



HILLINGDON
LONDON



Licensing Committee

Date: TUESDAY, 12 JANUARY
2016

Time: 10.00 AM

Venue: COMMITTEE ROOM 5 -
CIVIC CENTRE, HIGH
STREET, UXBRIDGE UB8
1UW

Councillors on the Committee

Dominic Gilham, (Chairman)
David Yarrow (Vice-Chairman)
Lynne Allen (Labour Lead)
Roy Chamdal
Jazz Dhillon
Janet Gardner
Judy Kelly, Arts Champion
Carol Melvin
John Morse
Brian Stead

Published: Monday, 4 January 2016

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Putting our residents first

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Agenda

- 1 Apologies for Absence
- 2 Declarations of Interest in matters coming before this meeting
- 3 To approve the minutes of the meeting held on 15 October 2015 1 - 6
- 4 To confirm that the items of business marked Part 1 will be considered in public and the items marked Part 2 in private

Part 1 - Members, Press and Public

PRESENTATION

- 5 Public Health and Licensing - Dr Steve Hajioff: Hillingdon's Director of Public Health

POLICY DISCUSSION

- 6 Update on Licensing Policies recently approved by Cabinet and Council (verbal update by the Licensing Officer)
- 7 Member Working Group Review into Under 18 Alcohol Related Presentations to A&E (verbal update by Democratic Services and Chairman)

INFORMATIVES

- 8 Police Enforcement Activity Update (verbal update by the Licensing Officer and Metropolitan Police)
- 9 Legislative Update (report enclosed) 7 - 10
- 10 Forward Planner (report enclosed) 11 - 12

Part 2 - Members' Only and Not for Publication

11 Sub-Committee Decisions & Ratification of Minutes (report enclosed) 13 - 44

This agenda item is to be considered in private as it contains information relating to an individual, information which is likely to reveal the identity of an individual and information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. It is deemed that the public interest in withholding the information outweighs the public interest in disclosing it (exempt information under paragraphs 1, 2 & 7 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 as amended).

Agenda Item 3

Minutes

LICENSING COMMITTEE

15 October 2015

Meeting held at Committee Room 5 - Civic Centre,
High Street, Uxbridge UB8 1UW



HILLINGDON
LONDON

	<p>Committee Members Present: Councillors Dominic Gilham (Chairman), David Yarrow (Vice-Chairman), Lynne Allen (Labour Lead), Roy Chamdal, Janet Gardner, Judy Kelly, Carol Melvin, John Morse and Brian Stead</p> <p>Also Present: PC Emly Mitchell (Police Constable) (Metropolitan Police)</p> <p>LBH Officers Present: Stephanie Waterford (Licensing Service), Beejal Soni, Claire Freeman, Ian Meens and Mark Braddock</p>
7.	<p>APOLOGIES FOR ABSENCE (<i>Agenda Item 1</i>)</p> <p>Apologies were received from Councillor Jazz Dhillon.</p>
8.	<p>DECLARATIONS OF INTEREST IN MATTERS COMING BEFORE THIS MEETING (<i>Agenda Item 2</i>)</p> <p>No interests were declared.</p>
9.	<p>TO APPROVE THE MINUTES OF THE MEETING HELD ON 17 JUNE 2015 (<i>Agenda Item 3</i>)</p> <p>Before the minutes were agreed, Members sought an update on the implementation of Community and Ancillary Sellers Notices and the fees for this. The Legal Adviser informed Members that the relevant Order to enable this was still awaited from the Government.</p> <p>The Committee queried the delay in the roll-out of the 'Reducing the Strength' Initiative and agreed to receive an update at the next meeting. In relation to the provision of statistics for alcohol related Accident and Emergency admissions, the Chairman informed Members of the related review by a Working Group of the External Services Scrutiny Committee. It was agreed that the Licensing Committee would be kept informed about this review.</p> <p>The minutes of the last meeting held on 17 June 2015 were agreed as a correct record.</p>
10.	<p>TO CONFIRM THAT THE ITEMS OF BUSINESS MARKED PART 1 WILL BE CONSIDERED IN PUBLIC AND THE ITEMS MARKED PART 2 IN PRIVATE (<i>Agenda Item 4</i>)</p> <p>This was confirmed.</p>

11. **REVIEW OF LICENSING POLICIES** (*Agenda Item 5*)

The Licensing Officer briefed Members on the review into four key licensing policies, following which Members gave their comments and sought clarification from officers on a number of matters.

Street Trading Policy & Markets Policy

The Committee welcomed the separation of the policies, which had previously been together, in order to improve clarity for those applying to trade.

Members supported the proposal for a more permanent one year licence for regular traders (rather than the current 6 month renewal) which they believed would make it more business-friendly for traders and efficient for the Council. Importantly, the Committee felt that more permanent licenses would also give the Council scope for improved enforcement action, if required. It was noted that temporary licences would still be issued for short-term trading.

The proposal to move all public notifications and consultation on any street trading and market applications to the Council's website was not welcomed by the Committee in the strongest possible terms. The Committee requested that the Public Notice requirement of the consultation process should be reinstated.

Members expressed the importance for residents, Ward Councillors and other nearby traders to see any potential application visibly on the street. The Committee considered this particularly crucial in high density areas, e.g. Hayes Town Centre. Additionally, it was noted that some residents may not be able to access the Council's website.

The Committee welcomed the proposed addition of delineating trading areas. Members felt this would:

- a) assist the trader to keep within the agreed boundary;
- b) provide clarity to other traders and;
- c) aid any enforcement activity, if required.

In this endeavour, the Committee asked that Council officers explore using suitable markings placed on the highway showing the delineated area to trade that would fully complement the attractiveness of the street or pavement and surrounding area.

The Committee endorsed improved clarity in the policies that any payment of fees should be upfront, before the licence is granted.

The importance of traders abiding by the Council's waste, cleaning and refuse conditions was highlighted along with the need for the Council to fully enforce any contraventions using the range of powers available to it.

It was further noted by Members present that the Street Trading policy under review still included the former RAF Uxbridge site (St. Andrew's development) as an area where mobile or itinerant ice cream trading was prohibited.

Statement of Licensing Policy

The Committee noted that little change had been made to this policy overall, but suggested that it should include an expectation that new applicants will promote the 'Challenge 25' age verification scheme as part of their operating schedules. It was

noted that this would also be a potential recommendation from the External Services Scrutiny Committee Working Group's review into alcohol related admissions to hospital of under 18s.

Statement of Gambling Policy

The Committee noted that little change had been made to this policy, but acknowledged the upcoming changes in regulation in 2016.

Members were aware that these changes would require gambling operators to prepare a local area risk assessment to demonstrate the effect of a premises on the surrounding area. The Licensing Authority would be empowered by the legislation to set local area profiles which operators have to address in their risk assessments. It was noted that the profiles could include measures to address anti-social behaviour and the protection of vulnerable people. However, the Committee expressed caution that areas with such profiles could also gain a negative association.

All policies

The Committee acknowledged the important role of ward councillors in licensing matters and suggested further clarity of the process relating to making representations with a specific section added to each policy in this regard. Officers indicated that additional guidance would also be supplemented by briefing notes.

The Committee suggested that in each of the policies, further clarity be given to designate the actual officer post that makes any decision to reject a representation or objection received before it goes to a sub-committee, e.g. who decides a representation is vexatious. The Committee considered it beneficial for the Public and Members to know where the buck stopped.

RESOLVED:

That the Committee:

- 1. Provide their comments on the draft policy documents, noting that they will set the framework for future Licensing Sub-Committee decisions;**
- 2. Request the Senior Manager, Democratic Services drafts the Committee's proposed response to Cabinet, subject to being circulated to Committee Members and final agreement by the Chairman and Labour Lead.**

12. **SCRAP METAL ACT 2013 - UPDATE & ANALYSIS** (*Agenda Item 6*)

The Committee considered an analysis of the Scrap Metal Dealers Act 2013, since its introduction in October 2013. It was noted that since the Act and the new registration regime had come into force, there had been a noticeable decline in metal thefts around the Borough. Members endorsed the positive partnership with the Police and their efforts to further educate fellow officers on what to look out for, when out on the beat.

Following a useful discussion with the Council's Licensing Officer and the Metropolitan Police representative present, Members agreed to note the update and thanked those involved for their work.

RESOLVED:

	That the Committee note the update.
13.	<p>PRIVATE MEMBERS BILL IN RELATION TO FIXED ODDS BETTING TERMINALS (<i>Agenda Item 7</i>)</p> <p>The Licensing Officer introduced this item to update Members of the Committee on a Private Member's Bill to reduce the maximum stake for Fixed Odds Betting Terminals (FOBT's) to two pounds. It was noted that a second reading was yet to be scheduled.</p> <p>Members were given a copy of the Local Government Association recently published Councillor Handbook on Gambling Regulation. The Chairman referred Members to the checklist within the handbook and thereupon it was agreed that officers would provide the Committee at its next meeting details of Hillingdon's compliance with it.</p> <p>RESOLVED:</p> <p>That the Committee note the update.</p>
14.	<p>LEGISLATIVE UPDATE (<i>Agenda Item 8</i>)</p> <p>The Legal Advisor updated Members on recent caselaw, relevant legislation and guidance recently issued, including:</p> <ul style="list-style-type: none"> a) Sharanjeet Lalli v Commissioner of Police for the Metropolis and LB Newham [2015] EWHC 14 (Admin); b) Gold Kebab Ltd v Secretary of State for Communities and Local Government [2015] All ER (D) 48 (SEP); c) The upcoming Immigration Bill and implications in respect of personal licences; d) Recent Gambling Commission guidance to licensing authorities; e) Home Office guidance on the licensing of late night refreshment to reflect forthcoming changes to the Licensing Act 2003 made by the Deregulation Act 2015, where Members indicated that they would not welcome any de-regulation in the high street. <p>RESOLVED:</p> <p>That the Committee note the update.</p>
	The Committee adjourned at 11:45am, for a short break, and reconvened at 11.55am.
15.	<p>RECENT REPORTING CHANGES TO LICENSING SUB-COMMITTEES & CONSIDERATION OF A NEW UNIVERSAL LICENSING PROTOCOL (<i>Agenda Item 9</i>)</p> <p>The Committee welcomed recent improvements in the presentation of information, guidance and reporting to Members in undertaking their important licensing duties, particularly at sub-committee hearings.</p> <p>A discussion took place on the idea of time limits for speaking at hearings, where Members felt this could be counter-productive and agreed no limits should be applied to sub-committee meetings.</p> <p>Officers elaborated further upon Member queries around the delineation of officer roles, accountabilities and responsibilities within the licensing sphere.</p>

Members agreed to use a new single protocol for all hearings under the Licensing and Gambling Acts.

RESOLVED

That the Committee:

- 1) Supports the reporting changes outlined in the report and does not recommend any move to introduce time limits for speakers at sub-committee meetings.
- 2) Agrees the new Hearing Protocol with immediate effect as official guidance for Members, Applicants, Responsible Authorities and Interested Parties in respect of matters being considered under the Licensing Act 2003 and the Gambling Act 2005.

16. **FORWARD PLANNER** (*Agenda Item 10*)

Members looked ahead at the future business to be considered by the Committee.

RESOLVED:

That the Committee note the Forward Planner and agree the following additional topics or business items at its meetings:

12 January 2015 meeting

- a) Progress on the 'Reducing the Strength' Initiative;
- b) Compliance with the LGA Gambling Handbook Checklist;
- c) A Member update on the Working Group Review into Under 18 Alcohol Related Presentations to A&E.

All future meetings

A regular report on recent enforcement activity on areas within the Committee's remit

17. **SUB-COMMITTEE DECISIONS & RATIFICATION OF MINUTES** (*Agenda Item 11*)

This agenda item was considered in private as it contained information relating to an individual, information which is likely to reveal the identity of an individual and information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. It was agreed that the public interest in withholding the information outweighed the public interest in disclosing it (exempt information under paragraphs 1, 2 & 7 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 as amended).

Members reviewed recent sub-committee decisions and those present at the relevant sub-committee confirmed the minutes of the meetings they attended were an accurate record. The Committee then agreed to ratify the minutes.

RECOMMENDATION

That the Committee:

	<p>1) Note the decisions of the Licensing Sub-Committees since the last Licensing Committee meeting;</p> <p>2) Note and ratify the minutes of the Licensing Sub-Committee meetings dated 23 July 2015, 11 September 2015 (Part 1 & Part 2) and 16 September 2015 which are attached.</p>
18.	<p>ANY OTHER ITEMS THE CHAIRMAN AGREES ARE RELEVANT OR URGENT (<i>Agenda Item 12</i>)</p> <p>No other business was considered.</p>
	<p>The meeting, which commenced at 10.00 am, closed at 12.16 pm.</p>

These are the minutes of the above meeting. For more information on any of the resolutions please contact Mark Braddock Senior Manager, Democratic Services - Telephone: 01895 250470 or email: mbraddock@hillingdon.gov.uk. Circulation of these minutes is to Councillors, Officers, the Press and Members of the Public.

LEGISLATIVE UPDATE

Committee	Licensing Committee
Officer Contact	Sarah White, Beejal Soni - Legal Services
Papers with report	None
Ward(s) affected	All

HEADLINE

This report provides an update for Members on:

- Recent caselaw
- A taxation scheme which impacts on the Licensing Act 2003

RECOMMENDATION

That the Committee note the update.

CASELAW UPDATE

Mayfair Residents Order to Pay Licensing Appeal Costs of Mayfair Residents.

Mr Adrian White and The Hon. Mrs Jessica White v Westminster City Council and London Executive Officers Ltd and 12-18 Hill Street Freehold Limited v Westminster City Council 4th November 2015

This appeal arose from the grant of a premises licence by Westminster City Council authorising serviced offices in London's Mayfair to sell alcohol to office users. Two sets of nearby residents (the Farm Street Residents and the Hill Street Residents) both appealed that decision to the Magistrates' Court but on different grounds and by way of two separate complaints. Given that these two appeals arose from the same decision they were conjoined by the Court and ordered to be heard together at a three-day hearing with the consent of all parties.

In relation to costs, the crucial issue concerned a condition attached to the premises licence by the Council requiring all deliveries and collections to take place in Hill Street i.e. outside the front entrance of the serviced offices. However, the Hill Street Residents, sought on appeal to amend this condition to ensure the deliveries and collections took place in Farm Street instead.

Unsurprisingly, the Farm Street Residents robustly resisted their neighbours' advance. They served unchallenged expert evidence confirming that in light of the physical layout of the respective streets and delivery points, the Council's decision to direct deliveries and collections via Hill Street was the correct one. They argued that it better promoted public

safety and served to prevent a public nuisance. Westminster City Council took a neutral view at the appeal.

The Farm Street Residents reached a full agreement with the serviced offices on how to settle the appeal over a fortnight before the 3 day appeal hearing was due to be heard. The Farm Street Residents continued their efforts to persuade their neighbours not to pursue their attempt to reverse the deliveries and collections condition. Costs warnings were repeatedly given but were ignored.

One clear working day prior to the hearing, the Hill Street Residents also managed to reach an Agreement with the serviced offices settling the appeal and abandoned their request to amend the condition. However by this time, the bulk of the legal work preparing for the appeal had already been carried out, at significant expense to the Farm Street Residents. It was unfair, they submitted, that they should be financially penalised for successfully defending the deliveries condition imposed by Westminster City Council against the attack on it by the Hill Street Residents. They applied to the Court for an order that the Hill Street Residents should pay a proportion of their costs to reflect the work they carried out defending this point.

The power to make such an order lies in the wide-discretionary nature of Section 181(2) of the Licensing Act 2003 that permits a Court to make *"such order as to costs as it thinks fit"*. This wide power provides the Court with an *"unfettered discretion"* to make cost awards including by way of example:

- 1) Against parties who have technically succeeded in their appeal but have conducted themselves unreasonably; and
- 2) Against "non- parties" to an appeal in exceptional and appropriate circumstances.

Although, in the past, most non-party costs have involved instances, where for example an individual company director has been ordered to personally pay costs even though his company was formally the "party" in a licensing appeal, the District Judge accepted the submissions of the Farm Street Residents that this established a general principle that cost awards could be made against non-parties to an appeal in "exceptional and appropriate circumstances". Such circumstances existed in the present case where residents in a conjoined appeal had unreasonably conducted themselves at the expense of a party in the other appeal.

Although no decision of a Magistrates Court is of binding authority, District Judge Jeremy Coleman, in a written reserved judgment noted that:

"In reality both appeals became part of one court case. Having consented to the joining together of the two appeals, I find there to be an overall responsibility on all parties to the Court and to each other, to progress the case, seek to reach a settlement at all times, and prepare efficiently for an effective hearing. The waste of court time caused by last minute settlements at the door of the court is a constant concern in all areas of litigation. I find that I have power to award costs between the appellants in this case...I find that the failure to reply to correspondence and deal with offers to settle proceedings does amount to an unnecessary or improper act or omission resulting in the Farm Street Residents incurring additional costs. I therefore find it appropriate to exercise my discretion to order costs against the Hill Street Residents in favour of the Farm Street Residents".

Forster v Secretary of State for Communities and Local Government [2015] PLSCS 254

The owner of an East London tavern recently lost a High Court challenge against a planning inspector's approval for a block of flats neighbouring her premises which it was claimed might put her out of business.

She owned a tavern which was used for live music events, film-making and photographic shoots. A developer applied for planning permission to demolish the building next door and replace it with a mixed use three-storey building, including commercial uses and flats. Objection was made to the proposal on the grounds that the development might jeopardise her business as there was a risk that residents of the flats would complain about noise from the tavern.

The Authority refused permission for the development, but that decision was overturned on appeal by an Inspector appointed by the Secretary of State. In reaching his decision the inspector considered an acoustic report submitted by the developer on noise levels and the effectiveness of proposed sound insulation measures and concluded that permission should be granted subject to a condition requiring the developer to obtain the Authority's approval to a scheme to protect the residents of the flats from noise and prohibiting their occupation until it was shown that suitable sound insulation had been achieved.

The Inspector's decision was appealed to the High Court where it was argued that the Inspector had erred in his consideration of the noise issue and that the conditions attached to the permission were inadequate to deal with it. He had failed to have regard to the harm that the development might cause to the operation of her established business as noise complaints from residents could result in enforcement action from the council or revocation of the tavern's late night music licence.

It was decided that the Inspector had not erred in his consideration of the noise issue. He had exercised his own judgment on the issues and correctly identified the main one which was whether residents of the new building would be subjected to unreasonable levels of noise. He had taken into account the pub operator's concern about the effect of possible complaints on the operation of her business. The conclusions he had reached were open to him on the evidence and the conditions attached to the grant of permission were adequate. It was also determined that he had not erred in his consideration of the effects of the development on the viability of the tavern or failed to grasp the true nature of the objection to the proposal. He could not be criticized for not considering the law of nuisance as his remit was to decide on the planning merits of the application, having regard to the public interest, and he had done this. He had correctly exercised his planning judgment.

LEGISLATION UPDATE

HMRC ALCOHOL WHOLESALER REGISTRATION SCHEME (AWRS)

HMRC recently announced plans to begin the registration of alcohol wholesalers with a view to limiting instances of non-duty paid alcohol being made available for sale within the United Kingdom.

From 1 January 2016, it is a criminal offence for a person or business based in the United Kingdom to knowingly sell, arrange, offer or expose for sale alcohol wholesale without

authorisation from the AWRS scheme. From 1 April 2017, it is also an offence to knowingly buy alcohol wholesale from a person who should be approved. Penalties for these offences can include forfeiture of a personal licence, a fine, imprisonment of up to 7 years or all three.

Existing wholesale businesses that commenced trading on or before 31 March 2016 have until 31 March 2016 to submit their application for AWRS approval. Providing an application is submitted by this date, the business won't be considered to be trading without approval unless the application is refused and the business continues to trade. Any new business that may engage in the wholesale sale of alcohol must submit an application 45 days before the first day of trading.

Paragraph 3.9 of the notice has examples of the types of businesses that fall within the scope of the scheme. This would include a pub retailer with a wholesale arm to their business, a local Cash and Carry or a specialist wine merchant. Internet sales from a UK established internet wholesaler to a UK trade buyer fall within the scheme in the same way as any other wholesale business.

From 1 April 2017, trade buyers, for example off licences or restaurants, who buy their alcohol from UK wholesalers for resale will need to make sure that these wholesalers are approved by HMRC. The check will be made using an online look up service, and using this to check the validity of wholesalers will form part of these businesses' 'due diligence' processes. In addition to the penalties listed above, there is a potential that a trade buyer may have his/her premises licence reviewed as a consequence of failing to purchase alcohol for resale from an approved wholesaler.

The AWRS scheme only covers sales that are made in the course of a trade or business to other businesses. It does not apply to private individuals purchasing alcohol from retailers for their own use.

The Public Notice can be found at:

<https://www.gov.uk/government/publications/excise-notice-2002-alcohol-wholesaler-registration-scheme/excise-notice-2002-alcohol-wholesaler-registration-scheme>

Implications on related Council policies

None at this stage.

Legal implications

Legal comments are contained within this report.

Financial Implications

None at this stage

Background Papers / Further Reading Material

NIL

LICENSING COMMITTEE - FORWARD PLANNER 2015/16

Committee	Licensing Committee
Officer Contact	Mark Braddock - Democratic Services
Ward(s) affected	N/A

RECOMMENDATION:

That the Committee note the Forward Planner and suggest any alterations or additional topics or business items.

12 January 2016	Proposed Agenda / Reports	Lead	Timings
10am Committee Room 6	Presentation: <ul style="list-style-type: none"> Public Health - Dr Steve Hajioff 	SH	Report deadline: 17 December 2015 Agenda Published: 4 January 2016
	Policy discussion: <ul style="list-style-type: none"> Update on Licensing Policies - Verbal Verbal update on Member Working Group Review into Under 18 Alcohol Related Presentations to A&E 	SW	
	Informatives: <ul style="list-style-type: none"> Police Enforcement Activity Update Legislative Update 	SW BS	
	Business Review: <ul style="list-style-type: none"> Forward Planner Sub-Committee Minutes 	MB MB	

14 April 2016	Proposed Agenda / Reports	Lead	Timings
10am Committee Room 6	Policies / Presentation: <ul style="list-style-type: none"> Shisha Cafes / Smoke Free legislation 	SN	Report deadline: 1 April 2016 Agenda Published 6 April 2016
	Policies <ul style="list-style-type: none"> Reducing the Strength Update Planning policy / Betting Shops 	SW JR	
	Informatives: <ul style="list-style-type: none"> Legislative Update Enforcement Activity Update LGA Gambling Checklist 	BS SW SW	
	Business Review: <ul style="list-style-type: none"> Forward Planner Sub-Committee Minutes 	MB	

13 July 2016 *	Proposed Agenda / Reports	Lead	Timings
10am Committee Room 6	Presentation: TBC		Report deadline: 30 June 2016 Agenda Published: 5 July 2016
	Informatives: <ul style="list-style-type: none"> ● Legislative Update ● Enforcement Activity Update 	BS SW	
	Business Review: <ul style="list-style-type: none"> ● Forward Planner ● Sub-Committee Minutes 	MB	

* Provisional date - TBC by Council

Lead Officers:

SW - Sarah White / Stephanie Waterford

CF - Claire Freeman

MB - Mark Braddock

SH - Dr Steve Hajioff

SN - Shabeg Nagra

JR - James Rodger

BS - Beejal Soni

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