

Decision Maker: GENERAL PURPOSES AND LICENSING

Date: 27 July 2011

Decision Type: Non-Urgent Non-Executive

Title: REVISED PROCEDURE FOR REVIEW HEARINGS -
LICENSING ACT 2003

Contact Officer: Paul Lehane, Head of Food, Safety & Licensing
Tel: 020 84216 E-mail: paul.lehane@bromley.gov.uk

Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

To report on improvements made to the 'Review' procedure following comments expressed by Councillor N. Bennett JP after the hearing of an application for Review of the licence at the Golden Lion public house Maple Road SE 20 held on 31 May 2011.

2. **RECOMMENDATION(S)**

Members are asked to note the procedural changes made to the Review procedure subsequent to Cllr N Bennett's comments in relation to the hearing.

Corporate Policy

1. Policy Status: Existing policy. Statement of Licesning Policy 2011 - 2014
 2. BBB Priority: Excellent Council. Safer Bromley, Vibrant thriving town centres
-

Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Public Protection & Safety Portfolio budget
 4. Total current budget for this head: £3.7 m
 5. Source of funding: Existing revenue budget 2011/12
-

Staff

1. Number of staff (current and additional): 59
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: No statutory requirement or Government guidance.
 2. Call-in: Call-in is not applicable.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

The Councils Public Health Team made an application to Review the licence issued to Admiral Taverns (58) Limited 150 Aldersgate Street London EC1A 4EJ for the Golden Lion in Maple Road Penge for failure to promote the licensing objective relating to the Prevention of Public Nuisance.

Councillor N Bennett was the Licensing Sub Committee Chairman and he noted a number of issues of concern relating to the preparation and conduct of the Review. These concerns were passed to Paul Lehane (Head of Food, Safety & Licensing) for a response, having consulted with the Head of Public Health Nuisance Team.

Councillor N Bennett's points and Officer comments are set out below.

The sub-committee was concerned as to why a Review had been launched given the paucity of evidence and the fact that neither the officers who visited the pub nor any local complainants were present. The Review was requested by the Public Health Nuisance Team within Public Protection. There were no police representations and they were not present.

1. No review proceedings should take place without the relevant officers being present to give evidence and answer questions;

Comment & Action

Agreed. This is essential. Regrettably because of the legal timescales in which a Review has to be held after it has been submitted the only date available coincided with the Officer being on leave.

In future we will liaise with an applicant to ensure they are available when the hearing is expected to be held. If there is any doubt we would suggest they delay making the application to ensure they are available.

2. No Review proceedings should be instituted except by the Licensing Team and when such a Review is considered all grounds for a possible review should be considered so that evidence from Public Protection, Licensing, Police is gathered, consolidated and reviewed to see if there is a substantial case for a Review; There were no representations by the police nor attendance and therefore there was no opportunity to test claims by the landlady that the police had never visited the premises.

Comment & Action

As the law stands the Licensing Team cannot bring a Review themselves. Reviews can be brought by any Responsible Authority, Ward Member or local resident / business.

When a Review application is received the Licensing Team has to advertise the Review by placing public posters in the area of the premises and at the Civic Centre. We also write to all the Responsible Authorities and Ward Councillors to inform them of the Review and invite them to join in with their concerns on any or all of the Licensing Objectives, This consultation lasts 28 days. In this case the Police were advised of the Review but did not seek to join in.

All statements should be checked for accuracy, the dates presented in evidence and the statements were contradictory;

It is suggested that the Head of Licensing should consider and comment on all applications for Review, however it should be noted that there is no provision for Officers to reject an application especially if it is from a Third Party eg Police or a local resident even if the case is weak. Advice can be given and one would hope has been sought prior to the application being submitted.

3. The papers for the hearing were repetitious and resulted in an agenda of over 130 pages. Officers should do a proper analysis and not just photocopy every complaint (which were identical) 19 times and leave the Sub-committee to wade through the papers to see if there was any variance in the appendices. The analysis produced of the complaints on the day should have been available with the original papers;

Comment & Action

This would be part of the consideration made by the Head of Licensing. (See point 3). When Reviews are being initiated by the Public Health Nuisance Team, their Head of Service will actively oversee the case as well.

4. The request for the DPS to lose her licence and the pub to have its entertainment licence removed for 12 months were wholly disproportionate in relation to the evidence at its highest and made the Council seem amateurish; did the Licensing Team review the evidence and the application by the Noise team for such a penalty?

Comment & Action

The recommendations made by the Public Health Nuisance Team Officer were all within the remit of the options open to the Council under the Review Powers (Section 52 Licensing Act 2003) and were offered for the Sub Committee to consider.

However on reflection the three proposed conditions did appear to be disproportionate when considered as a whole package.

The Head of Service for the Public Health Nuisance Team will oversee all Review cases to ensure that the proposed options are proportionate.

The Licensing Team have not previously seen it as their role to 'approve' an application for a Review. (see my comments to point 2 above), however this case has made it clear that we do need to have a greater role.

5. It was alleged that verbal warnings had been given. There was no written record. All verbal warnings should be logged;

Comment & Action

This point has been taken up by the Head of Public Health Nuisance (Noise team) with all Out of Hours Officers, and reinforced with the Licensing Team as well.

6. In the agenda there was a letter from the Licensing Team dated July 8th 2010 and one from the Noise Team dated July 12th 2010. There appeared to be no coordination between the Noise Team and the Licensing Team and the Council looked amateurish with one arm of the Council acting in isolation and unaware of what another part was doing. The Council is a corporate body and should act as one. It is suggested that the Licensing Team should be the co-ordinating section and that they alone should deal with licenses on regulatory matters;

Comment & Action

There is close liaison between the Public Health Nuisance Team and the Licensing Team. The Licensing Team do not have the capacity to deal with all matters that arise out of, or in connection with licensed premises. There has to be a degree of joint work between the two teams. Technical aspects of noise such as acoustic measures to attenuate noise and setting noise limiters need the expertise of the Public Health Nuisance Team. Additionally the Public Health Nuisance Team cover the monitoring of noise issues between 5pm and midnight and forms the core resource of the Party Patrol service which operate at weekends. The Licensing Team tries to deal with issues that relate to the Licence conditions but the Public Health Nuisance Team would deal with other type of noise.

Following a meeting with the Head of Public Health Nuisance we will ensure, in all cases involving noise, that there is ongoing liaison and we will establish a single point of contact for communication with a licensed business following complaints.

7. It was clear that when the Noise Team visited the public house they had no idea who the DPS was and reported that they spoke to a 45 year old man who claimed to be the licensee. The licensee is a woman in her 50s. No names were obtained. The Noise team and any other regulatory officers should have the necessary technology and associated database so that they are aware of the name of the DPS and can record at the time what is said;

Comment & Action

The two officers who attended the Golden Lion in February 2011 were on the Out of Hours Party Patrol. They would not routinely deal with noise from Commercial premises, party patrol most commonly responds to complaints concerning noisy parties. The ability of Out of hours to access details of Licence Holders / DPS details should be improved with the introduction of Notebooks in February 2011 with the capability of remote and Mobile access to our database. Officers have now been provided report record forms to complete for every noise complaint actioned out of hours so they can note the name of the person they speak to .

8. All officers investigating complaints should have camcorders and cameras to provide evidence. The Noise team should have sound measuring equipment. No evidence was provided of decibel limits;

Comment & Action

Noise measuring equipment is available when required for specialist investigations, but it is not required to establish the existence of a statutory nuisance. Readings may be necessary to

establish that a noise limit set on a noise limiter has been exceeded or to provide measurement of exposure to noise over a longer period e.g. to bar staff or DJ under the Noise at Work Regulations. Officers do have cameras for use when appropriate to record evidence.

The Head of Public Health Nuisance is currently drafting a procedure for serving fixed penalty notices in respects of noise from licensed premises. The service of such penalty notices requires a specific noise level to be obtained and as such out of hours officers will be provided with the appropriate sound measuring equipment for this purpose.

9. When visiting licensed premises the Noise team and other regulatory officers should liaise with the Licensing Team and the police.

Comment & Action

There is close liaison between the Licensing Team Police and Public health Nuisance Team and liaison occurs as appropriate to the nature of the complaint and the premises.

10. At the hearing the landlady was represented by a solicitor and the brewery was separately represented by another legal representative – this greatly extended the hearing. Should the Council require the ‘defendant parties’ to agree one representative?

Comment & Action

This is a difficult issue where, as in this case, the Review is brought against the Premises Licence holder (Admiral Taverns) but the pub is operated by a tenant whose livelihood was potentially threatened by the action. It is rare that 2 parties are represented by different solicitors but in the interests of justice it would seem unfair to prevent the tenant from being represented appropriately. In most cases I would expect the licence holders legal representative to be able to represent both parties.

11. Details of who is appearing either as a representative or a witness should be collected and checked beforehand and written details of names etc supplied to the Chairman at the start of the proceedings. This is done in court and saves time and means that there are not unnecessary discussions to rule witnesses as admissible or inadmissible.

Comment & Action

This is a good idea and we can introduce this practice to all hearings if it is not being done.

Appendix 1 sets out the flow diagram for the Review process.

4. LEGAL IMPLICATIONS

Hearings by the Licensing Sub Committee are governed by The Licensing Act 2003 (Hearings) Regulations 2005 as amended. The points raised by Councilor N Bennett would support the effective conduct of hearings.

Non-Applicable Sections:	POLICY IMPLICATIONS, FINANCIAL IMPLICATIONS PERSONNEL IMPLICATION
Background Documents: (Access via Contact Officer)	[Title of document and date]