

Committee(s):	Date(s):	Item no.
Licensing	10 May 2012	
Subject: Procedure for dealing with amended licence applications.	Public	
Report of: Director of Markets and Consumer Protection	For Decision	
<p>Summary:</p> <p>This report considers the issues involved when a representation, against a premises licence application, is withdrawn following negotiations between the applicant and person(s) making the representation. Current procedures take a robust line with amended applications although recent advice would point to the adoption of a more flexible approach.</p> <p>The report suggests an amendment to the current licensing procedures which satisfies the advice given, involves Members in decision-making after the consultation period and earlier if the application is more obscure and ensures that officers involved in the process are aware of the procedural requirements.</p> <p>Recommendations:</p> <p>To approve the procedure set out in paragraph fifteen of this report and Appendix 1, subject to any amendments arising from discussion at your Committee.</p>		

Main Report

Background

1. Members have asked officers to consider the practicality, in the cases where representations have been withdrawn following negotiations between the applicant and the objector, for this delegation to be exercised with some element of Member involvement.

Current Position:

2. When an application for a premises licence is received by the Licensing Service a period of twenty-eight days then follows during which a responsible authority and/or

other persons can make a representation. For the purposes of this report it will be assumed that the representation is against the application.

3. The person(s) making the representations ('objectors') are encouraged to discuss any issues with the applicant in order that some form of agreement can be reached so that the representation can be withdrawn thus preventing the need for a hearing. This is in keeping with guidance issued under s.182 of the Licensing Act 2003.
4. This agreement practically takes one or more of the following forms:
 - i. A more detailed explanation of the nature of the proposed business satisfying the objector's concerns resulting in the withdrawal of any representation by the objector.
 - ii. An agreement by the applicant to voluntarily withdraw (amend) certain aspects of the application on the understanding that the objector(s) will withdraw any representation. e.g. bring forward the terminal hour for the sale of alcohol from 01:00 to 24:00.
 - iii. An agreement by the applicant to amend the application's operating schedule by adding a more detailed explanation as to how the licensing objectives will be met. This normally takes the form of draft conditions which the applicant and objector assume the Licensing Service will include on the licence.
5. Following a request by Members to have greater involvement in whether or not such agreements should be permitted a new policy was introduced approximately five months ago. Since that time, once objections have been received within the prescribed twenty-eight day period then the authority to grant the licence effectively moves to the Sub-Committee if the objections remain.
6. If the objector wishes to withdraw his representation in the circumstances described in 4(ii) or (iii) above, the Licensing Service would not permit the original application to be amended. In such cases, a hearing would normally still be convened in order to agree any conditions/changes which the applicant was willing to make, unless the applicant, objector(s) and the Licensing Sub-Committee, unanimously agreed that the agreement reached makes it no longer necessary for a hearing to be held.

Issues to be considered:

7. Issues have arisen when either of the second or third scenarios above takes place. Prior to implementing Members' wishes this has resulted in, for example, unenforceable conditions being placed on a licence (albeit agreed between the applicant and objector(s)) and hearings being cancelled at very short notice. Since the implementation of the current system, a lack of consistency has arisen as Licensing

Officers are uncertain as to which applications can proceed and licensing solicitors are confused as to why we appear out of step with other Licensing Authorities.

8. Legislation prescribes that the Licensing Authority should grant a Licence with such conditions as are consistent with the Operating Schedule (s.18(a)). Where an applicant is willing to attach conditions on the basis that an objector would withdraw his representations, then the practice has previously been that an amended application is submitted and the conditions will be normally attached to the Licence.
9. The legislation is silent on the practice of whether an application can be amended in this way. However, since no parties would wish to challenge the conditions, this has been an accepted way forward to avoid unnecessary hearings. An amendment in these circumstances has only ever been permitted by the Licensing Service where the scope of the application is being restricted i.e. a reduction in the licensable activities or conditions added to the licence.
10. However, conditions agreed between the applicant and the objector(s) are not always relevant or enforceable. The Licensing Officer should only issue a licence with such conditions which are consistent with the operating schedule (s.18(a)) and where the conditions are necessary (*'appropriate' from 25 April 2012*) in order to promote the licensing objectives. Therefore, although an agreement may have been reached between the applicant and objector(s) the Licensing Service has to occasionally inform both parties that certain aspects of the agreement may not be included on the licence. This may result in the objector(s) now not wishing to withdraw their representation.
11. At a recent training session by Licensing Barrister Elliot Gold, advice given was that the Licensing Officer has no power to refer matters to a Sub-Committee if there are no representations or all representations have been withdrawn prior to the end of the twenty-eight day period. The application must be granted subject to such conditions as are consistent with the operating schedule accompanying the application.
12. A policy which states 'no amendments' will result in procedural complications whereby Members, acting as the Licensing Authority, will need to be consulted on every occasion a representation is made if the hearing is to be avoided.

Proposal:

13. It is suggested that the following amendment is made to the Licensing Act 2003 Procedure in order to better control the quality of conditions placed on a licence, ensure that hearings are not cancelled at the last minute and to permit consistency of approach by ensuring all parties are aware of the procedure and how it is expected to operate.

14. Delete the words from ‘It should be noted...’ until the end of paragraph 8.1 of the Licensing Act 2003 Procedure (attached as Appendix 1) and add the following paragraphs:

8.1(a) Where a representation has been received in respect of an application prior to the ‘last date’ the Licensing Service will, if practicable, try to assist the applicant and the person(s) making the representation(s) to reach an agreement in order to avoid the need for the matter to be heard by a Licensing Sub Committee. In order to achieve this agreement an applicant will be permitted to amend his application providing the amendment:

i) Brings forward the terminal hour of any licensable activity; or

ii) Reduces the number of licensable activities; or

iii) Adds conditions that restrict the licensable activities provided that any conditions are in line with those agreed by Members and published in the City Corporation’s ‘Pool of Model Conditions’.

8.1(b) Where an applicant wishes to amend his application after the ‘last date’, or wishes to amend his application before the ‘last date’ with a condition not in line with the ‘Pool of Model Conditions’, an amended application will not be permitted.

8.1(c) Where such an amendment, if permitted, would have resulted in all current representation(s) being withdrawn all parties will be consulted as to the necessity for conducting a hearing. All parties in these circumstances are the applicant, objector(s) and the Licensing Authority (i.e. the Members of the Licensing Sub-Committee).

8.1(d) If all parties agree that a hearing is not necessary then the application will be considered by the Sub-Committee relying totally on the documentation supplied with the hearing report. Members will consider the matter taking into account:

- the proposed amendment
- any representations
- the fact that objectors are happy to withdraw their representation(s) if the amendment is permitted

8.1(e) In all other circumstances a hearing will be required.

15. The Licensing Service will inform potential applicants that it expects them to discuss application issues with relevant responsible authorities, local residents etc prior to the application being submitted. In this way the number of representations received should be kept to a minimum.

Recommendation

16. That Members agree to the changes to the Licensing Act 2003 Procedure as detailed in section fourteen of this report.

Implications

17. Changes of this significance to the procedure will need to be reflected in the review of the Corporation's Licensing Policy.

Background Papers:

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Appendix 1

8.0 Hearings

- 8.1 Once a representation has been made a hearing must be convened within twenty working days of the 'last date' to decide on whether or not to grant the application unless:
 - For whatever reason, the person making the representation wishes to withdraw it; or
 - The person making the representation, the Licensing Authority and the applicant all agree that a hearing is not necessary.

It should be noted that a representation can not normally be withdrawn on the basis that the applicant wishes to amend his application. Once an application has been submitted it cannot then normally be amended.

- 8.2 The Licensing Service will inform the Town Clerks Service as soon as a representation has been made informing them of the premises concerned.
- 8.3 At least five working days before the 'last date', or as soon as possible after that date if that is when a representation is first received, preliminary information will be sent to the Town Clerks Service. This will consist of the name, address and ward of the premises in question, the name and address of the applicant and any solicitor acting on their behalf, the number of representations received to date, the names and addresses of the persons making the representations, a copy of the application and a copy of the representations. This information will be updated if necessary within two working days following the last date.

- 8.4 Within four working days following the last date, a copy of the hearing report and all supporting evidence will be sent to the Comptroller and City Solicitor's Service by the Licensing Service. The final report and supporting evidence, including any amendments as advised by the Comptroller and City Solicitor's Service, will be sent to the Town Clerks Service no later than seven working days following the last date.
- 8.5 At least seven working days before the date of the proposed hearing the Town Clerks Service will send all parties a copy of the hearing report, supporting evidence and all necessary documentation.
- 8.6 The hearing will be conducted by a panel of three Common Councilmen of the City of London and conducted in accordance with the 'rules for hearings'. The applicant will be informed of the decision at the hearing panel either at the hearing or in any case within five working days of the hearing.