

**LICENSING AND SAFETY COMMITTEE**  
**31 January 2008**

---

**LICENSING PANEL HEARINGS**  
**(Director of Environment and Leisure)**

**1 PURPOSE OF DECISION**

- 1.1 The hearings held by the Licensing Panel for matters under the Licensing Act 2003 are governed by the Licensing Act 2003 (Hearing) Regulations 2005. These regulations set out the conditions in and under which hearings shall be conducted.
- 1.2 The Council supports and encourages negotiation between the applicant, responsible authorities and persons making representations to reach an amicable arrangement. This report seeks to gain committee approval for a procedure which will recognise that commitment and possibly reduce the need to hold a hearing with all parties in attendance.

**2 RECOMMENDATION**

- 2.1 **That the Committee agrees the procedure as set out in paragraph 4.7.**

**3 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

Borough Solicitor

- 3.1 The relevant legal provisions are contained within the body of the report.

Borough Treasurer

- 3.2 There are no significant financial implications arising from the recommendations in this report.

Impact Assessment

- 3.3 There are no direct consequences of this report for any group and no direct community safety implications.

Strategic Risk Management Issues

- 3.4 There are no issues to consider.

Other Officers

- 3.5 None.

## 4 SUPPORTING INFORMATION

- 4.1 The Licensing Act 2003 requires a period of consultation between a range of parties including responsible authorities and interested persons. Where there are no representations made, then the application must be granted with conditions attached in line with those measures as set out in the Operating Schedule.
- 4.2 Where the Licensing Authority has received a valid representation within the 28-day consultation period, then unless that representation is withdrawn a hearing must be held.
- 4.3 Where a representation is received, the Licensing Authority through its officers will encourage the relevant parties to enter into a period of negotiation to try and reach agreement. In some instances there are misunderstandings and it is possible to deal with those without any need to agree an alteration to the application or suggested conditions contained in the Operating Schedule. In other circumstances agreement may be reached where changes to the application or additional conditions are agreed. In a very few circumstances it is not possible to reach agreement.
- 4.4 Where agreement is reached, it is permissible for parties to withdraw their representations which must be done in a specified manner. If representations have been withdrawn, then the Licensing Authority, with the agreement of all parties, may decide to dispense with a hearing. The Licensing Authority in this instance refers to the decision-making power of members of the Licensing Committee, and not officers of the Council.
- 4.5 Where representations have been withdrawn with no agreed changes to the original application or Operating Schedule, then the application can be granted without the need for a hearing. Where agreement is reached, but with a need to change or alter the application or Operating Schedule including new or modified conditions then a "Hearing" must take place as the Licensing Panel is the only body that can impose conditions on a licence other than those offered up by the applicant in the Operating Schedule.
- 4.6 A question that needs to be asked is "given agreement by all other parties, is there a necessity to have a hearing with all parties present or could it be determined on written representations?" The answer in the officers' view is "yes", however there is still the need to ensure that the discretion of the Licensing Authority is engaged.
- 4.7 With this in mind the following procedure is recommended to the Committee for adoption where representations have resulted in agreement between parties and which seek to alter the original application or operating schedule. Where representations are received, the Licensing Authority has 28 days from the closing date within which to hold a Hearing. If possible, attempts to mediate those representations should be completed within 10 days.
- Notice in writing by all parties of the agreement reached and that a Hearing is not required must be received by the Licensing officer by the end of the tenth day.
  - The Licensing Officer will draw up a report on the application and mediated agreement and submit it to Democratic Services within 2 working days.
  - Democratic Services will pass the report to the allocated panel members within one working day.
  - Panel members will have 3 days within which to consider the report and decide either:

- (i) to have a public hearing on the agreed date or
- (ii) agree the application after consideration of the written representations and mediated agreement.

- The decision will be made by a simple majority of the 3 members.
- The decision must be communicated to Democratic Services by the close of the third day.
- Democratic Services must then send out either the papers necessary to hold a hearing or a decision letter at least 5 working days prior to the set hearing date.

4.8 The procedure outlined above is very tight in terms of timing and turnarounds, but it has proved to be achievable in a couple of examples in recent months. The aim of such a procedure is to comply with legal requirements and to provide to members the option to dispense with a public hearing if they are satisfied that the suggested mediated conditions met the licensing objectives.

#### Background Papers

Licensing Act 2003

Licensing Act (Hearing) Regulations 2005

#### Contact for further information

Robert Sexton, Head of Trading Standards and Services - 01344 352580

robert.sexton@bracknell-forest.gov.uk

#### Doc ref

G: Secs1\Winword\L&S Cttee\2008\Jan\Licensing Panel Hearings\15.1.08