

Agenda



Licensing (2003 Act) Sub-Committee

Date Monday 11th June 2012

Time 10.00 a.m.

Venue Council Chamber, Newham Town Hall, East Ham, E6 2RP

Contact: Paul Johnston, Committees and Partnerships
Tel: 020 3373 1461. E-mail: paul.johnston@newham.gov.uk

<p>MEMBERSHIP</p> <p>Councillors (3): Ian Corbett (Chair) East Ham Central; Andrew Baikie Little Ilford; Unmesh Desai East Ham Central;</p> <p>(Quorum: 3)</p>	<p>Officers usually in attendance:</p> <p>Environment Department: John Chislett Colin Hunt Mark Orton</p> <p>Resources Department: Janet Fasan</p>
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Sir Robin Wales
Mayor of Newham

Kim Bromley-Derry
Chief Executive

Agenda

	Report	Ward(s) Affected
1.	Declarations of Interest	
2.	Ally`s Food and Wine Store, 257 High Street, Stratford, E15 2LS (Pages 1 - 26)	Stratford and New Town;
3.	EFS Food and Wine, 39 Vicarage Lane, London E15 4HS (Pages 27 - 70)	Forest Gate South;

LICENSING COMMITTEE (2003 ACT)

PROCEDURE NOTE

INTRODUCTION

This document sets out the procedure for the Licensing Committee (2003 Act) and its Sub-Committees. The procedure helps to give effect to the Human Rights Act and the recommendation of the Nolan Committee on Standards of Conduct in Local Government that local authorities should have well-documented practices and procedures designed to avoid grounds for allegations of impropriety. The purpose of the Procedure is to ensure that the Committee or its Sub-Committee act reasonably, openly and fairly in dealing with licensing matters and is seen to be doing so. The Committee's work has a high public profile and needs to be as open and transparent as possible, so that applicants, Interested Parties and Responsible Authorities making Relevant Representations or seeking a Review receive a fair hearing and are clear about how decisions will be taken.

Newham aims to be the vanguard of good practice by adopting this Procedure.

This procedure note contains information for Councillor's and other parties (including applicants and persons making representations).

Reference to 'Committee' in this document also includes reference to its 'Sub-Committee'.

OPPOSED APPLICATIONS AND APPLICATIONS FOR REVIEW

Newham Council is the Licensing Authority for the Borough under the Licensing Act 2003. All applications for new Premises Licences and Club Premises Certificates, variations and transfers that have valid representations made against them (that have not been subsequently withdrawn) will be heard and determined by the Councils Licensing Committee (2003 Act) or one of its Sub-Committees. All applications for the review of an existing Premises Licence or Club Premises Certificates will be heard and determined by the Councils Licensing Committee (2003 Act) or one of its Sub-Committees irrespective of whether or not representations have also been made. The Licensing Committee (or its Sub-Committee) will also have to hear and determine other cases (such as opposed Temporary Event Notices and the cancellation of interim authority notices) that are laid down in the Licensing Act.

The administration and enforcement of the Licensing Act is undertaken by the Councils Licensing Team, 1st Floor, Town Hall Annexe, 330-354 Barking Road, London E6 2RT, tel: 020 3373 1925: licensingregistration@newham.gov.uk

Representations can be made by an 'interested party' against certain applications made to the Council under the Licensing Act 2003. An interested party means any of the following:

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity,
- (c) a person involved in a business in that vicinity,
- (d) a body representing persons involved in such businesses.

- (e) members of local authorities that are licensing authorities are “interested parties” in their own right under the Licensing Act 2003 in the area of the authority for which they are also members

Representations can also be made by the ‘responsible authorities’ specified in the legislation, against certain applications. The responsible authorities include the Police, Trading Standards and the Council Department responsible for enforcing noise nuisance.

The applications that interested parties and all the responsible authorities can make representations against are:

- Applications for new Premises Licences
- Applications for the variations of existing Premises Licences
- Applications for new Club Premises Certificates
- Applications for the variations of existing Club Premises Certificates

The Police, and only the Police, can make representations against applications for transfers of premises licences, variations to change the Designated Premises Supervisors, applications for personal licences, interim authority notices, and Temporary Event Notices. In these cases, the representations from the Police have to be restricted to the licensing objective of the prevention of crime and disorder.

Applications for the review of an existing Licence or Certificate can be made by interested parties and responsible authorities. Persons interested in applying for a review are recommended to contact the Council’s Licensing Team for information regarding the necessary procedure and to obtain the prescribed review application form. The completed form must be submitted directly to the Licensing Team.

When a review application has been made in relation to an existing Premises Licence or Club Premises Certificate, representations can also be made against that Licence or Certificate by interested parties and the responsible authorities.

All relevant representations and applications for the review of an existing Licence or Certificate must be in relation to one or more of the following licensing objectives:

- (a) The prevention of crime and disorder
- (b) Public safety
- (c) The prevention of public nuisance
- (d) The protection of children from harm

Representations must not contain anything defamatory or discriminatory, or matters that do not relate to the above licensing objectives.

If you or your organisation wants to make a relevant representation or apply for a review of a licence to the Committee please do not contact Members of the Licensing Committee directly. The method of making relevant representations and applications for Reviews is set out below:

All relevant representations and applications for the review of an existing Licence or Certificate must be in relation to one or more of the following licensing objectives:

- (a) The prevention of crime and disorder
- (b) Public safety
- (c) The prevention of public nuisance
- (d) The protection of children from harm

Relevant representations should be submitted directly to the Licensing Team, and must be received by them on or before the statutory deadline. The deadline is specified in the notices advertising the application and is normally 28 days after the Councils receipt of the application. It is against the law for the Council to accept representations received after the deadline.

Representations from interested parties must be made in writing, signed and include the name and full address of the person/organisation opposing the application. Anonymous representations cannot be accepted.

Persons wishing to organise petitions against an application are recommended to contact the Licensing Team for advice on the correct format and layout for the petition.

Persons making relevant representations (or seeking a review of a licence) who wish to provide video or DVD evidence which they would like the Committee to see must lodge this with the Licensing Team within the statutory deadline for receipt of representations. The Licensing Team will require 3 copies.

Copies of all representations are sent by the Licensing Team to the applicant/licence holder after their receipt. Such copies will include names and addresses, unless the person making the representation can justify to the Licensing Team that there are extremely exceptional circumstances as to why their details should not be disclosed.

Officers will include all relevant representations (including names and addresses) as an appendix to the report to the Committee.

Wherever possible you will be able to obtain a copy of the agenda for the meeting and the officer's report five clear working days before the meeting. The agenda is posted on the internet at:

<http://moderngov.newham.gov.uk/mgCommitteeDetails.asp?ID=890>

Hearings may be held anytime, as may be necessary. All relevant parties (e.g. applicants, licence holders and persons making representations) will be notified of when and where the Committee hearing of the matter will take place.

INTERESTED PARTIES AND RESPONSIBLE AUTHORITIES MAKING RELEVANT REPRESENTATIONS OR SEEKING A REVIEW OF A LICENCE

The Committee will allow an Interested Party, or a Responsible Authority who has made a relevant representation or has made an application for a review of an existing licence to address the meeting.

Witnesses may be called by a party if written notice is given to the Licensing & Registration Team 1, 2, or 5 working days (see below for further details as to which applies to you) before the hearing date together with details of the witness and a brief

description of the points the witness will be able to assist the Committee with. The Committee will normally allow witnesses to address the meeting. However, there may be occasions when permission for witnesses to address the meeting is reasonably refused.

Notice periods of intention to call a witness at a hearing:

- One working day's notice is required for:
Cancellation of an Interim Authority Notice hearing;
A Counter Notice hearing following police objection to a Temporary Event Notice
- Two working days notice is required for:
Review of a premises licence following a closure order
- **Five working days notice is required for any other application.**

If one of your local Councillors is a Member of the Committee, you should refrain from lobbying them directly, as this will prejudice their position. If a Member of the Committee takes a view on an application in advance of the meeting, this would debar them from determining the case. Remember that, if you live in Newham, you have three councillors representing your area and it is advisable to approach one who is not a member of the Committee.

If you wish to address the Committee, you should not introduce any written information or document that was not submitted with your original written relevant representation to the Licensing Team. If you do, the Chair will intervene and remind you of this procedure. However, the Chair at his discretion may allow the introduction of new written material if all parties present agree. You must not say anything that is discriminatory, defamatory or irrelevant to the matter under consideration.

When you arrive at the Town Hall please make yourself known to the Clerk before the start of the hearing. If you do not attend or are not represented at a hearing it may proceed in your absence. In that case the Committee or its Sub-Committee will consider the written representations made. If the hearing is adjourned you will be notified of the new date.

APPLICANTS

Applicants, those seeking a review of a licence, and their witnesses (with the permission of the Committee), can address the meeting. Applicants may arrange for and be represented at the hearing if they so wish. Applicants will also need to give notice of any intention they wish to call witnesses within the times specified above together with a description of the points on which the witnesses will be able to assist the meeting. Applicants will receive a copy of the officers' report in advance of the meeting. The agenda is posted on the internet at:

<http://moderngov.newham.gov.uk/ieListMeetings.asp?CommitteeId=890&CF=Licensing+Committee>

Applicants wishing to provide video or DVD evidence which they would like the Committee or its Sub-Committee to see must lodge this with the Licensing Team at least 7 days before the hearing. The Licensing Team will require 3 copies. This is to allow

Interested Parties/Responsible Authorities to view the evidence in advance of the hearing. Applicants must bear the cost of providing copies.

The Licensing Team will make available to the applicant copies of any video or DVD evidence received from persons making representations, which can be collected after the end of the deadline for representations.

When you arrive at the Town Hall please make yourself known to the Clerk before the start of the hearing.

If you do not attend or are not represented at a hearing it may proceed in your absence. In that case the Committee or its Sub-Committee will consider your application and any written representations made. If the hearing is adjourned you will be notified of the new date.

PROCEDURE AT PUBLIC HEARINGS

The Committee is not a court, and every effort is made to keep the proceedings as informal as possible. However, it is important that the hearing follows a particular order, to make sure that all parties receive a fair hearing. The meeting will be held in public except when there are legal reasons for it to be held in private and the Committee agrees that it should meet in private. The Chair of the meeting will have discretion to depart from the procedure in appropriate circumstances. The Chair may seek appropriate advice from the clerk or the legal advisor on any matter arising at the hearing. The Committee may at any time during the hearing seek clarification or information from the Licensing Officer. If the Licensing Officer believes that as a result of anything said at the hearing by the applicant, responsible authorities or interested parties that he should provide clarification to the Committee, he may ask the Chair's permission to do so.

The hearing will normally follow the procedure outlined as follows:-

1. INTRODUCTIONS

- The Chair asks the parties present to introduce themselves, and explain the procedure to be followed.
- The Chair will also ask the parties whether they intend to call witnesses and for the details of such witnesses.
- The Chair explain the procedure to be followed at the hearing.

2. PRESENTATION

Licensing Officer to present the Officers' report:-

- Members may seek clarification of matters in the report from presenting officer.
- The Applicant, Responsible authorities and Interest Parties may seek clarification of matters within the officers' report from the presenting officer.

- For Review hearings: The Licence holder may seek clarification

3. RELEVANT REPRESENTATIONS:

To assist the Committee, your representation should be concise, and must not include matters that you have not already included in your original written relevant representation. However, where there are a large number of Interested Parties the Chair will establish the grounds for the relevant representations. Interested Parties may choose, and are encouraged to nominate a person to make submissions on their behalf and the Chair of the meeting may invite them to do so. Interested Parties and Responsible Authorities should avoid going over issues that have already been raised, and if Interested Parties or Responsible Authorities bring up new matters not covered by the original written relevant representation, these matters may not be accepted.

Where there are a large number of Interested Parties present at the meeting the Chair, in consultation with the Committee, may impose a time limit for submissions by the applicant, Interested Parties and Responsible Authorities. In such circumstances all parties present will be entitled to address the meeting for an equal maximum period of time.

Responsible Authorities (e.g. Police, Trading Standards, Fire Service, Noise & Nuisance Unit) will be asked to present their case and call any witnesses (if permission has been granted):

- Members may ask questions of the responsible authorities (and their witnesses) concerning their representations
- Applicant may ask questions of the responsible authorities (and their witnesses) concerning their representations.
- For Review hearings: The Licence holder may seek clarification

Interested Parties (residents, business representatives etc) will be asked to present their case and call any witnesses (if permission has been granted):-

- Members may ask questions of the interested parties (and their witnesses) concerning their representations.
- Applicant may ask questions of the interested parties (and their witnesses) concerning their representations.
- For Review hearings: The Licence holder may seek clarification

The Licence holder will be asked to present their case (for Review Hearings only) and call any witnesses (if permission has been granted):-

- Members may ask questions of the licence holder (and their witnesses)

- Responsible Authorities may ask questions of the Licence holder (and their witnesses)
- Interested parties may ask questions of the Licence holder (and their witnesses)

4. THE APPLICANT

Applicant to present their case and call any witnesses (if permission has been granted):-

- Members may ask questions of Applicant (and their witnesses).
- Responsible Authorities may ask questions of Applicant (and their witnesses).
- Interested Parties may ask questions of Applicant (and their witnesses).
- Applicant may make brief closing remarks.

5. DELIBERATION

Members may pass a resolution to deliberate in private and exclude the press and public. The clerk and legal advisor remain with Members to provide advice on procedure and law as required by Members. If the Committee requires their advice, or requires any further clarification from the applicant or the persons making relevant representations, the meeting will re-assemble in public.

6. DECISION

The Committee will make a decision, which the Chair will announce publicly. The Chair will advise all parties of their right of appeal to the Magistrates Court. The Licensing Team will confirm the decision in writing to all parties within 2 working days. The minutes of the meeting are made public within 5 working days.

Please note: -

Time Limits: At evening meetings, a hearing in progress at 9.30 p.m. may continue for a further 30 minutes, but no new hearings may begin after that time, unless they are for a cancellation of an interim authority notice or for a temporary event notice. If there is any business not transacted by the end of the meeting, and it is not practicable to adjourn the hearing to another day, the matter will be deferred to another meeting and heard afresh. Applicants and persons making relevant representations will be informed in due course of the date the meeting has been adjourned to. The Council wishes to avoid this situation arising, and it is therefore in the interest of all present that contributions at the meeting are concise, and unnecessary repetition is avoided.

GUIDANCE FOR COUNCILLORS

Objections to an application are known as Relevant Representations under the Licensing Act 2003. Those entitled to make relevant representations are Interested Parties, i.e. individuals living in the vicinity of the premises, an organisation representing those living in the vicinity or a representative of businesses within the vicinity affected by the proposal.

If Councillors wish to make an objection to an application, or make an objection in connection with a review application, they may only do so if they make a written relevant representation as an Interested Party in the same way as any other member of the public. Similarly if a Councillor wishes to make a review application against an existing licence, they may only do so if they are an Interested Party. Under the legislation a Councillor can only be considered an Interested Party if they reside or carry on a business within the vicinity of the premises that is the subject of the licensing/review application. Representations against applications, and applications for reviews of licences, can only be made on the grounds of one or more of the four licensing objectives.

If a member of the Committee makes a relevant representation as an Interested Party (or attends as a witness for an applicant) the member is likely to have a personal interest that may also be prejudicial. If the Councillor's presence during the hearing of the application is likely to be prejudicial, the Councillor should leave the meeting room when the Committee hears the matter.

If during the course of a Committee meeting it appears that the procedures are not being followed by any Councillor, the Legal Advisor and the Clerk will bring this to the attention of the Chair for appropriate action. Breaches can result in matters being referred to the Council's Standards Committee and the Council's Monitoring Officer.

Councillors should be aware of the Council's protocols. Further information on which can be obtained from Paul Johnston, Clerk to the Licensing Sub-Committee (Licensing Act 2003), London Borough of Newham, Democratic Services, 3rd Floor, East Wing, Newham Dockside, 1000 Dockside Road, London E16 2QU. Telephone 020 3373 1461 or email paul.johnston@local.gov.uk

Councillors who feel that there are some concerns on the grounds of the 4 licensing objectives about a particular application, will need to consider how to ensure that the Licensing Authority is aware of those concerns. Councillors have a number of ways that this can be done, namely:

- Contacting the appropriate Responsible Authority (e.g. Police, Fire Brigade, Trading Standards, Noise & Nuisance Unit) drawing their attention to Councillors local knowledge. In this case the Responsible Authority will have to decide whether to pursue and make representations on the basis of the Councillors concerns and evidence.
- Councillors may appear as witnesses for an applicant or a person seeking a review of a licence. However, see below regarding members' personal interests.
- A Councillor may act in an advocacy role for interested parties (e.g. residents), and represent them at hearings. However if a Councillor wishes to do so, it will be necessary for the Councillor to submit proof to the Licensing Team that they have been specifically instructed by the interested parties in connection with the matter

and provide the names and addresses of those persons. Such proof may take the form of a letter from a resident requesting that the Councillor acts as their advocate in the matter.

- Councillors who are members of local authorities that are licensing authorities are now “interested parties” in their own right under the Licensing Act 2003 in the area of the authority for which they are also members, and therefore can make representations in their own right.

The Licensing Team should not be contacted except to obtain basic details of the application. As Council Officers, they must take an impartial view when processing applications and can only call for a hearing if representations are made.

Interested Parties can also seek a Review of an existing Premises Licence or Club Premises Certificate. A Premises Licence is required for the sale of alcohol, provision of regulated entertainment and late night refreshment. A Club Premises Certificate allows qualifying non-commercial members club to supply alcohol and provide regulated entertainment to their members and guests of their members.

Personal and Prejudicial Interests

As with all other meetings, members should comply with the provisions of the National Code of Local Government Conduct and the Newham Code of Conduct. However, the public and quasi-judicial nature of the Committee means that issues of propriety are of particular concern. Members need to be particularly vigilant and should refamiliarise themselves with the provisions from time to time, seeking advice if in any doubt.

If a Member of the Committee is likely to be affected by the outcome of a licensing application, it is likely that he or she has a personal interest in the matter, and should declare the nature and extent of the interest, preferably at the beginning of the meeting. The Member must also consider whether that interest is prejudicial. Where there is an objection in a personal capacity from a Committee member who has decided to object to an application, it is likely that he or she has a prejudicial interest. In either case where a member has a prejudicial interest he or she should not take part in the deliberation of the item and should withdraw from the meeting room when that item is reached.

Relevant representations from Councillors in their personal capacity (for example if they are directly affected by noise nuisance) will be dealt with exactly as the same as any other member of the public. This applies where the councillor is personally affected by the application on account of matters such as potential nuisance. However, a member's presence at the meeting may be prejudicial if for example the member is more affected by the outcome than others by the proposal in which case the member should not take part in the hearing of the item and leave the meeting room for that application.

A member of the Committee should not sit on the Committee or its Sub-Committee if the application is for a proposal in the member's ward.

If a Member of the Committee has already taken a view on an application in advance of the hearing, either for or against, and spoken or written about it, they should not be present for the hearing of the application and should leave the meeting room for that item.

Advice from the Standards Board for England is that a "particular cautious approach should be adopted to Licensing (and Planning) matters. You should avoid committing yourself on any matter that may fall to be decided by you as a member of the Licensing (or Planning) committee".

Councillors who are not Members of the Sub-Committee

A Councillor who is not a Member of the Committee may speak at a meeting as an advocate for either the applicant or an Interested Party unless the member has a personal interest that is also prejudicial.

A Councillor who wishes to attend the meeting in a personal capacity to object to or support an application may do so as an Interested Party if he or she has made written relevant representations or is a witness for a party unless the Councillor has a personal interest that is prejudicial. If the interest is prejudicial the Councillor should withdraw from the meeting room for that application. This is to ensure compliance with natural justice and the Human Rights Act.

Members should disclose any interest they may have, including the fact that they have been in contact with the applicant, agent, an Interested Party or a Responsible Authority if this is the case and whether they are speaking on behalf of such persons or any particular interest.

Any Councillor who is not on the Committee but who is at one of its meetings should normally sit separately, to demonstrate that they are not taking part in the discussion, consideration or vote. They should not communicate with Members of the Committee or its Sub-Committee or pass papers or documents to them before or during the meeting. They may not attend any briefings or accompany the Committee or its Sub-Committee if it excludes the press and public to deliberate in private.

Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

Ward Members

To underline the openness of the proceedings, the agenda papers show which ward each Member sits for, and it is helpful if Members introduce themselves and name their ward when they introduce themselves at the start of the meeting.

Being Seen to Act Fairly

The Local Government Ombudsman advises that not only must Members act fairly, they must be seen to act fairly. During the course of meetings Members should not discuss (or appear to discuss) any matter with any members of the public nor should they accept letters or documents from members of the public unless they have been processed in the normal way through the Licensing and Registration Team or the Clerk (see Section 1 above). Members are also advised to maintain and demonstrate an open mind if contacted by applicants or members of the public in the time leading up to the meeting.

Members should be Present throughout Consideration of an Item

Members making a decision on any particular item must ensure that they are present throughout its consideration. If they join the meeting or go out and return to it part way through a particular item they should refrain from participating in the discussion and not vote on that item. If a Member needs to leave the room, he or she may ask for a short adjournment.

Use of Political Whips

The Local Government Ombudsman considers that the "whipping" of group meetings for town and country planning matters in this way is maladministration, and it is good practice to apply the same maxim to licensing matters.

Lobbying

Lobbying is a normal and perfectly proper part of the political process and recognised by the Nolan Report that "It is essential for the proper operation of the system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves". Nevertheless if an approach is received by a Member from an applicant, agent or any other person (including a constituent) in relation to a particular Licensing (or planning) matter the Member should consider carefully how to proceed.

In some cases the approach may raise issues which the Member feels he or she needs to represent to the committee so as to properly represent the interests of his or her constituents. However if Members take a firm public position on the matter which might give the impression that they would not bring an open mind to the issue at committee this may mean that the Member may have to declare an interest in the matter and will have to refrain from taking part in the consideration and discussion and any vote on the matter as a member of the committee.

This remains the case irrespective of -the party who makes the approach to the member and irrespective of whether the Member supports or opposes the application.

The Local Government Ombudsman has expressed the view that the need to represent one's constituents does not override the requirement to withdraw from a meeting if there is a declarable interest. Thus, a member cannot present his or her constituent's views at a meeting if he or she has a declarable interest which requires that he or she withdraw.

If an approach does not raise issues which the Member wishes to present as a constituency matter to the committee, the member:

- shall make it clear that a decision will only be taken at committee after all the relevant evidence and arguments have been considered;
- shall avoid giving the impression that they will not bring an open mind to any decisions on a licensing application;
- may refer individuals to the council's appropriate officer(s) for matters relating to procedure, rules and the Licensing Policy;
- shall disclose the fact and nature of any such approach at any relevant meeting of the Licensing Committee.

Councillors who are not Members of the Committee

A member who is a member of a lobby or a campaign group should carefully consider whether they can participate in a licensing application where the group has campaigned for or against a particular proposal.

A member should consider the nature of their involvement with the group; the publicly expressed views of the lobby or campaigning group; what has been or done in relation to the particular group and consider whether a member of the public with all the facts would reasonably think that the interest is significant, that your decision on the matter would be prejudiced by it. If the answer is yes then you must declare a personal and prejudicial interest and leave the room.

When a Councillor who is not a Member of the Committee speaks at a meeting they should disclose any interest including the fact that they have been in contact with the applicant, agent or an interested party if this is the case and whether they are speaking on behalf of such persons or any particular interest. The Councillor should also consider whether any personal interest is also prejudicial as this is likely to be the case if the Councillor is a member of a lobbying group and in such circumstances should leave the meeting room when the item is considered.

Any Councillor who is not on the Committee but who is at one of its meetings would normally sit separately, so as to demonstrate clearly that they are not taking part in the discussion, consideration or vote. They should not communicate with Members of the Committee or pass papers or documents to them before or during the meeting. The Councillor should consider if they have a personal interest that is also prejudicial.

(This is an extract from the procedures adopted by the Licensing (2003 Act) Committee on 3 February, 2005.)