

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

ADMINISTRATION COMMITTEE – 11 FEBRUARY 2015

JOINT REPORT OF THE DIRECTOR OF STRATEGY AND LOCAL SERVICES AND THE BI-BOROUGH DIRECTOR OF LAW

PROPOSALS FOR THE REALLOCATION OF FUNCTIONS CURRENTLY WITHIN THE REMIT OF THE REGULATION AND ENFORCEMENT REVIEW COMMITTEE (AND SUB-COMMITTEE)

This report invites the Administration Committee to consider and endorse, for internal consultation, proposals to wind-up the existing Regulation and Enforcement Review Committee and to reallocate its functions within the Council.

FOR DECISION

1. BACKGROUND

- 1.1 The Council has, since 2001, appointed a Regulation and Enforcement Review Committee (RERC) - which in turn has appointed a Sub-Committee. The current terms of reference for each are set out at Appendix A. From its establishment until May 2014 the Committee was chaired by former Cllr. Doreen Weatherhead, and it is currently chaired by Cllr. Charles Williams.
- 1.2 The operation of these arrangements has not been systematically reviewed since they were established, however both officers and Members have at times queried whether this business could be handled in other, more effective and efficient, ways – with some still being dealt with at Member-level but some allocated to other existing committees and some delegated to the relevant officer(s).
- 1.3 There is no statutory requirement to establish a Committee to undertake these functions currently allocated to RERC – as there is for Licensing, Planning and Scrutiny – and with a reduction in Council size from 54 to 50 Councillors in May 2014 there is an imperative to ensure finite Councillor time is best used.
- 1.4 The simplified diagram overleaf sets out the current arrangements:



2. ISSUES FOR CONSIDERATION WHEN LOOKING AT REDISTRIBUTION OF RERC FUNCTIONS

Continued Member involvement

2.1 Any new arrangements for handling current RERC functions need to reflect the wishes of Members to retain their existing role both:

- (i) in determining contested tables and chairs applications, revocations of tables and chairs licences and market trader appeals against revocation of their licence on the grounds of conduct; and
- (ii) in relation to the oversight of the totality of the Council's public realm enforcement activity to ensure it is as 'joined-up' as possible (with departments, especially Planning and Highways, working closely together) and to help identify enforcement 'hotspots'.

but to remove from committee terms of reference those matters where Members don't especially want to be involved, or where Member input in reality adds little value, slows decisions, or is no longer justifiable use of Member time.

The overview of regulatory and enforcement activity

- 2.2 The overview of regulatory and enforcement activity and its effectiveness is (and arguably has always been) primarily a scrutiny function belonging to the Public Realm Scrutiny Committee - rather than, as now, a function somewhat uncomfortably shared between RERC and Scrutiny.

Routine applications

- 2.3 In practice many of the issues listed within RERC's existing terms of reference 1-17 – insofar as the Council receives such applications - are dealt with by officers under existing delegations or should for convenience be dealt with in this way in future (subject of course to explicit and appropriately-worded delegations being inserted into relevant officers' Constitutional authority).

Special treatment licences etc.

- 2.4 Licences relating to special treatments, sex shops, sex encounter, sex establishments and public exhibitions could (and probably should more logically be) dealt with by the existing Licensing Sub-Committee.

Street trading licences

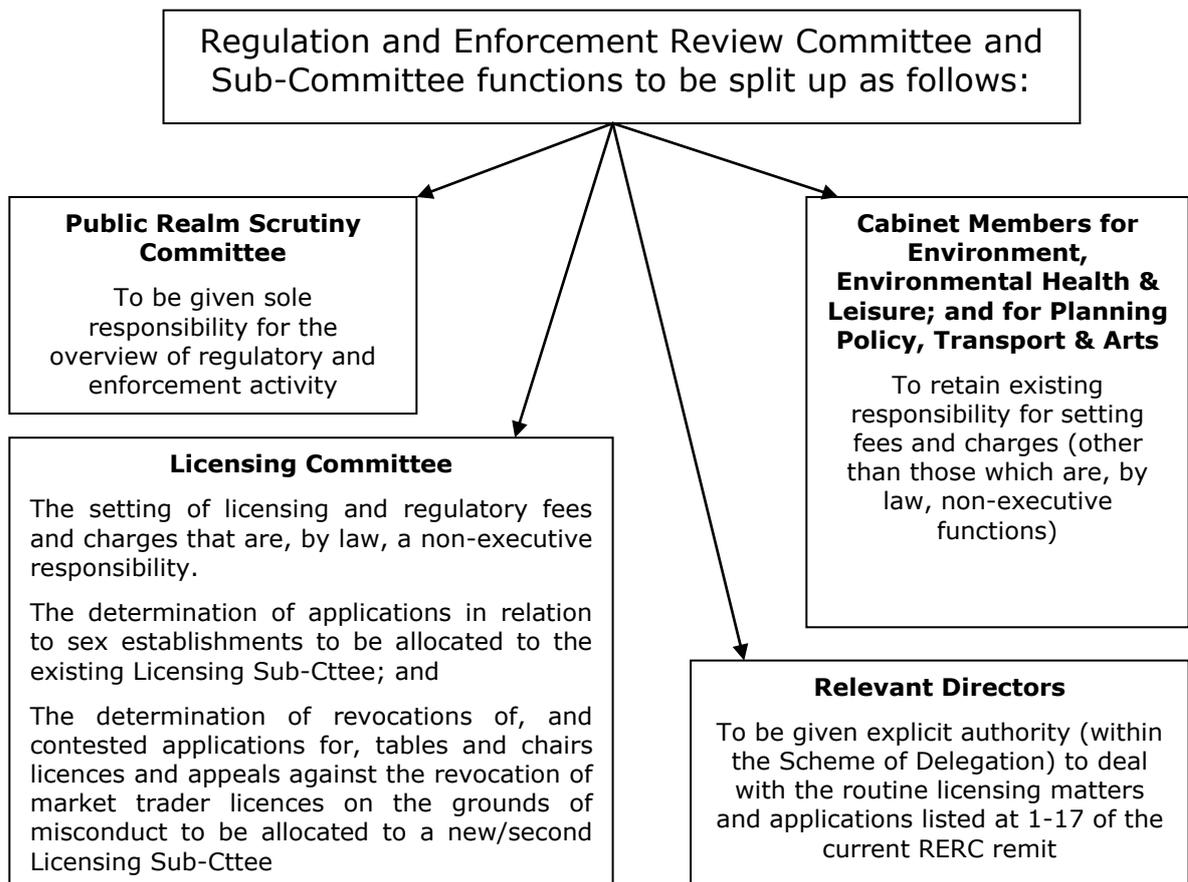
- 2.5 Street trading licences should continue to be issued by officers.
- 2.6 Appeals against the routine revocation of street trading licences on the grounds of non-payment are more appropriately dealt with at Director-level, however appeals against the revocation or variation of street trading licences on the grounds of misconduct should continue to be handled (in Part B (private) session) by a Committee.
- 2.7 Determination of contested tables and chairs applications, and revocations of tables and chairs licences should continue to be handled (in Part B (private) session) by a Committee.

Fees and charges

- 2.8 Many of the fees and charges for functions that fall within the current RERC remit are, by law, non-executive matters and will need to remain so should RERC be wound-up.

3. RECOMMENDATION

- 3.1 Appendix B shows a proposed reallocation of all the RERC Committee and Sub-Committees' responsibilities, which is summarised in diagrammatic form on page 4 below.



3.2 It is recommended that the Administration Committee endorse these proposals for internal consultation, following which they will be re-submitted, amended if necessary and in greater detail, to the Committee at its 25 March meeting and, if agreed, recommended to Council for approval on 15 April with a view to their adoption for the 2015/16 Municipal Year.

FOR DECISION

Tony Redpath
Director of Strategy and Local Services

Tasnim Shawkat
Bi-Borough Director of Law

Background papers used in the preparation of this report: None other than previously published documents

Contact officer: Robert Sheppard, Head of Governance Services at (E) robert.sheppard@rbkc.gov.uk and (T) 020 7361 2265.

THE CURRENT ARRANGEMENTS

Regulation and Enforcement Review Committee – Terms of Reference

To consider the efficiency and effectiveness of the Council's regulatory and enforcement activity, including the need for effective co-operation and collaboration between licensing and planning enforcement, and to exercise the following enforcement functions:

1. To assert and protect the rights of the public to use and enjoy highways.
2. To erect hoardings or fences.
3. To divert highways, footpaths and bridleways.
4. To designate streets as prohibited or licence streets.
5. To revoke, to refuse to grant, and to refuse to renew a street trading licence.
6. To make regulations prescribing standard conditions to be attached to licences.
7. To make or to vary conditions (whether standard or non-standard conditions) to be attached to street trading licences.
8. To maintain a list of persons entitled to sell non-medicinal poisons.
9. To remove objects deposited on the highway.
10. To restrict the placing of rails, beams, banners and other similar apparatus over highways.
11. To sanction the use of parts of buildings for storage of celluloid.
12. To exercise enforcement functions relating to the smoking ban under the Health Act
13. To undertake all health and safety functions, other than duties as an employer.
14. To make a Closing Order with respect to take-away food shops.
15. To make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption.
16. To determine contested applications for consent to load and unload delivery vehicles on Sundays pursuant to Sunday Trading legislation or uncontested applications referred to it by the Director of Environmental Health, as s/he considers appropriate.
17. To issue a permit, consent, approve, register or licence premises or persons in respect of:
 - animal boarding;
 - animal trainers and exhibitors;

- booking offices;
- breeding of dogs;
- caravan sites;
- vaults, cellars and other constructions;
- dangerous wild animals;
- dispatch or purification centres;
- erection of stiles and so forth on footpaths or bridleways;
- explosives and fireworks;
- food businesses and premises;
- guard dogs;
- knacker's yards;
- market and street trading;
- moveable dwellings and camping sites;
- near beer premises;
- obstructions to the highway;
- occasional sales;
- pet shops and other establishments where animals are kept for the purposes of carrying on a business;
- pleasure boats and other vessels;
- public exhibitions;
- riding establishments;
- sale of goods by competitive bidding;
- scaffolding;
- scrap metal dealers;
- Special treatment;
- Sex shops, sex encounter and sex establishments;
- skips;
- solemnisation of marriages;
- street works;
- tables and chairs on the highway;
- temporary deposits or excavations in public highways;
- the creation or stopping-up of footpaths and bridleways;
- the employment of children;
- the operation of a loudspeaker in a street or road; and
- zoos;
- motor salvage operators.

18. To set fees and charges and revise current ones.
- 19.1 To discharge all functions in relation to the determination of any applications for the registration of a town and a village green under the Commons Act 2006 and any regulations incidental thereto or any Act or regulations replacing or amending the same, including but not exclusively: (a) - considering such applications and objections thereto; - determining whether applications and objections are valid; - determining applications; - obtaining advice or arranging an inquiry in relation thereto; - issuing any notices etc.
- 19.2 To take any enforcement steps, including issuing notices or instruct the Director of Legal Services to issue prosecution proceedings to protect village or town greens under The Inclosure Act 1857 and The Commons Act 1876, or any Act replacing or amending the same.

Regulation and Enforcement Review Sub-Committee – Terms of Reference

- To revoke a street trading licence, and to make or vary the conditions attached to a licence, where the determination of the matter could not wait until the subsequent meeting of the Regulation and Enforcement Review Committee;
- to determine any application for a tables and chairs licence; and
- to determine all licensing applications specified listed in paragraph 3.B.13 (b)(16) and (17) which are required to be determined by the Regulation and Enforcement Review Committee or which are referred to that Committee for determination.

PROPOSALS FOR THE REALLOCATION OF RERC RESPONSIBILITIES

To the Public Realm Scrutiny Committee

To consider the efficiency and effectiveness of the Council’s regulatory and enforcement activity, including the need for effective co-operation and collaboration between licensing and planning enforcement

To the Licensing Sub-Committee

To determine any contested application for, or proposed revocation of, a tables and chairs licence

To determine appeals against the revocation or variation of street trading licences on the grounds of misconduct

To the relevant Cabinet Member(s)

To set fees and charges

Delegated to officers (as shown)

To assert and protect the rights of the public to use and enjoy highways	DTH	
To erect hoardings or fences	DTH	
To divert highways, footpaths and bridleways	DTH	
To designate streets as prohibited or licence streets	ELRS	
To grant, to refuse to grant, to revoke for non-payment, and to refuse to renew a street trading licence	ELRS	
To make regulations prescribing standard conditions to be attached to licences.	DTH ELRS	and
To make or to vary conditions (whether standard or non-standard conditions) to be attached to street trading licences	ELRS	
To remove objects deposited on the highway	ELRS	
To grant uncontested tables and chairs licences	DTH	
To restrict the placing of rails, beams, banners and other similar apparatus over highways	DTH	
To determine contested applications for consent to load and unload delivery vehicles on Sundays pursuant to Sunday Trading legislation or uncontested applications referred by the Director of Environmental Health, as s/he considers appropriate	DTH	
To discharge all functions in relation to the determination of any applications for the registration of a town and a village green under the Commons Act 2006 and any regulations incidental thereto or any Act or regulations replacing or amending the same, including but not exclusively: (a) -	EDP&BD	

considering such applications and objections thereto; - determining whether applications and objections are valid; - determining applications; - obtaining advice or arranging an inquiry in relation thereto; - issuing any notices etc.

To take any enforcement steps, including issuing notices or instruct the Director of Legal Services to issue prosecution proceedings to protect village or town greens under The Inclosure Act 1857 and The Commons Act 1876, or any Act replacing or amending the same EDP&BD

To maintain a list of persons entitled to sell non-medicinal poisons DEH

To exercise enforcement functions relating to the smoking ban under the Health Act DEH

To undertake all health and safety functions, other than duties as an employer DEH

To make a Closing Order with respect to take-away food shops DEH

To make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption DEH

To issue a permit, consent, approve, register or licence premises or persons in respect of:

- animal boarding DEH
(Licensing)
- breeding of dogs DEH
(Licensing)
- dangerous wild animals DEH
(Licensing)
- guard dogs DEH
(Licensing)
- pet shops and other establishments where animals are kept for the purposes of carrying on a business DEH
(Licensing)
- near beer premises DEH
(Licensing)
- riding establishments DEH
(Licensing)
- zoos DEH
(Licensing)
- special treatments DEH
(Licensing)
- sex shops, sex encounter and sex establishments DEH
(Licensing)
- explosives and fireworks DEH *(Trading Standards)*

- occasional sales DEH (*Trading Standards*)
- sale of goods by competitive bidding (auction houses) DEH (*Trading Standards*)
- motor salvage operators and scrap metal dealers DEH (*Trading Standards*)
- food businesses and premises DEH
- public exhibitions DEH
- market and street trading DWM&L
- obstructions to the highway (DTH) - and CGCS for smaller items such as A-Boards etc. (should formal consent be required) DTH/CGCS
- pleasure boats and other vessels DTH
- streetworks DTH
- scaffolding DTH
- skips DTH
- tables and chairs on the highway DTH
- vaults, cellars and other constructions DTH
- temporary deposits or excavations in public highways DTH
- the creation or stopping-up of footpaths and bridleways DTH
- The erection of stiles and so forth on footpaths or bridleways DTH
- the employment of children FCS
- the solemnisation of marriages DSLS
- animal trainers and exhibitors
- knacker's yards
- booking offices
- moveable dwellings and caravan/camping sites
- dispatch or purification centres
- the operation of a loudspeaker in a street or road

To be allocated following check of statutory provisions