

PART 1 - PUBLIC

Decision Maker: General Purposes and Licensing Committee

Date: 24th May 2011

Decision Type: Non-Urgent Non-Executive Non-Key

Title: LICENSING SUB-COMMITTEE: SCHEDULE OF MEETINGS

Contact Officer: Graham Walton, Democratic Services Manager
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Chief Officer: Mark Bowen, Director of Resources

Ward: N/A

1. Reason for report

The Committee is requested to consider the proposed schedule of meetings of the Licensing Sub-Committee for the period June to November 2011. This report also addresses the issue of what circumstances will make a member ineligible to sit on a particular Sub-Committee hearing.

2. **RECOMMENDATIONS**

- (1) That the schedule of meetings of the Licensing Sub-Committee for June to December 2011 be agreed, subject to any changes being made as necessary by the Director of Resources with the agreement of the members concerned; and
- (2) That the Committee considers the issues about eligibility for membership of the Sub-Committee set out in section 4 of the report.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Safer Bromley.
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Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £434,444 (2010/11)
 5. Source of funding: Existing revenue budgets
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Staff

1. Number of staff (current and additional): There are 10 posts in the Democratic Services Team
 2. If from existing staff resources, number of staff hours: Preparing the Licensing Sub-Committee rota takes a few hours of staff time every six months.
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Legal

1. Legal Requirement: Statutory requirement. Licensing Act 2003
 2. Call-in: Call-in is not applicable. This report does not involve an executive decision.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY – LICENSING ROTA

- 3.1 Twice a year the Committee receives a six month schedule of meetings of the Licensing Sub-Committee meetings. The schedule for the remainder of 2011 has been drawn up along similar lines to those previously prepared.
- 3.2 In accordance with the Licensing Act 2003, only members of this Committee may serve on meetings of the Licensing Sub-Committee or act as substitutes. Proportionality is not required under the 2003 Act, and at its meeting on 27th May 2010 the Committee decided to overturn its previous practice of applying proportionality on the basis on two majority party members and one minority party member for each meeting wherever practical. For 2010/11, meetings were allocated on a roughly equal basis to all members of the Committee, and it is recommended that this continues.
- 3.3 All the meetings are to be held in the daytime; the morning session starting at 10 a.m. and the afternoon session at 2 p.m. with pre-meetings at 9.45 a.m. and 1.45 p.m. respectively. All the dates in the schedule will cover both sessions although it is anticipated that there will be occasions when one of the sessions (usually the afternoon) is not required. In line with the existing arrangements, Members are asked to notify the Democratic Services Team as soon as possible of meetings of the Sub-Committee where they are unable to attend as allocated.
- 3.4 The schedule of the proposed dates for the Licensing Sub-Committee is set out below:
- Tuesday, 31st May
 - Wednesday, 15th June
 - Thursday, 30th June
 - Friday, 15th July
 - Monday, 1st August
 - Tuesday, 16th August
 - Wednesday, 31st August
 - Thursday, 15th September
 - Friday, 30th September
 - Monday, 17th October
 - Tuesday, 1st November
 - Wednesday, 16th November
 - Thursday, 1st December
 - Friday, 16th December
- 3.5 Additional meetings may be set up as required. The rota of Councillors is currently being finalised and will be circulated before the meeting (once the membership of the Committee has been confirmed at the annual meeting of the Council on 18th May 2011).

4. CONVENTIONS OF SUB-COMMITTEE ELIGIBILITY

4.1 It is important that each Licensing Sub-Committee is, and is seen to be, impartial, and with only three Members sitting on each Panel it is essential to avoid Members having to step down at the last minute. Officers therefore work with Committee members to ensure that a suitable panel is selected for each meeting, with no potential conflicts of interest.

4.2 The Court of appeal in the recent “*Hope and Glory*” case settled the question of whether members on Licensing panels are making quasi judicial or administrative decisions. As Lord Justice Toulson said:

1. As Mr Matthias rightly submitted, the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires.

However it is clear that there is the duty to act fairly in accordance with quasi judicial principles as set out by the House of Lords in *Alconbury*:

The administrator may have a duty, in accordance with the rule of law, to behave fairly ("quasi-judicially") in the decision-making procedure. But the decision itself is not a judicial or quasi-judicial act.

4.3 Members are subject to the code of conduct when sitting on licensing panels and will have a prejudicial interest in any licensing application which affects them a family member or other close associate to a greater extent than other residents in their ward where from the perspective of an objective bystander that interest would be likely to prejudice members judgement of the public interest.

4.4 The Code of Conduct also prevents a member improperly using their position to secure an advantage or disadvantage for any person.

4.5 As is outlined above, even through the decision itself may not be quasi-judicial, in accordance with ensuring principles of fairness and the perception of fairness, Members have agreed that a member should not determine applications –

- from within their own ward;
- where they, or a family member, have an interest, such as through proximity to the property, or they or a family member/close associate have objected to or supported an application;

4.6 There is not a statutory prohibition on Members determining applications within their own wards but it is accepted national good practice to prevent accusations or challenge on bias that, as Bromley has done, licensing procedures discourage or prevent members sitting in these circumstances.

4.7 A complication is that some members of this Committee have family members who are also councillors in different wards. If that family member has been involved in the application then the position is clear cut. The question arises whether members should determine applications from wards represented by their family members where those family members and fellow councillors have not commented on the application or made an objection.

- 4.8 From a strict legal perspective if a member sitting on a licensing panel has a family member who is a councillor in a ward who has had no involvement or contact in that licensing application then it is extremely unlikely in the absence of some other aggravating factor that an aggrieved party could challenge a decision based on that alone. Neither would it be likely to amount to a breach of the Code of Conduct.
- 4.9 In practical terms matters are often not that cut and dried. Objectors and supporters of applications will often contact all councillors for a ward (particularly by e-mail) and may leave lobbying or making contact until after a licensing panel has been appointed or a member may feel late in the day they need to get involved at a ward level. In order to ensure that the Sub-Committee is seen to be impartial, and to minimise the risk of challenge, officers have generally sought to avoid this situation occurring. Whilst this has not been much of an issue and relatively few members are affected, this precautionary approach has recently been questioned and members have sought an opportunity to clarify what the Council's policy should be.
- 4.10 Whereas at one level the responsibility for councillor deciding they have a prejudicial interest ultimately sits with the councillor to take responsibility for this it must also be remembered that a councillor does not either have a right to sit on any committee and it is open to an authority to adjust the composition of a committee or sub-committee if it considers a councillor's participation could impact on the viability of a decision.

Non-Applicable Sections:	Policy/Financial/Legal/Personnel
Background Documents: (Access via Contact Officer)	Report to the GP&L Committee on 21 st May 2008, 15 th October 2008, 8 th April 2009, 21 st May 2009, 2 nd November 2009 and 27 th May 2010.

