



Subject:	Consideration of representations received outside of the statutory 28 day period
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	Members will recall that, at your meeting of the 14th December, 2016, when agreeing to consider objections to the grant of a Seven-Day Annual Entertainments Licence for the Hawthorn Bar, which were received outside the 28 day statutory period, the Committee further agreed that officers submit to a future meeting a report outlining potential options for dealing with such representations which were submitted outside the statutory timeframe.
2.0	Recommendations
2.1	The Committee is requested to consider the proposal for dealing with representations received outside the 28 day statutory period and determine if you wish to adopt the proposal or adopt it with any necessary modifications arising from your discussions.
3.0	Main report
	<u>Key Issues</u>
	Legislative Requirements
3.1	In accordance with Schedule 1 of the Local Government (Miscellaneous Provisions) (NI) Order 1985, any person wishing to make any representation in relation to an application for the grant, renewal or transfer of an Entertainments Licence shall give notice to the council, stating in general terms the nature of the representation, not later than 28 days after the date of the application.
3.2	Under Paragraph 5(8), in considering any application for the grant, renewal or transfer of an Entertainments Licence, the council must have regard to any representations received

within 28 days and must give an opportunity of appearing before and of being heard by the council to any person who has made such representation.

3.3 Similar requirements are in place for other application types the Committee consider, namely:

- Amusement Permits under the Betting and Gaming (NI) Order 2004 and Betting, Gaming, Lotteries & Amusements (NI) Order 1985;
- Sex Establishment Licences under Article 4, Schedule 2 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.

3.4 For both these application types the council must also have regard to representations which have been received within the 28 day statutory period.

House of Lords Judgement

3.5 The Local Government (Miscellaneous Provisions) (NI) Order 1985 permits the Committee to consider objections received outside the 28 day statutory period but it is a matter for the Committee to decide whether or not to exercise its discretion in such instances.

3.6 Members are reminded of the House of Lords decision in the case of Belfast City Council v Miss Behavin' Ltd. which, in 2007, upheld Belfast City Council's decision to refuse an application for a sex establishment. In delivering that judgement the Court held that it would be perverse if relevant information could not be taken into account just because it had been received outside the statutory time period.

3.7 The Court stated that the 28 day period should be treated as being administrative as opposed to mandatory. The Court ruled that the council was entitled to take into account late objections when deciding on an application and, in fact, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable.

3.8 This was also the view taken by the High Court in Northern Ireland in cases such as Ava Leisure, in which the Court held that the failure to take into account an objection just because it was out of time was unlawful.

3.9 In the Miss Behavin' case, Lord Neuberger declared that if an objection which revealed to a council for the first time certain highly relevant information was received one day late, it would be a little short of absurd if it could not be taken into account.

3.10 He stated that it might reveal, for instance, that a family with a large number of small children had moved into the flat above the subject property, or that the applicant had a string of relevant convictions. In such cases, it would be contrary to the purpose of the 1985 Order, and to the public interest generally, if the council was obliged to ignore the information.

3.11 He further declared that it would be the duty of council officers to open and read any letter received; such an officer would be placed in an impossible situation if she or he had read a late letter of objection, with new and important information, but was effectively precluded from communicating this information to Council members.

3.12 Additionally, it was stated that the council is not prohibited from taking all relevant representations into account, whether they have been communicated by objectors or others, early or late, or in any other way.

3.13	In light of the above, Committee is advised that, in considering applications for Entertainment Licence, Amusement Permit or Sex Establishment Licences it has a discretion, but not a duty, to consider objections received outside the 28 day statutory period.
3.14	A copy of both the Miss Behavin' and Ava Leisure decisions are included as Appendix 1 to this report.
	<p>Consideration of objections received outside the 28 day statutory period by Committee</p>
3.15	A review of applications since 2013 for which objections were received outside the 28 day statutory period and subsequently brought to Committee for consideration was undertaken and details of those applications are contained in Appendix 2.
3.16	Members will note that for all 12 applications, which include both indoor and outdoor entertainment licence as well as amusement permit applications, the Committee has, in each case, exercised its discretion to consider objections received outside the 28 day statutory period.
	<p>Consideration of representations received outside the 28 day statutory</p>
3.17	Whilst late objections have been considered in the past there is nothing to preclude the Committee from determining that, in future, this will not always be the case. Legal Services have advised that given the Miss Behavin' decision discussed above it would be unlawful to refuse to consider all representations received outside the 28 day period.
3.18	It should also be borne in mind that when assessing applications the Committee is often tasked with assessing competing Convention rights, those of the business owner and those who are affected by the operation of that business. It is therefore important to ensure that both parties have a fair opportunity to express their case.
3.19	Should Committee wish to set guidance as to when late objections may be considered it is important to make provision for unforeseen and exceptional circumstances so that new relevant information, which comes to light through a late objection, is not precluded from being presented to Committee.
3.20	It is proposed that a more rigorous test of the merits of each late objection be undertaken which, unless Members are satisfied, will mean the objection is not taken into account.
	<p>Proposal for dealing with late representations</p>
3.21	<p>For any representation which is received outside the 28 day statutory period Members may wish to consider adopting the following criteria:</p> <ol style="list-style-type: none"> 1. Has a reasonable explanation been provided, in writing, by the objector as to why their representation was not made within the 28 day period; 2. Does the representation provide substantially different additional information to that already contained within representations that have been received within the 28 day period; 3. How far outside the 28 day period were the representations received; 4. The proximity of the objectors to the premises; 5. The number of other representations received outside the 28 day period; 6. Whether there are any other material considerations which would warrant consideration of the objection.

<p>3.22</p> <p>3.23</p> <p>3.24</p> <p>3.25</p> <p>3.26</p> <p>3.27</p>	<p>At present, when a late objection is received, a preliminary report is brought to Committee to seek its view on whether the late objection would be considered. If Committee agrees to do so all parties are invited to a subsequent meeting of the Committee which will receive a detailed paper. As part of the preparation for that meeting, both the applicant and objectors are required to submit their representations which are exchanged with the parties, considered by officers and addressed in the case officers report.</p> <p>Committee had requested that officers consider the possibility of rolling up the process so that all matter could be dealt with at one hearing. Having done so officers are concerned that this will be more cumbersome for Committee, members of the public and officers.</p> <p>A rolled up hearing would mean the parties would have to lodge formal representations in accordance with the Operating Protocol. Officers would have to investigate the issues raised in those representations and the objector would have to appear before Committee without any certainty as to whether they would be heard. It would also cause difficulties for applicants as they would not know until the last minute whether they had to address the objections in their deputation to Committee.</p> <p>In light of these concerns officers would recommend that the present approach is maintained.</p> <p><u>Financial and Resource Implications</u></p> <p>There are no financial or resource implications associated with this report.</p> <p><u>Equality and Good Relations Implications</u></p> <p>There are no equality or good relations issues associated with this report.</p>
<p>4.0</p>	<p>Appendices – Documents Attached</p>
	<ul style="list-style-type: none"> • Appendix 1 – Miss Behavin’ Ltd and Ava Leisure Ltd Judgements • Appendix 2 – Consideration of objections received outside the 28 day statutory period by Committee