

**London Borough of Sutton
Licensing Committee – 9 June 2009**

Report of the Executive Head of Environmental Sustainability

Licensing Sub-Committees - Hearings Procedure

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Report to amend the hearing procedure for Licensing sub committees

Summary

The current procedure for sub committee hearings does not reflect common practice by licensing authorities and it is therefore advisable that the procedure is amended to ensure best practice is followed.

It is recommended that the procedure is amended to include the additional paragraph proposed at paragraph 2.6 of the report.

1. Background

- 1.1 The Licensing Act 2003 requires all Licensing Authorities to determine a hearing procedure to be followed by sub committees for specified applications under the Act. These include applications that have had valid representations submitted and therefore have to be determined by a sub committee.
- 1.2 The current hearing procedure was adopted before the implementation of the Act and is set out in full at appendix A to the report.

2. Issues

- 2.1 Since the introduction of the Act it has become apparent that the procedure used during sub committee hearings is not in line with the practices of other authorities and does not follow best practice.
- 2.2 The current procedure states at point 7:
 - The members of the Sub Committee, their clerk and their legal advisor will retire to determine the application and the reasons for their decision.

This does not allow for any legal advice given to the members to be reported in open session.

- 2.3 Leading legal opinion in this area states that any legal advice given when the members have retired should be repeated in open session on the return to the hearing to allow all parties to the hearing to make representations on the advice given. The legal advisor can then consider these representations and then confirm the advice as it stands or vary that advice as he or she determines. The full section of advice on this area is set out below:

- At any time the committee is entitled to receive advice to assist it in discharging its responsibilities. If the committee is in any doubt as to the evidence which has been given, it should then seek the aid of their legal adviser, who should refer to his or the clerk's notes as appropriate. This should ordinarily be done in open session.
- Any legal advice given to the committee other than in open session should be clearly stated to be provisional and the advisor should subsequently repeat the substance of the advice in open session and give the parties an opportunity to make any representations they wish on that provisional advice. The legal advisor should then state in open session whether the provisional advice is confirmed or if it is varied the nature of the variation.

2.4 This practice would ensure that the hearing is conducted in a fair and open way and follow the same principles applied during court proceedings.

2.5 Although no legal challenges have been made against the hearing procedure or complaints lodged against the conduct of any hearings comment have been made by the legal representatives of applicants. It would therefore be prudent to amend the procedure to prevent this becoming an issue of contention and possible challenge.

2.6 It is recommended that the hearing procedure is amended to include an additional paragraph at the end of the procedure as set out below. This wording has been drafted in consultation with the principle solicitor of the council.

8. If the legal adviser gives advice to the sub-committee that advice will be reported to the parties to the hearing in open session and the opportunity will be given for representations to be made on that advice. The legal adviser will then either confirm the legal advice given or vary the advice given to the sub-committee.

3. Financial Implications

None

4. Influence of the Council's Core Values

None

5. Equality Impact Assessment

None

6. Background Papers

None

Appendix A

Hearing procedure