate with residents regarding the quality of evidence. However, Officers had been unwilling to comply and 18 months had gone by with Officers doing nothing in response to residents' correspondence. He would have preferred to go down this route of striking roads from a definitive list. He did not support litigation but supported mutual disclosure.

Councillor Smith commented that the past could not be changed and the Council needed a resolution and a way forward and he felt the recommendation should be pursued. He saw the exchange of communication between residents and officers as positive and the collected evidence would be considered and a decision as to whether or not the roads were private or public highways would be made. He highlighted again the frustration that had been caused by the closed gate.

In conclusion the Council's Legal Officer stated that the Bickley Park solicitors would receive a pre-action protocol letter from the Council and be given adequate time to respond. A final decision would then be taken whether to institute proceedings. The Officer agreed to provide members of the Committee with copies of the pre-action protocol letter.

On voting for the recommendation Councillor Wells requested that his vote against be recorded.

**RESOLVED that the Director of Legal, Democratic and Customer Services be authorised, subject to the evidence and after consultation with the Chairman and the Vice-Chairman of the General Purposes and Licensing Committee, the Environment Portfolio Holder and the Director of Environment Services, to commence legal proceedings to seek a declaration from the Courts as to the status of the area known as "Bickley Park".**

## **91 PRESENTATION - LICENSING DEVELOPMENTS**

The Committee received a briefing from the Head of Food, Safety, Occupational Safety and Licensing on the changes proposed to the Council's licensing regime by the Police Reform and Social Responsibility Bill. The briefing note is attached to these minutes as an appendix.

Members were advised that the Council's Licensing Policy stated that Members should not agree to Licensing applications unless any relevant planning permission had been approved. However, if Members had good reasons for deviating from the policy then they could do so.

Strong concern was expressed about the increased in hours of temporary event notices from 96 hours to 268 hours (8 days) with 2hours gap between each temporary event notice. It was noted that an event could be held almost continuously for nearly 6 months of any year. The Chairman advised the temporary event notice applications could be refused on the basis of the public nuisance it might cause.

## **92 LICENSING ACT 2003 - REVIEW OF OUTCOMES**

The Chairman had requested a report that summarised the outcome of all review applications since 2005. The report set out the reasons for a review, which was heard by the Licensing Sub-Committee, and the action the Sub-Committee could make. The report also set out details of the 21 reviews made to the Council since in became the Licensing Authority in 2005.

The Chairman commented that the reasons for reviews had proved to be largely consistent and he asked Members to use the report for future guidance.

The Committee was advised that the Beckenham Convenience Store had been suspended for two months after serving underage customers with alcohol. The owners of the store had appealed but had been caught doing the same thing twice before they had actually appealed against the first suspension decision.

**RESOLVED that the outcome of the 19 Licensing Review hearings be noted.**

## **93 EXECUTIVE ASSISTANTS: ANNUAL REPORT 2010/11**

At its meeting on 21<sup>st</sup> May 2008 (Minute 13) this Committee had agreed that the Executive Assistants should submit to this February meeting a written report of their work over the past year in justification of the receipt of their allowances. This decision had been reaffirmed by the Committee at its meeting on 18<sup>th</sup> February 2009 (Minute 102).

Submissions from Councillors Peter Fortune (Executive Assistant to the Portfolio Holder for the Environment), Brian Humphrys (Executive Assistant to the Portfolio Holder for Children and Young People), Gordon Norrie (Executive Assistant for the Portfolio Holder for Renewal and Recreation) and Catherine Rideout (Executive Assistant to the Portfolio Holder for Adult and Community Services) were circulated at the meeting.

**RESOLVED that the submissions provided by the Executive Assistants covering their work during 2010/11 be noted.**

## **94 MEMBERS' ALLOWANCES SCHEME - ANNUAL REPORT**

The Regulations governing Members' allowances required that, before the beginning of each financial year, the Council should make a scheme of allowances for that year.

**RESOLVED that the Members' Allowances Scheme 2011/12 be submitted to Council for approval on 28<sup>th</sup> February 2011 and this would include recommendations that:**

- (1) in light of the current economic situation, the current allowances be frozen; and**
- (2) the Mayoral and Deputy Mayoral allowance be set at the same rate as last year be agreed.**

## **95 PROGRAMME OF MEETINGS 2011/12**

The report presented the draft timetable of meetings for the next Municipal Year. At the meeting of the Committee held on 20<sup>th</sup> October 2010 it was suggested that the Annual Council meeting should be moved one week to a proposed date of 18<sup>th</sup> May 2011. This report reflected that change. Since that time, further consultation with members had been undertaken on the basis of a reduced programme with meetings being restricted to three days a week – three options were considered by the Committee. Members noted that in view of the major changes being proposed to the programme, it was recommended that Council take the final decision on the new approach.

The main changes proposed were reducing the number of programmed meetings to allow savings to be made in staff costs and other ancillary savings such as heating, lighting and the preparation and distribution of reports. Nearly 30 meetings had been taken out of Options 1 and 2.

Another change was the consolidation of meetings around three evening per week rather than four. This would enable Civic centre support and security to be more focussed leading to further savings. Option 1 was based on Monday, Tuesday and Wednesday nights and Option 2 was based on Tuesday, Wednesday and Thursday nights with Council remaining on a Monday night. Option 1 offered more savings but would require moving the Plans Sub-Committee from their traditional Thursday evening slot.

A change on the number of Plans Sub-Committees from four to three was also proposed while maintaining the current frequency of the meetings. This would provide savings in Members' Allowances.

The final change offered was for meetings to be guillotined at 9pm or 9.30pm and moving additional meetings to the daytime.

Option 3 gave a programme with no changes to the current arrangements.

The Chairman advised that this would be the subject of further discussions and would be reported to Members in due course. He stated that he was content with suggestion that meetings be held on three days per week and it was just a matter of deciding which three days. The Chairman asked Councillor John Canvin and Councillor John Getgood for their input on this matter.

**RESOLVED to support the change to three meetings nights a week in principle, the meeting nights and other changes to be determined after further Member consultation.**

**96 RESOURCES PORTFOLIO - CHANGES TO MEMBER BUDGETS**

The report set out a number of proposals for saving in the draft budget for 2011/12 that were not being considered by the Executive for recommendation to Council on 28<sup>th</sup> February 2011 would have a direct impact on members.

Members noted the correction in paragraph 4.1 of the report the “once a week van delivery” figure should read £30,000.

**RESOLVED that the report be deferred for further consideration by Members.**

**97 BECKENHAM PAROCHIAL CHARITY - APPOINTMENT OF NOMINATIVE TRUSTEES**

The Council appointed six representatives to serve as Nominative Trustees on the Beckenham Parochial Charity Trust. Members considered the re-appointment of three representatives whose term of office expired on 24<sup>th</sup> January 2011.

**RESOLVED that the re-appointment of Councillor Russell Mellor, Mrs. M. Jessiman and Mr. A.M. Wilkinson as Nominative Trustees of the Beckenham Parochial Charity Trust for a four year term of office expiring on 24<sup>th</sup> January 2015 be agreed.**

**98 APPEALS SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 2ND SEPTEMBER 2010, EXCLUDING EXEMPT INFORMATION**

**RESOLVED that the minutes of the Appeals Sub-Committee meeting held on 2nd September 2010 (excluding exempt information) be noted.**

**99 LOCAL JOINT CONSULTATIVE COMMITTEE - MINUTES OF THE MEETING HELD ON 21ST OCTOBER 2010**

**RESOLVED that the minutes of the Joint Local Consultative Committee meeting held on 21<sup>st</sup> October 2010 be noted.**

**100 PENSIONS INVESTMENT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 11TH NOVEMBER 2010 AND 10TH FEBRUARY 2011, EXCLUDING EXEMPT INFORMATION**

**RESOLVED that:**

- (a) the minutes of the Pensions Investment Sub-Committee meetings held on 11<sup>th</sup> November 2010 (excluding exempt information) be noted;**
- (b) the minutes of the Pensions Investment Sub-Committee meetings held on 10<sup>th</sup> February 2011 (excluding exempt information) be noted; and**
- (c) That the recommendation to Council to agree that the pension deficit be recovered over 12 years be deferred for further consideration by Members.**

**101 AUDIT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 6TH DECEMBER 2010, EXCLUDING EXEMPT INFORMATION**

**RESOLVED that the minutes of the Audit Sub-Committee meeting held on 6<sup>th</sup> December 2010 (excluding exempt information) be noted.**

**102 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND THE FREEDOM OF INFORMATION ACT 2000**

**RESOLVED that the press and public be excluded during the consideration of the items of business referred to below as it was likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the press or public were present there would be disclosure to them of exempt information.**

**103 CONFIRMATION OF THE EXEMPT MINUTES OF THE MEETING OF THE COMMITTEE HELD ON 20TH OCTOBER 2010**

**RESOLVED that the minutes of the meeting held on 20<sup>th</sup> October 2010 be confirmed.**

**104 APPEALS SUB-COMMITTEE: EXEMPT MINUTES - 2ND SEPTEMBER 2010**

The Committee noted the exempt minutes of the Appeals Sub-Committee meeting held on 2<sup>nd</sup> September 2010.



**105 PENSIONS INVESTMENT SUB-COMMITTEE: EXEMPT MINUTES - 11TH NOVEMBER 2010 AND 10TH FEBRUARY 2011**

The Committee noted the exempt minutes of the Pensions Investment Sub-Committee meetings held on 11<sup>th</sup> November 2010 and 10<sup>th</sup> February 2011.

**106 AUDIT SUB-COMMITTEE: EXEMPT MINUTES - 6TH DECEMBER 2010**

The Committee noted the exempt minutes of the Audit Sub-Committee meeting held on 6<sup>th</sup> December 2010.

**107 UNADOPTED HIGHWAYS AT BICKLEY PARK**

This matter was discussed. Please refer minute number 90.

The Meeting ended at 8.37 pm

Chairman

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# Minute Annex

## BRIEFING NOTE FOR GENERAL PURPOSES AND LICENSING COMMITTEE 16 FEBRUARY 2011 – AGENDA ITEM 6

### **Police Reform and Social Responsibility Bill**

#### **1. Making Licensing Authorities Responsible Authorities**

Licensing Authorities will become responsible authorities. This will empower them to refuse, remove or review licences themselves. This proposal will ensure that licensing authorities are better able to respond to the concerns of local residents and businesses.

#### **2. Enable Licensing Authorities to suspend licences due to non-payment of fees**

In order to provide a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment this policy will enable licensing authorities to suspend licences due to non payment of fees.

#### **3. Late Night Levy**

This policy will permit local councils to charge businesses that benefit from a late night economy for the extra enforcement costs that the night time economy generates for police and local authorities. In areas where the licensing authority decides to apply the levy it will affect all premises that are licensed to sell alcohol during the hours at which the levy applies in their area. This can be between midnight and 6am. 70% paid to the Police

#### **4. Extend Early Morning Restriction Orders so they can be applied flexibly between midnight and 6am**

Early morning restriction orders allow licensing authorities to restrict sales in the whole or part of their area for any specified period between 3am and 6am if considered appropriate for the promotion of the licensing objectives.

The key changes that will be made through the Bill is to amend the provisions to allow local councils to decide between which hours they would like to prevent premises from opening between 12am and 6am

The main benefits to residents will be the avoidance of no go areas at night and anti-social behaviour associated with late night drinking that extends into residential communities, not just around licensed premises.

#### **5. Persistently selling alcohol to Children**

Persistently selling alcohol to children is defined as when a licence holder is found to be selling alcohol to children two or more times within a three month period. The key changes that will be made through the bill are to double the maximum fine from £10,000 to £20,000. Also to extend the period of voluntary closure that can be issued by the police or trading standards officers as an alternative to prosecution, imposing

a minimum closure period of 48 hours and a maximum closure period of two weeks. Introduce a presumption that a licence will be 'Revoked' on review.

**6. Increase the opportunities for local residents or their representative groups to be involved in licensing decisions by removing the vicinity test for interested parties**

The aim of the policy is to reduce any uncertainty amongst residents as to whether or not they are in the 'vicinity' of a premises and therefore whether they classify as an interested party. By removing the requirement to show 'vicinity' it will allow any person, body or business to make a relevant representation on any premises, regardless of their geographic proximity.

**7. Lower the evidential hurdle for Cumulative Impact Policies to allow licensing authorities to have more control over outlet density**

Currently statutory guidance implies that licensing authorities must gather statistical evidence to justify a decision to include a Cumulative Impact Policy in their licensing policy statement. In future the guidance will state that licensing authorities can include CIP's in their proposal for a licensing policy statement, because they believe that it is appropriate for the promotion of the licensing objectives. Licensing authorities are under a duty to consult widely on their licensing Policies taking into account the views of the local community.

**8. Give more autonomy to licensing authorities regarding closing times**

The proposed changes through the Bill would allow local authorities to make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using methods including fixed closing times, staggered closing times and zoning.

This change acknowledges the fact that different licensing approaches may be best for different areas, empowering licensing authorities to implement a licensing strategy best placed to meet the needs of the local community.

**9. Applicants to give greater consideration to the local area when making their application**

The aim of proposal is to shift the onus onto the applicant to address specific issues to the local area which should be clearly set out in their objectives. Providing contextual information on the local areas social demographic characteristics, local crime and disorder issues and awareness of the local environment to enable responsible authorities, other interested parties and the licensing authority to make better informed representations or decisions. This proposal will ensure that greater consideration is given to local issues when determining licence applications.

**10. Reducing the burden of proof on licensing authorities**

When making decisions on new and existing licenses and fulfilling their licensing responsibilities, licensing authorities are currently required to demonstrate that these decisions are 'necessary'. The proposed changes to the Bill will be to change the

wording from 'necessary' to 'appropriate'. This will give licensing authorities greater power to tackle irresponsible premises.

#### **11. Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police**

It is vital that licensing authorities consider relevant representations on the impact of crime and disorder from all responsible authorities, but the proposal is to strengthen the weight that licensing authorities give to police representations, in order to reduce alcohol related crime and disorder.

#### **12. Temporary Event Notice**

The key changes to be made through the Bill will be to allow the police and environmental health officers to object to a Temporary event notice on the basis of all the licensing objectives

To allow three working days to object to a Temporary event notice

To give licensing authorities discretion to apply existing licence conditions to a Temporary event notice

To allow late Temporary event notices (i.e. those submitted less than 10 working days before the beginning of the event) unless there are objections.

To relax the statutory limits on the total annual period covered by a temporary event notice in a single premises from 15 days to 21 days per year. Each Temporary Event can cover 168 hours (was 96hrs).

#### **13. Making local health bodies responsible authorities**

At present, the determination of licensing decisions gives little consideration to the views of local health bodies as they are not included as responsible authorities in the Licensing Act. By making health bodies responsible authorities it will allow health bodies to make representations regarding concerns about the impact of new licensed premises on the NHS (primarily A&E departments and ambulance services) or more generally the safety of the public within the night time economy.

Further details can be found at

<http://www.homeoffice.gov.uk/publications/alcohol/alcohol-proposals-factsheet/the>

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