

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE MEETING OF THE LICENSING AND
REGULATORY COMMITTEE – 5 OCTOBER 2009

SUBMITTED TO THE COUNCIL – 20 OCTOBER 2009

(To be read in conjunction with the Agenda for the Meeting)

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| * Cllr Mrs Gillian Beel (Chairman) | Cllr Julian Hubble |
| * Cllr Robert Knowles (Vice-Chairman) | * Cllr Peter Isherwood |
| * Cllr Mrs Elizabeth Cable | * Cllr Bryn Morgan |
| Cllr Victor Duckett | Cllr Steven Renshaw |
| * Cllr Mrs Lucinda Fleming | Cllr John Sandy |
| * Cllr Bob Frost | * Cllr John Savage |
- *Present
*Cllr Maurice Byham

26. MINUTES (Agenda Item 1)

The Minutes of the Meetings held on 27 July 2009 were confirmed and signed.

27. APOLOGIES FOR ABSENCE (Agenda Item 2)

Apologies for absence had been received from Cllrs Victor Duckett, Julian Hubble, Steven Renshaw and John Sandy. Cllr Maurice Byham attended as a substitute.

28. DISCLOSURE OF INTERESTS (Agenda Item 3)

Cllr Robert Knowles declared a personal interest in Agenda Item 8 as he is the Executive Portfolio Holder for On-Street Parking Enforcement.

29. START TIME OF THE MEETING (Agenda Item 5)

Following discussion it was RESOLVED that future meetings of the Committee start at 6.30pm and that public question time precede the meeting and commence at 6.30pm for up to 15 minutes. If no members of the public were present at 6.30pm then the Committee meeting would start immediately.

PART I – RECOMMENDATIONS TO COUNCIL

30. NEW PROCEDURES FOR MINOR VARIATIONS AND COMMUNITY PREMISES UNDER THE LICENSING ACT 2003 (Agenda Item 7; Appendix A)

- 30.1 The Committee received a report that brought members' attention to the amendments to the Licensing Act 2003 which introduced a procedure for making minor variations to premises licences and club premises certificates, and which also introduced new provisions in relation to community premises.

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This report also sought Members' approval of a revision to the Scheme of Delegation.

- 30.2 The Government had recently brought into force regulations amending the Licensing Act 2003 ("the Act"). These amendments would have implications for the Council in its position as Licensing Authority.
- 30.3 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (Statutory Instrument 1772 of 2009) introduced a new minor variations procedure, by introducing new sections 41A to 41C and 86A to 86C of the Act.
- 30.4 At the same time, The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (Statutory Instrument 1724 of 2009) brought into force new sections 25A, 41D and 52A of the Act, which allowed community premises to apply to sell alcohol without a Designated Premises Supervisor and Personal Licence holder.
- 30.5 All of the new provisions came into force on 29 July 2009, together with a number of other amendments to existing regulations covering application procedures. The statutory guidance issued under section 182 of the Act had also been revised, and the updated version was introduced on the same date.

Minor Variations Process

- 30.6 Applications for minor variations are made to the Licensing Authority using the prescribed form, and must be accompanied by the statutory fee of £89 (there are no exemptions). The applicant is also obliged to display a statutory white notice (to distinguish it from the blue notice used to advertise full variation and new applications) advertising the application at the premises for 10 working days, starting with the first working day after the day on which the application was submitted to the Licensing Authority.
- 30.7 The notice must contain details of the proposed variation(s); the name of the applicant; address of the premises; and the date by which an interested party can make representations to the Licensing Authority. Interested parties would have the same 10-working day period within which to make representations.
- 30.8 There is no requirement for the applicant to advertise the application in a local newspaper, and nor does the applicant have to send a copy of the application to the Responsible Authorities.
- 30.9 On receipt of an application, the Licensing Authority must consider whether the proposed variation(s) *could* impact adversely on any of the Licensing Objectives. If it is felt that there could be an adverse impact, then the Licensing Authority must consult such of the Responsible Authorities as it considers appropriate. For example, where the Licensing Authority considers that a variation could impact adversely on the crime and disorder objective, it follows that it must consult with the Police. However, the Licensing Authority is not required to consult with every responsible authority on each application.
- 30.10 Once the 10-working day period has expired, the Licensing Authority must consider any representations received from interested parties, together with

any responses received from consulted Responsible Authorities. The period for determination of the application is 15 working days starting on the first working day after the application is submitted. As the first 10 working days constitute a consultation period, the Licensing Authority will only have 5 working days to determine the application.

- 30.11 Paragraph 8.42 of the revised Guidance makes clear that the “key test is whether the proposed variation could impact adversely on any of the four Licensing Objectives.” If, having considered the representations and/or responses, the Licensing Authority considers that there could be an adverse impact, it must reject the application. In all other cases it must grant the application.
- 30.12 There is no power for the Licensing Authority to impose conditions as part of the grant of a minor variation application. Only conditions volunteered by the applicant can be added to the licence under the minor variations procedure. Such conditions may arise from the applicant’s own risk assessment of the variation(s), or from informal pre-application discussions with any of the Responsible Authorities or the Licensing Authority.
- 30.13 If the Licensing Authority fails to determine the application within 15 working days, the application will be treated as refused and the fee must be returned to the applicant. However, the Licensing Authority and the applicant may instead agree that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as the fee for the new application.
- 30.14 There is no right of appeal against the rejection of a minor variation application. Instead, applications that have been rejected could then be the subject of a full variation application (and subject to the full variation procedure) or of a revised minor variations application, and the minor variations refusal does not affect any subsequent variation application in respect of the same premises.

Minor Variation Applications

- 30.15 The Guidance envisages four main categories of minor variation application.
- 30.16 Minor variations to the structure or layout of a premises – Many small variations to layout, such as an extension to the length of the bar, will have no adverse impact on the Licensing Objectives. Licensing Authorities would need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment) which in themselves might not be significant, but which cumulatively may impact adversely on the Licensing Objectives.
- 30.17 Small adjustments to licensing hours – Variations to extend the licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00, or to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises, are excluded from the minor variations process and must be treated as full variations. Applications to reduce licensing hours for the sale or

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supply of alcohol or to move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

- 30.18 Removal of out-of-date, irrelevant or unenforceable conditions – In some cases conditions may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant and embedded conditions may no longer apply. There may also be cases where it is necessary to revise wording of a condition that is unclear and/or unenforceable.

The minor variations process could also be used for the addition of volunteered conditions, and such conditions might arise from consultation with Responsible Authorities or the Licensing Authorities. In these circumstances, the minor variations process may provide a less costly and onerous means of amending the licence than a review, with no risk to the Licensing Objectives.

- 30.19 Addition of certain licensable activities – It is the Government's intention that applications to vary a licence for live music should benefit from the minor variations process, unless there could be an adverse impact on the Licensing Objectives. Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the Licensing Objectives.

- 30.20 Further detail on what the Government considers should, and should not, be the subject of the minor variations process is provided in the revised Guidance.

- 30.21 It is important to repeat that applications will only be granted where the variation(s) *could not have an adverse impact on the promotion of any of the Licensing Objectives*, and in all other cases the application must be rejected.

Community Premises

- 30.22 'Community Premises' are now permitted to apply to have the standard mandatory conditions under section 19 of the Act removed from their premises licence. The section 19 conditions require all premises licensed to sell alcohol to have a Designated Premises Supervisor, and for all sales of alcohol to be made or authorised by a person who holds a Personal Licence.

- 30.23 'Community Premises' means premises such as a church hall or chapel hall (or other similar building), or a village hall, parish hall community hall or other similar building. Where it is not clear whether premises are community premises, the matter should be approached on a case-by-case basis, with the main consideration being how the premises are predominantly used, for example:

- (a) If they are genuinely made available for community benefit most of the time; and
- (b) are accessible by a broad range of persons and sectors of the local community; and
- (c) for purposes which include purposes beneficial to the community as a whole;

- 30.24 The management committee, or board of individuals in charge of the premises, would be expected to take responsibility for the sale of alcohol instead, subject to any representations from the Police in exceptional circumstances that this should not occur. The applicant must provide to the Licensing Authority the names of the management committee's key officers.
- 30.25 There is a prescribed form for such applications and the prescribed fee of £89 must accompany each application. The applicant must serve a copy of the application on the Police at the same time as submitting the application to the Licensing Authority. The application form requires applicants to set out how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations, and how responsibility for this is to be determined in individual cases and reviewed within the committee procedure in the event of any issues arising.
- 30.26 There is the usual 28-day period within which the Police can make a representation. Should the Police make a relevant representation against the removal of the mandatory standard conditions, on the ground of the prevention of crime and disorder, the Licensing Authority must hold a hearing to determine whether to grant the application.
- 30.27 Interested parties and responsible authorities, with the exception of the Police, cannot make representations in respect of an application. However, they can apply for premises licences to be reviewed by the Licensing Authority and for the requirement for a Designated Premises Supervisor to be re-imposed on the licence.
- 30.28 The Police and the applicant can appeal in respect of the grant or refusal of such an application, and similarly the applicant, interested parties and responsible authorities can appeal the removal or re-instatement of the mandatory conditions following a review.

Minor Variations and Community Premises Delegations

- 30.29 The Guidance recommends that licensing authorities delegate decision-making on minor variation applications to licensing officers. In practice this would be the only way in which to ensure that the Council can deal with minor variation applications within the 15-working day period.
- 30.30 If representations were to be received in respect of a minor variation application, then the application would at present have to be determined by one of the Licensing Act Sub-Committees, albeit that a formal hearing would not be permitted. The 15-working day timeframe would leave 5 working days from the end of the consultation period within which to arrange a sub-committee. Such an arrangement would make it extremely difficult to comply with the notice and agenda requirements of the Local Government Act 1972, and would almost certainly lead to many applications not being determined by the deadline, and therefore being deemed rejected.
- 30.31 In respect of the community premises provisions, there is currently no delegation in place to permit officers to determine such applications where no representations are received.

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30.32 Similarly, in order for the Licensing Act Sub-Committees to consider community premises applications where representations *have been* received, this Committee would need to delegate that function to those Sub-Committees. No such delegation is currently in place sufficient to cover these applications.

30.33 The amendments outlined above are the most significant changes to application procedures since the Act came fully into force in 2005. It is not known how many of the new applications the Council might receive, and therefore the Council must be ready to deal with applications efficiently and within statutory time limits.

30.34 The Committee noted the new statutory provisions relating to minor variations and community premises and

RESOLVED that

1. the Head of Democratic and Legal Services and the Licensing Manager in consultation with the Chairman and Vice-Chairman of the Licensing and Regulatory Committee be given the power to determine minor variation applications under sections 41A to 41C and 86A to 86C of the Act, including deciding whether to consult with Responsible Authorities;
2. the Head of Democratic and Legal Services in consultation with the Chairman and Vice-Chairman of the Licensing and Regulatory Committee be given the power to grant applications for community premises under sections 25A and 41D of the Act, where no relevant representations have been received; and
3. where representations are received in respect of applications under sections 25A and 41D of the Act, the matter is delegated to the Licensing Act Sub-Committees for determination.

30.35 The Committee further

RECOMMENDS that:

1. **the Council's Scheme of Delegation to Officers be amended to reflect the above.**

Background Papers (CEx)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

PARTS II AND III - MATTERS OF REPORT

Background Papers

The background papers relating to the following items in Parts II and III are as specified in the agenda for the meeting of the Executive.

Part II – Matters Reported in Detail for the Information of the Council

There were no matters falling within this category.

Part III – Brief Summaries of Other Matters Dealt With

31. APPLICATION FOR A STREET TRADING CONSENT- LION LANE, HASLEMERE (Agenda Item 8; Appendix B)

Following discussion it was agreed that the applicant be granted a Street Trading Consent and that the standard conditions from the WBC Street Trading Policy be attached to the Consent together with the condition that no trading shall commence before 18.00 hours.

The reason for the conditions was to comply with parking restrictions and to help to minimise the potential for litter nuisance in the area.

RESOLVED that the application of Mr Mehmet Akif Dengiz for a Consent to trade in Lion Lane, from its junction with Lion Green to the junction with Underwood Road, Haslemere, be granted with the conditions identified above.

32. APPLICATION FOR STREET COLLECTION PERMIT - ROLDA UK (Agenda Item 9; Appendix C)

Following discussion the Committee agreed that although this was a commendable cause, Waverley guidelines state that organisations should be registered charities and benefit local causes. It was therefore

RESOLVED that the application of ROLDA UK for a street collection permit be refused.

(Cllr Bryn Morgan requested that his vote against the decision be recorded)

33. APPLICATION FOR STREET COLLECTION PERMIT - ANIMAL DEFENDERS INTERNATIONAL (Agenda Item 10; Appendix D)

Following discussion the Committee agreed that although this was a commendable cause, Waverley guidelines state that organisations should be registered charities and benefit local causes. It was therefore

RESOLVED that the application of the Animal Defenders for a street collection permit be refused.

(Cllr Bryn Morgan requested that his vote against the decision be recorded)

34. CONSULTATION WITH LICENSED DRIVERS AND OPERATORS (Agenda Item 11)

The Committee noted the request from WBC licensed drivers following their last consultative meeting, to be able to attend meetings of the Committee when general matters or policy issues are discussed so that they are able to give the Committee full information on those issues.

The Committee was committed to developing a constructive dialogue with licensees, but following discussion the Committee considered that this would put Taxi Drivers at an advantage over other groups, including disabled people and other passengers. Members agreed to develop the Taxi Drivers' Forum to include representatives from relevant organisations, and arrange additional meetings when necessary rather than to invite individual drivers to attend the main Committee meetings.

The Committee therefore

RESOLVED that the Taxi Drivers' Forum be extended by inviting representatives of Surrey Police and Waverley Disability Forum and that additional meetings be arranged when necessary to discuss major issues.

35. MINUTES OF THE MEETING OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE (Agenda Item 12; Appendix E)

RESOLVED that the Minutes of the Meeting be noted.

36. MINUTES OF THE MEETINGS OF THE LICENSING ACT 2003 SUB-COMMITTEE 'A' (Agenda Item 13; Appendix F)

RESOLVED that the Minutes of the Meetings be noted.

The meeting commenced at 6.30 p.m. and concluded at 7.28 p.m.

Chairman