

GENERAL PURPOSES AND LICENSING COMMITTEE

Minutes of the meeting held at 7.30 pm on 27 July 2011

Present:

Councillor Tony Owen (Chairman)
Councillor Russell Mellor (Vice-Chairman)
Councillors Nicholas Bennett J.P., John Canvin,
John Getgood, Will Harmer, Gordon Norrie, Ian F. Payne,
Charles Rideout, Diane Smith, Harry Stranger and
Stephen Wells

135 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS

Apologies for absence were received from Councillor Roxy Fawthrop and Councillor Roger Charsley.

136 DECLARATIONS OF INTEREST

There were no declarations of interest.

137 CONFIRMATION OF MINUTES OF THE MEETINGS HELD ON 18TH AND 24TH MAY 2011 (EXCLUDING EXEMPT MINUTES)

RESOLVED that:

- (a) the minutes of the meeting held on 18th May 2011 be confirmed; and**
- (b) the minutes of the meeting held on 24th May 2011 (excluding exempt information) be confirmed.**

138 MATTERS OUTSTANDING FROM PREVIOUS MEETINGS

Minute 128 – Licensing Work Plan 2011 – Review of 2010

Further to the meeting of the Committee on 24th May 2011, the Head of Food Safety, Occupational Safety and Licensing advised that he had referred the underage sales question to the Head of Trading Standards. A number of test purchases had been undertaken on 2nd July 2011. In total Sixteen visits had been done and seven sales achieved including two of alcohol in Biggin Hill and these were currently under investigation along with some other sales made in other areas

Minute 130 – Appointment of Council Representatives to Serve on Outside Bodies and Partnership Bodies

Further to the meeting of the Committee held on 24th May 2011, in relation to the vacancy for the Cray Valley Library and War Memorial Institute (to 8th June 2014), Councillor Roxy Fawthrop had been emailed and invited to fill the vacancy. Councillor Fawthrop was considering the invitation but had not yet responded.

RESOLVED that Mr. Graham Collins, a Cray Forum representative and member of the local safer neighbourhood panel, be asked to be the Council's representative on the Cray Valley Library and War Memorial Institute until June 2014.

The Renewal and Recreation Policy Development and Scrutiny Committee at its meeting on 5th July 2011, considered the ending of the need to appoint Councillors to the Beckenham and Bromley Town Centre Steering Groups. An extract of the minutes from this meeting was tabled for Members' consideration.

Councillors were advised that although the Town Centre Steering Groups were now defunct, both Beckenham and Bromley town centres had external business-based groups which included developers amongst other business interests. The Chairman stated that whilst it was not for the Council to impose its representatives it would be a good idea to encourage Councillors to become involved in these external groups.

RESOLVED that the Assistant Director for Culture (responsible for the town centre management team) be advised that the Committee considers that local Councillors should be encouraged to be involved in the external management groups for Bromley and Beckenham town centres.

139 QUESTIONS FROM MEMBERS OF THE PUBLIC ATTENDING THE MEETING

There were no questions from members of the public,

140 UPDATE ON LICENSING ASPECTS OF POLICE REFORM AND SOCIAL RESPONSIBILITY BILL

The Head of Food Safety, Occupational Safety and Licensing briefed Members on the latest position of the Police Reform and Social responsibility Bill. The briefing note is attached at Appendix A to these minutes. The Officer invited Members to consider the briefing note and to highlight anything that was felt to have been overlooked.

The Officer also brought to Councillors' attention the case of Brighton and Hove City Council versus Sainsbury's PLC where Sainsbury's had failed to

prove that the new store would not have a negative impact on the Cumulative Impact Area. This was unusual as the proposed store was a brand new development and not an existing business. A summary in relation to this case is attached at Appendix B.

The Chairman noted that both Beckenham and Bromley had cumulative impact areas. Another Councillor noted that there was a lesson to learn as when Beckenham Night Club went to the Magistrates' Court it fell to the Council to prove a detrimental impact and as a result the Council's decision to revoke the licence had been overturned.

It was also felt that the Council's Licensing Policy should be compared with that of Brighton to see if there were any differences that could be incorporated. The Officer confirmed that it had been for Sainsbury's to prove that its alcohol sales would not have a detrimental impact and he also drew Members' attention to the Hope and Glory case. It was also confirmed that Brighton's policy referred specifically to off sales which the Council's policy did not. Another Member noted that only Court of Appeal cases were relevant in matters such as this.

RESOLVED that a report on possible amendments to the Council's Licensing Policy in light of the Brighton and Hove City Council versus Sainsbury's PLC outcome be submitted to the next meeting of the Committee.

141 REVISED PROCEDURE FOR REVIEW HEARINGS - LICENSING ACT 2003

The Committee considered a report on the improvements made to the 'Review' procedure following comments expressed by Councillor Nicholas Bennett after the hearing of an application for the review of the licence at The Golden Lion Public House, Maple Road, Penge SE20 held on 31st May 2011.

The Chairman thanked the Head of Food Safety, Occupational Safety and Licensing for his open and honest report and he hoped that this approach would be taken up by other services within the Council.

RESOLVED that the procedural changes made to the review procedure subsequent to the receipt of Councillor Nicholas Bennett's comments be noted.

142 REPRESENTATIONS ON HOME OFFICE APPEALS FOLLOWING DECISIONS TO REVOKE A LICENCE

Members' approval was sought to write to the Home Office to express concerns about the sale of a licensed business whilst that business was subject to an appeal at the Magistrates Court following the Council's decision to revoke the Licence after a 'Review'.

The Head of Food Safety, Occupational Safety and Licensing advised that Councillor Wells had bought the matter in question to review due to concerns regarding after hours sales. After test purchases had proved this was so, the premises' licence had been suspended for two months. The owner of the business had appealed against this decision. During the appeal process the premises had been test purchased again and it failed so the Council made a decision to revoke the licence. This decision was then appeal against by the owner. There were therefore two outstanding appeals when the owner sold the business to a new owner.

The Premise Licence was held by the owner and had been subject to two Reviews for selling alcohol after the hours permitted under the Licence. At the first Review in October 2010 brought by Councillor Wells, the Sub Committee decided to impose conditions and suspend the licence for 2 months. This decision was the appealed against by the owner. While that Appeal was in the system with the Court further test purchases had been undertaken in December 2010 and January 2011. On both occasions sales had been made. This resulted in the Police bringing a second Review which had been heard in March 2011. At that Review hearing the decision had been made to revoke the licence, this decision inevitably was subject to a further appeal. In the meantime the owner sold the business and the licence was transferred to the new owner. This complicated the legal position with regard to the decisions of the Licensing Sub-Committee. After consulting with appropriate Councillors it was decided to continue with the appeal and allow the Court to decide how the matter should be taken forward.

Both the Appeals were taken together and heard by a Deputy District Judge. She decided that both the original decisions by the Council's Licensing Sub-Committee were correct (proportional and necessary). She acknowledged that the sale of the business did represent a change of circumstances and that the new operator should be given a chance to operate the business in compliance with the Licensing Act and to promote the licensing objectives but felt that there should be a clear demarcation between the two operators and that further training was needed for the staff. She therefore suspended the Licence for 1 month – to achieve this. If the training was not undertaken the licence would remain suspended until training had been completed

The Chairman noted that the letter to the Home Office would need to be reworded in light of the judgement.

Many Councillors agreed that a new owner should not be penalised for the actions of the previous owner even if it was suspected that the new owner was simply a "smoke screen".

The Chairman suggested that this case should be drawn to the attention of James Brokenshire, MP and then left to his consideration. This was agreed.

RESOLVED that the draft letter to the Home Office drawing attention to the Council's concerns, as amended by the comments above, be endorsed.

**143 APPOINTMENTS OF COUNCIL REPRESENTATIVES TO
OUTSIDE AND PARTNERSHIP BODIES 2011/12**

On 24th May 2011, the Committee considered a report that requested the agreement of the appointment of Council representatives to serve on Outside Bodies and Partnership Bodies in respect of annual appointments, three year term appointments and four year term appointments co-terminus with the period of the Council. Further to the above meeting of the Committee, Councillors were asked to consider a small number of issues that had arisen since.

RESOLVED that:

(a) there is no longer a need for the Council to appoint a representative to the Kent Association for the Blind;

(b) that Councillor Robert Evans (representative) and Councillor Diane Smith (deputy) be appointed as the Council's representatives to the Mental Health Joint Board; and

(c) the latest position with regard to Council appointments to the Cray Valley Library and War Memorial Institute be noted.

144 REFERENCE FROM THE PENSIONS INVESTMENT SUB-COMMITTEE

A report had been referred from the Pensions Investment Sub-Committee held on 10th May 2011 on changes that would have an impact on the pension fund and requested that the General Purposes and Licensing Committee or the Executive and Resources Policy Development Scrutiny Committee, as appropriate, consider the overall impact on the pension scheme of any high earning staff wishing to take early retirement.

The Chairman welcomed the Chief Accountant to the meeting and advised Members that he felt that it was too early to make a definitive decision as there was not enough information available as yet.

The Chief Accountant informed the Committee that the Council's actuaries were preparing a model on the impact of opt out rates on various contribution models. Barnett Waddingham, the actuary, acted for a number of clients and consideration could be given to commissioning them to do some modelling and prepare a report for Bromley, subject to the level of fee being levied being value for money.

RESOLVED that this matter be listed under the "Matters Outstanding from Previous Meetings" item on future agendas until it was considered that there was sufficient information for the matter to be determined.

145 PENSIONS INVESTMENT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 10TH MAY 2011(EXCLUDING EXEMPT MINUTES)

RESOLVED that the minutes of the meeting of the Pensions Investment Sub-Committee held on 10th May 2011 (excluding exempt information) be noted.

146 AUDIT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 7TH JUNE 2011, EXCLUDING EXEMPT INFORMATION

RESOLVED that the minutes of the meeting of the Audit Sub-Committee Sub-Committee held on 7th June 2011 (excluding exempt information) be noted.

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

148 CONFIRMATION OF EXEMPT MINUTES OF THE MEETING HELD ON 24TH MAY 2011

RESOLVED that, subject to the changes set out above, the exempt minutes of the General Purposes and Licensing Committee held on 24th May 2011 be confirmed.

149 PENSIONS INVESTMENT SUB-COMMITTEE: EXEMPT MINUTES - 10TH MAY 2011

RESOLVED that the exempt minutes of the meeting of the Pensions Investment Sub-Committee held on 10th May 2011 be noted.

150 AUDIT SUB-COMMITTEE: EXEMPT MINUTES - 7TH JUNE 2011

RESOLVED that the exempt minutes of the meeting of the Audit Sub-Committee held on 7th June 2011 be noted.

Appendix A
Appendix B

The Meeting ended at 7.56 pm

Chairman

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Briefing Note for General Purposes and Licensing Committee 27 July 2011 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>

PopplestonAllen

The leading licensing practice in the UK

News: Proving a negative can be very difficult, if not impossible

Date: 25/07/2011

Source: Poppleston Allen

Author/Solicitor: Jonathan Smith

You may have recently seen that Brighton City Council's refusal to grant a Premises Licence for Sainsbury's on North Street in Brighton, was upheld by the Magistrates Court. A spokesman for the Council said that the Magistrates had taken into account the wider issue of street drinking and what happens to the alcohol when it leaves the Premises, something licensees have no control over.

The Statement of Licensing Policy published by Brighton and Hove City Council states that applications for New Premises Licences, or variations, which are likely to add to the existing Cumulative Impact will be refused, unless the applicant can show that their application will have no negative Cumulative Impact. It goes on to say that: 'off licences also come within this policy as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, pre loading and excessive drinking and related order'. As an aside, the Council are now consulting over extending this policy by almost two thirds the size of the existing area.

Despite Sainsbury's offering additional conditions at the appeal, the appeal was still dismissed because the Court felt that Sainsbury's had still failed to show that the grant of the Premises Licence would not have an adverse effect on crime and disorder and public nuisance in the Cumulative Impact Area, and also on the grounds of protecting children from harm.

There was another interesting development on this appeal because evidence was given by the City Council's Director of Public Health and, whilst the author wasn't there,

presumably this was about the effect on the health of the general public as a consequence of drinking alcohol. With the introduction of the Primary Care Trust or Local Health Boards as Responsible Authorities and the distinct possibility in the future of a Public Health Licensing objective, the influence of health professionals will become more prevalent.

The question therefore centres on how any applicant, within this particular Cumulative Impact Policy area, or indeed any other such area, is going to satisfy the 'conditions' set out at paragraph 13.29 of the National Guidance, which is found in many Statement of Licensing Policies?. This paragraph suggests that it is for an applicant to demonstrate 'in their operating schedule' that there will be no negative cumulative impact on one or more of the licensing objectives as a result of the grant of a new Premises Licence or a variation to the hours on a Premises Licence.

Recently we had a client who was in the unusual (but fortunate) position that they had traded for 14 months with the additional hours before the decision was reversed in the High Court. Many operators apply for Temporary Event Notices to test the water for a much more limited period and with a more limited capacity.

If Premises have never traded at all, or never traded for the additional hours then how is it possible to demonstrate 'in an operating schedule' that there will be no negative cumulative impact when you have nothing to hang your hat on? You are seeking to prove a negative without any evidence and, if this is the case, many Police forces will simply make the point that the new licence or additional hours will, by definition, mean people staying longer, drinking more and therefore more crime and disorder. It is therefore very difficult as an operator to demonstrate that there will be no negative cumulative impact because you have never been given the opportunity to trade for those additional hours.

Additional measures can be offered in operating schedules, but how can operators demonstrate that there will be no increase in crime and disorder or public nuisance when they have either never traded from the site or not traded the additional hours?

Why does the Guidance say that the applicant has to demonstrate 'in their operating schedule' that there will be no negative cumulative impact? It is open for any applicant to demonstrate, other than by evidence simply being in the operating schedule, that there will be no adverse impact, much as we did in our recent case, through the production of statistical information provided by the Police showing there had been no increase in crime and disorder during the 14 months our client had traded for the additional hour. Had we not had this information we would simply have been relying upon the operating schedule and the Police would have said that we had failed to demonstrate in our operating

schedule that we will have no negative cumulative impact on the licensing objectives. Of course we would have no evidence to prove otherwise.

Most operators will not be in such a fortuitous position and will simply have to try and rely upon their operating schedule and an element of crystal ball gazing. But with the political climate as it is at the moment, with the proposed changes being made to the Licensing Act 2003 so that any action taken by a Licensing Committee, will only have to be 'appropriate' rather than 'necessary' along with the fact that any evidence given by the Police will have to be accepted unless proved irrelevant, the situation is not going to get any easier for applicants who are in areas covered by Cumulative Impact Policies.

For more information please contact [Jonathan Smith](#)

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