

Item No. 8.	Classification: Open	Date: 28 February 2023	Meeting Name: Licensing Committee
Report title:		Licensing Sub-Committee Hearings - Procedures	
Ward(s) or groups affected:		All wards	
From:		Assistant Chief Executive – Governance and Assurance	

RECOMMENDATIONS

1. That the Licensing Committee:
 - 1.1 Agree the procedures for Licensing Sub-Committee hearings reducing the time for verbal submissions to maximum of 10 minutes; and
 - 1.2 Approves that the proposed hearings procedure attached to Appendix A of this report and the protocol attached as Appendix B.

BACKGROUND INFORMATION

2. The Authority is obliged by virtue of section 6 of the Licensing Act 2003 (“the 2003 Act”) to establish a Licensing Committee consisting of at least 10 but no more than 15 Members of the Authority. All matters, save for those matters expressly dealt with by full Council, relating to the discharge by the Authority of its licensing functions under the 2003 Act are referred to this Committee and the Committee must discharge those functions on behalf of the Authority.
3. Matters reserved for Licensing Committee and its Sub-Committees are detailed in Southwark’s Constitution (September 2022) at Part 3G: Licensing Committee and Sub-Committees¹ as :
 - Determinations of applications under the Licensing Act 2003
 - Determinations of Gambling Act 2005
 - Sex establishment applications
 - New designations for sites for street trading and market
 - Revocation of permanent street trading licences and markets.
 - Determine the revocation of any licence following successful prosecution of the holder for breach of licence terms, conditions and restriction
 - Any application for consent to provide hypnotism or like entertainment
 - Any application for the grant, renewal, variation or transfer of any general safety certificate in respect of a sports stadium or regulated stands

¹ <https://moderngov.southwark.gov.uk/documents/s109072/3G%20Licensing%20-%20July%202017.pdf>

- Any application for the grant, renewal, variation or revocation of any scrap metal licence (which involves the applicant making representations)
4. Section 10 of the Licensing Act 2003 provides for the sub-delegation of functions by licensing committee by establishing a sub-committee established by it.
 5. Hearings² considered by the of the 2003 Act says that Regulations may be made about the proceedings of Licensing Committees and Sub-Committees i.e. licensing hearings and the public access to such hearings, agendas and record of decisions. Regulation 21 of the Licensing Act 2003 (Hearings) Regulations 2005 (“the 2005 Regulations”)³ provides that subject to the provisions in the regulations, each licensing authority shall determine the procedure to be followed at Licensing Sub-Committee hearings. Regulation 21 of the 2005 Regulations enables the Licensing Committee, subject to the provisions of the 2005 Hearing Regulations and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007⁴
 6. Section 54 of the Gambling Act 2005 provides for the delegation of the gambling licensing functions to the Licensing Committee: England and Wales.⁵ In summary, regulation 9 of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 provides that hearings shall be determined by relevant committee subject provisions of the regulation.
 7. The procedures for Licensing Act 2003 and Gambling Act 2005 applications is mirrored in non-licensing and non-gambling applications identified in paragraph 3 of this report.

KEY ISSUES FOR CONSIDERATION

8. At present, each party to an application, being it applicant or objector has 15 minutes to make verbal submissions. Officers have identified that the time allowed for parties to make representations can be extremely lengthy, particularly when an application involves a large number of residents. Although residents are asked not to repeat the points raised by others, because each party is permitted the same amount of time to make verbal submissions, there is scope for duplication which can prolong hearings. The 15 minutes to make verbal submissions can be extended with the agreement of the Chair.
9. It is unclear when the procedures for Licensing Sub-Committees were established. The Revised Guidance issued under section 182 of the Licensing Act 2003 (Updated 12 January 2023) is silent on the hearing process bar ⁶ “*The*

² “Hearings” as defined in regulation 6 of the Licensing Act 2003 (Hearings) Regulations 2005. For all non-licensing Act 2003 and non-gambling Act 2005 hearings is taken to mean applications a Licensing Sub-Committee is convened to make a determination on.

³ <https://www.legislation.gov.uk/ukxi/2005/44/regulation/21/made>

⁴ <https://www.legislation.gov.uk/ukxi/2007/173/contents/made>

⁵ <https://www.legislation.gov.uk/ukpga/2005/19/section/154>

⁶ <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003/revised-guidance-issued-under-section-182-of-the-licensing-act-2003-december-2022-accessible#determining-applications>

hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful”.

10. In March 2005 the Local Authorities Coordinators of Regulatory Services (LACORs) issued guidance on for Licensing Committees. Although the guidance does not give any direction to the timings parties should be given, it is suspected that the procedures for Licensing Act 2003 hearings Southwark’s Licensing Sub-Committees were made agreed taking into account the LACORs guidance into account, albeit no specific guidance was detailed as to the timings provided.
11. A benchmarking exercised was carried out in December 2022 via the Licensing Managers Forum to assess other authorities approach in hearings. The results of the benchmarking exercise are included in Figure 1 below.

Borough	Time
London Borough of Bexley	There is no time limit given to any party. However, should there be a large number of representations from local residents the Chairman may decide to give timings to all parties, but in all the 17 years I have been at Bexley this has only happened twice and it would certainly be longer than 5 minutes.
Croydon	Ten minutes here – though can be extended at Chair’s discretion – as long as both sides get same extension etc.
Enfield	We restrict timings to 5 minutes per party, so even if 4 residents, it is 5 minutes for Other Parties total, so recommend a spokesperson is nominated. If a very heavy case, like a large scale capacity event, we have extended with Chair’s agreement to 40 minutes per party. No time limit on questions, and all parties (not just spokesperson) can ask questions.
Lambeth	3-5 minutes, but this can be extended with LSC approval at the meeting.
Bromley	We do not limit our applicants here we do advise that 20 mins should be adequate but if they feel they would need more time it would be very rare for the Licensing Sub Committee not to allow it.
Tower Hamlets	5 minutes.
Kingston and Sutton	We have a 5 minute limit in both Kingston and Sutton. However in both authorities I have tried to instil a level of

	flexibility... no benefit to cutting people off midsentence...
RBKC	10 minutes but is extended in some circumstances if deemed necessary.
Harrow	We generally don't set time limits for parties to make representations, however, if have lot of parties attending, councillors have been known to set a limit of 5 minutes.

Figure 1: Cross-Borough benchmarking from the Licensing Managers Forum

12. It is proposed the maximum time for each party to make verbal submissions is reduced to 10 minutes. The Chair will retain the discretion to extend this time to all parties is retained.
13. It is not intended to make any changes to Southwark's Statement of Licensing Policy 2021-2026, sample guidance setting out the hearing procedures is attached as Appendix A.
14. The Licensing Unit have produced a guidance note for all hearings considered remotely which is attached at Appendix B.

COMMUNITY, EQUALITIES (INCLUDING SOCIO-ECONOMIC) AND HEALTH IMPACTS

Community Impact Statement

15. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account

Equalities (including socio-economic) impact statement

16. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
17. The Council in exercising its licensing function must have regard to the guidance issued by the Secretary of State under section 182 of the 2003 Act. It must also give appropriate weight to the views of those persons/bodies listed in the Act which it is required to consult before determining its policy.
18. Equality impact assessments are an essential tool to assist Councils to comply

with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.

Health impact statement

19. The Licensing Act 2003 does not include health as a licensing objective although Public Health Public Health is a responsible authority by virtue of s.13(4)(bb) Licensing Act 2003 who may submit representations in respect of applications to promote the licensing objectives: the prevention of crime and disorder, Public Safety, the prevention of public nuisance and the protections of children from harm.

Climate change implications

20. Although climate change is not a relevant consideration for applications considered by the licensing sub-committee, on 14 July 2021, Counsel Assembly agreed that it committed to considering the climate change. Climate change can be addressed as part of the licensing applications for example not using single use plastics (both receptacles and straws) unless there is no alternative.

Resource Implications

21. The proposed procedure for Licensing Sub-Committee meetings does not have any resource issues in itself.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

22. Part 3G: Licensing Committee And Sub-Committees, The Head Of Service And Officer Panel Exercising Licensing Functions of the Council's Constitution (22 September 2022) provide for the functions of the Licensing Committee (<https://moderngov.southwark.gov.uk/documents/s109072/3G%20Licensing%20-%20July%202017.pdf>)
23. Section 9(3) of the Licensing Act 2003 states that a Licensing Committee may regulate its own procedure and that of its sub-committees, subject to regulations made by the Secretary of State. Licensing Sub-Committees are, however, governed by the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005 and Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007. Regulation 21 of the Licensing Act 2003 (Hearings) Regulations 2005 ("the 2005 Regulations")⁷ provides that subject to the provisions in the regulations, each licensing authority shall determine the procedure to be followed at Licensing Sub-Committee hearings.

⁷ <https://www.legislation.gov.uk/ukxi/2005/44/regulation/21/made>

Strategic Director of Finance and Governance (EL22/133)

24. The strategic director of finance and governance notes the recommendation to the Licensing Committee to agree the procedures for Licensing Sub-Committee hearings, reducing the time for verbal submissions to maximum of 10 minutes; and approve the proposed hearings procedure as set out in Appendix A.
25. The strategic director also notes that there are no resource implications contained within the report and that there are no financial implications as a result of accepting the proposals.
26. Officer time to effect recommendations will also be contained within existing budgeted revenue resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 plus secondary regulations	https://www.legislation.gov.uk/ukpga/2003/17/contents	
The Licensing Act 2003 (Hearings) Regulations 2005	https://www.legislation.gov.uk/uksi/2005/44/made/data.pdf	

APPENDICES

No.	Title
Appendix A	Licensing Sub-Committee Hearings – Procedures
Appendix B	Protocol to Licensing Sub-Committee Hearings

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Assistant Chief Executive – Governance and Assurance	
Report Author	Debra Allday, Senior Solicitor – Regulatory Team	
Version	Final	
Dated	16/01/2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		20 February 2023