

REPORT OF CORPORATE DIRECTOR, CITY DEVELOPMENT

OPERATION OF THE LICENSING COMMITTEE

**1.0 SUMMARY**

This report suggests how the functions of the Licensing Committee should be put into effect.

**2.0 RECOMMENDATIONS**

2.1 IT IS RECOMMENDED THAT the Committee:

- (i) Establish five sub-committees (to be known as Licensing Panels A-E) consisting of no more or less than three members with substitutes to be drawn from the membership of this Committee and its substitutes;
- (ii) Appoint the Chairs of Licensing Panels A-E subject to nominations being received at the meeting;
- (iii) Approve the matters to be determined by the full committee, the Panels, and nominated officers as set out in the "Table of Delegated Functions" at Appendix 1 to this report;
- (iv) Approve the Officer Delegations as set out in Appendix 2;
- (v) Approve the Guidance and Procedure note with respect to hearings as set out in Appendix 3;
- (vi) Meet again on 21<sup>st</sup> November 2005 it being noted, however, that additional meetings may be required before that date;
- (vii) Agree that dates of meetings of the Licensing Panels should be determined by the Corporate Services Director in consultation with the Chairs of those panels;
- (viii) Agree that membership of the Licensing Panels be notified to the Corporate Services Director once meeting dates have been finalised;
- (ix) Indicate the types of matters upon which it would wish to give/receive reports and at what frequency.

**3.0 BACKGROUND**

3.1 This Committee was established under Section 6 of the Licensing Act 2003. By virtue of the Act all the functions of the Licensing Authority, (other than matters relating to the Statement of Licensing Policy and matters referred to another committee) are to be carried out by this Committee. The Committee may appoint one or more sub committees consisting of three members of the Committee and in so doing may arrange for some or all of the functions of the Committee to be exercised by a sub committee or, in appropriate cases, by officers of the Authority.

3.3 The Guidance issued under the Act recommends that certain functions are reserved to the Committee/sub committee and these are reflected in the Table of Delegated

Functions attached as appendix 1 to the report. However, the table additionally suggests that where representations are received in respect of cumulative impact those matters should come to the full Committee for determination. The reason for this is that such considerations are both sensitive and significant and may result in the Committee wishing to make recommendations to the Authority that amendments should be considered in relation to the Statement of Policy.

- 3.4 The aim of the Act is to ensure the efficient determination of applications and the Guidance suggests that officers should determine all uncontested matters. It is considered appropriate that such determinations are delegated to the Team Leader (General Licensing), the Senior Assistant Licensing Officer (General Licensing), the Service Manager Food and Licensing and the Assistant Director (Environment and Public Protection). In addition the Act and its subordinate legislation create powers in relation to the proper administration and enforcement of the regime. Appendix 2 indicates the additional officer delegations required to ensure the appropriate administration of the regime.
- 3.5 Where contested matters come before either the panels or the full Committee it is important that the hearings are fair, comply with the appropriate legislation, but seek to ensure the efficient administration of the function. A proposed guidance and procedural note has been devised with this in mind and is found at Appendix 3. This is based on the existing procedure adopted by the Regulatory Committee but revised in accordance with the new legislation.
- 3.5 Whilst the Licensing Committee may determine some applications its main role is seen to be strategic. The Guidance suggests that the Licensing Authority should hold regular open meetings at which the public can express how well it feels the licensing objectives are being met. It also suggests that Authorities should be familiar with the terms of the Alcohol Harm Reduction Strategy and Pub Watch Schemes within their area and that there should also be an integration of strategies and other enforcement regimes. The Committee is therefore asked to consider the types of report which it would wish to send and receive from other Committees, bodies, and Responsible Authorities and their frequency.

#### **4.0 PROPOSALS**

- 4.1 The suggestions outlined above and detailed in the appendices to this report will meet the requirements of the Act and Guidance and it is proposed that members adopt them.

#### **5.0 FINANCIAL IMPLICATIONS**

- 5.1 The cost of delivering the licensing regime is being calculated and will be reported to the committee in due course.

#### **6.1 LEGAL IMPLICATIONS**

- 6.1 These have been incorporated into the body of the report.

#### **7.0 EQUAL OPPORTUNITIES IMPLICATIONS**

None

## **8.0 STRATEGIC AIMS**

**Regeneration** – The licensing regime promotes regeneration in deprived areas by generating employment, quality of life opportunities and by supporting local communities;

**Creating a more attractive place to live, work and visit** – if properly channelled the creation and operation of leisure opportunities and makes local communities more attractive areas in which to live and work. If not adequately controlled it may result in the Authority failing in its duty to promote the licensing objectives.

**Making Nottingham a safer city** – by working with local communities and partners to reduce crime and fear of crime the Authority will promote and contribute to its community safety programme.

**Maximising leisure and culture** - supporting cultural diversity and providing leisure and community facilities is a strategic aim of the Authority.

## **9.0 BEST VALUE**

9.1 The Authority is required to operate the licensing regime as a no cost service. Fees set centrally aim to ensure that this is achieved. Early indications are that the cost will outweigh the income derived and action is being taken to lobby Government to address the shortfall in costs.

## **10.0 CRIME & DISORDER IMPLICATIONS**

Licensing is an opportunity for the City Council to work in partnership with the Police to reduce the risk of crime and disorder occurring both within and immediately outside licensed premises, having regard to the effect of the proposals on both customers and residents.

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## **12.0 List of background papers other than published works or those disclosing confidential or exempt information**

None

## **13.0 Published documents referred to in compiling this report**

New Licensing Committee Arrangements – Nottingham City Council meeting 24 January 2005.

The Licensing Act 2003.

Guidance issued under s182 of the Licensing Act 2003.

The Licensing Act 2003 (Transitional Provisions) Order 2005.

The Licensing Act 2003 (Hearings) Order 2005.

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Date 25 January 2005

## Process of Licence Decision Making - TABLE OF DELEGATED FUNCTIONS

The Authority intends, in the majority of cases, to follow the table of delegated functions set out below. However, in circumstances where it seems appropriate to the Authority any particular matter may be dealt with otherwise than is indicated in this table whilst having due regard to statutory requirements. For example, an Officer may choose not to exercise their delegated power and refer the matter to the Panel or the Panel itself may choose to refer the matter to the Full Committee.

<b>Matter to be dealt with</b>	<b>Full Licensing Committee</b>	<b>Licensing Panel</b>	<b>Officer decision*</b>
Application for Personal Licence		Police Objection	No representation made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate	Representation relating to Cumulative Impact	Representation made	No representation made
Application for provisional statement	Representation relating to Cumulative Impact.	Representation made	No representation made
Application to vary premises licence/club premises certificate	Representation relating to Cumulative Impact.	Representation made	No representation made
Application to vary designated personal licence holder		Police representation made	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence		Police representation made	All other cases
Application for interim authority		Police representation made	All other cases
Application to		All cases	

review premises licence/club premises certificate			
Decision on whether a complaint or objection is irrelevant, frivolous, vexatious etc			All cases
Decision to object when Local Authority is a consultee and not the lead authority		All cases	
Determination of a police representation to a temporary event notice		All cases	

\* These Powers are delegated to the Team Leader (General Licensing), the Senior Assistant Licensing Officer (General Licensing), the Service Manager Food and Licensing and The Assistant Director (Environment and Public Protection)

**Licensing Act 2003 – Officer Delegations**

- 1 That The Assistant Director (Environment and Public Protection) and the Service Managers for Food and Licensing, Pollution Control, Health and Safety and Bereavement Services and Trading Standards be given delegated Authority to issue formal cautions and/or Instruct the Solicitor to the Council to commence and defend proceedings under the Licensing Act 2003, its subordinate legislation, and any legislation which may subsequently amend or replace it.
- 2 That The Assistant Director (Environment and Public Protection) and the Service Managers for Food and Licensing, Pollution Control, Health and Safety and Bereavement Services and Trading Standards be given delegated Authority to authorise appropriate competent officers to carry out functions under the Act its subordinate legislation, and any legislation which may subsequently amend or replace it including, for example, to exercise rights of entry and investigation.
- 3 The Team Leader (General Licensing), the Senior Assistant Licensing Officer (General Licensing), the Service Manager Food and Licensing and The Assistant Director (Environment and Public Protection) be given delegated power to carry out all functions of the Licensing Authority under The Licensing Act 2003 and its subordinate legislation, (and any legislation which may subsequently amend or replace it), which is not otherwise delegated to the Authority, The Licensing Committee or its Sub Committees (“Panels”). This includes, for example, but is not limited to:-
  - (i) To serve and receive notices, counter notices, etc
  - (ii) To determine points of clarification required for hearings
  - (iii) To agree that a hearing is unnecessary
  - (iv) To adjourn hearings where all parties are in agreement
  - (v) To determine applications where representations are withdrawn before the hearing
  - (vi) To extend time limits
  - (vii) To give effect to the decisions of the Magistrates Court on appeal
4. The Solicitor to the Council be given delegated power to commence and defend proceedings both criminal and civil under The Licensing Act 2003 and its subordinate legislation, (and any legislation which may subsequently amend or replace it).

**NOTTINGHAM CITY COUNCIL**  
**LICENSING COMMITTEE HEARINGS**  
**GUIDANCE AND PROCEDURAL NOTE**

1. Upon notification of a hearing, the recipient shall, as soon as possible, but in any event the within the time period provided for in Regulation 8 of the Licensing Act 2003 (Hearings) Regulations 2005, give notice to the Licensing Office:-
  - i. stating whether they intend to be present and/or represented at the hearing,
  - ii. requesting permission to call any witnesses that they wish to appear at the hearing and to include details of the name of any such person(s) and a brief description of the point(s) upon which they may be asked to address the hearing,
  - iii. giving a time estimate for their presentation/representations to the hearing, or,
  - iv. indicating that they consider a hearing to be unnecessary
2. Where a large number of interested parties are involved they will be encouraged to appoint a spokesperson or spokespersons so as to avoid duplication of evidence in so far as is possible.
3. Any one invited to attend the Panel/Committee may bring legal or other professional representatives with them if they so wish. Advocates are, however, reminded that these are civil proceedings and inquisitorial rather than adversarial in nature. **Aggressive advocacy is not encouraged and will not be tolerated.**
4. Copies of the application and representations made by the parties will have been circulated to members prior to the hearing. **Plans can not be copied by the Authority.** Where plans need to be considered the applicant will be expected to supply a further 6 copies for use at the hearing.
5. The hearing will focus on those areas of the application which are in dispute. The Authority is under an obligation to disregard information which is not relevant to the application, representation, or notice or to the licensing objectives. **Advocates and parties are therefore asked to be as succinct as possible.** Whilst all parties are entitled to the same amount of time as the applicant within which to make their representations Parties are asked not to unduly prolong their representations and should be aware that the chair may impose a time limit on the applicant (and hence other parties) if it becomes appropriate to do so.



6. Whilst additional material in support of the application, representation or notice may be taken into account by the authority such material should be produced and circulated by the producer to all parties concerned (including the Authority) as soon as possible, and no later than the working day before the hearing. Material produced on the day of the hearing can only be admitted with the consent of all other parties. The late production of material may lead to a hearing having to be adjourned and is to be discouraged. **Additional material will be disregarded where**
- i. **it is not relevant to the licensing objectives**
  - ii. **it reveals a new ground of representation**
  - iii. **it is not relevant to the application, representation or notice lodged.**
7. Any party who intends to put additional written material before the Panel/Committee should provide at least **18 copies** of that material to the Licensing Office if the application is to go to the full Committee and **6 copies** if the matter is to go before the Panel. Applicants should note that changes to application plans during the application process should be notified to the Licensing Office as soon as possible and are likely to result in a new application having to be submitted.
8. All relevant documentation received by the Authority will be sent to members of the Panel/Committee before the hearing if at all possible. Any failure to adhere to requirements listed above may: -
- result in a case having to be adjourned
  - result in delay
9. Where a party does not attend the hearing and is not represented the Authority may
- i. continue with the hearing and consider any written material submitted by the party,  
or
  - ii. adjourn the hearing if it is in the public interest to do so.

## Hearing Procedure

10. The presumption will be that Parties may call witnesses in support of their case and that other parties will be entitled to ask questions of those witnesses. However the Committee/panel retains the power to refuse to permit witnesses to speak and to refuse to allow other parties to ask questions. These powers may be used where, for example, evidence may be duplicated, or where it appears irrelevant. The following procedure will ordinarily be followed at Panel/Committee hearings:
- (i) The Chair will introduce the Committee/Panel and relevant officers. The Chair will also ask the applicant, interested parties and the responsible authorities to introduce themselves.
  - (ii) The Chair will indicate the procedure to be followed at the hearing as outlined in this note.
  - (iii) The applicant will be asked to present their case. Where witnesses are to be called the applicant will outline the matters on which they may assist the authority and seek permission for them to speak. If granted the responsible authorities and interested parties will normally be permitted to ask questions of the witness at the end of their evidence. The order for asking questions will be:
    - Responsible Authorities
    - Interested parties
    - Panel / Committee members
    - Legal advisor to the Committee/Panel (where appropriate)
  - (iv) Responsible authorities, and interested parties will then be given an opportunity to make their representations. Once again where witnesses are to be called permission must first be sought from the Committee/panel. There will be an opportunity for questions to be asked firstly, by the applicant and then by other responsible authorities and interested parties, members and the legal advisor to the Committee/Panel. Where there is more than one body making representations to an application the order for the hearing of representations will normally be the responsible authorities followed by interested parties.
  - (v) Once all the evidence has been given responsible authorities, and interested parties will be given an opportunity to sum up their representations in the same order as they presented them. The applicant will then be given an opportunity to sum up and have the final word.
  - (vi) Whilst Hearings will normally be conducted in Public the Committee/Panel does have powers of exclusion (which cover the public, the press, and even applicants, parties and their representatives) in appropriate circumstances. The Committee/Panel will however always exclude the press and public whilst it discusses the application and makes its decision.
  - (vii) The decision and reasons for it will normally be announced in public at the end of the hearing and transmitted in writing in accordance with the relevant rules .

11 If all parties agree and the Authority considers it appropriate, a hearing may be dispensed with. In some circumstances (where representations are not withdrawn,) the Committee/Panel may still have to determine the application but will do so on the papers previously submitted. In such circumstances the Authority would also consider the terms of any "consent order" drawn up by the parties indicating terms upon which all of the relevant parties would be content that the application be granted.

## 12 Adjournments

- (i) Due to the time constraints upon the Committee/Panels, applications for adjournments will only be granted where absolutely necessary. Do not automatically assume that a request will be granted.
- (ii) Once a hearing has been set **it is for the parties to ensure that they attend or are represented or submit written material for consideration**. Hearings may proceed in the absence of a party and in such circumstances the party's original representations will be taken into account together with any further material in support of that representation which has been served on all parties before the day of the hearing.
- (iii) If it is not possible for a party or their witness to attend a hearing the Authority's would normally expect to consider their representation in their absence.
- (iv) If it is necessary to make an application for an adjournment the party seeking the adjournment should seek the consent of all other parties to the application and notify the Licensing Office as soon as possible that an adjournment may be sought. If all parties agree the matter may be adjourned administratively.
- (v) If not agreed administratively the matter will remain listed before the committee/panel to hear the application and determine whether to agree the adjournment or proceed, if necessary in the absence of some or all of the parties.
- (vi) The Authority may adjourn proceedings where it considers it necessary for it's consideration of any application, representations or notice made or where it considers it to be in the interests of justice.
- (vii) Where an adjournment is granted all parties will be given notice of the adjournment and the new hearing date.

### 13 Applications to Extend Time Limits –

- (i) These may be dealt with administratively but will only be granted where it is necessary in the public interest.
- (ii) Applications should be made to the Licensing Officer as soon as possible identifying
  - i. the licensing application and premises concerned,
  - ii. the person making the application for the time limit to be extended,
  - iii. the time limit concerned,
  - iv. the reasons why that time limit cannot be complied with,
  - v. the extension sought, and
  - vi. why it is believed that it would be in the interests of justice to grant the application.
- (iii) Where an extension is granted all parties will be given notice of the extension.