

**Report for:** Licensing Committee

**Title:** Changes to the protocol for Licensing Sub-Committees

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**Ward(s) affected:** All

**1. Describe the issue under consideration**

- 1.1 The Council's Licensing Procedure Rules ("the Protocol") and the Summary Procedure rules need to be updated to allow Licensing Sub-Committees to operate efficiently and in keeping with the needs of Licensing Sub-Committees.
- 1.2 In particular the Protocol needs to reflect that hearings under the Licensing Act 2003 are being held remotely, to introduce a time limit for oral representations before the Sub-Committee so that hearings do not overrun and to change the order of the speakers on applications.

**2. Cabinet Member Introduction**

Not applicable.

**3. Recommendations**

The Licensing Committee is asked:

- 3.1 To agree the updated Licensing Protocol attached at Appendix 1.
- 3.2 To agree the updated Licensing Hearings Procedure Summary attached at Appendix 2.
- 3.3 To agree updated Licensing Hearings Review Procedure Summary attached at Appendix 3.
- 3.4 To agree the updated Gambling Act 2005 Hearings Procedure Summary attached at Appendix 4.

**4. Reasons for decision**

- 4.1 To support the efficient discharge of licensing functions as set out within Part 3, Section B of the Council's constitution by clarifying the procedure for remote hearings.

4.2 To formalise standardised speaking processes.

## **5. Alternative options considered**

5.1 An alternative would be to continue with the current protocol and procedures but they do not set out the procedure for remote hearings. This has been discounted because for those participating at hearings the procedure needs to be clear.

5.2 The Licensing Sub Committee could continue to have no time limits for speakers, however, that would typically allow any application being heard to potentially run beyond the 10:00 pm terminal hour for Council business. The Chair has discretion to extend the hearing beyond 10 p.m. but that should not be a frequent occurrence. Without a time limit there may need to be a continuance of the hearing on another day.

## **6. Background information**

6.1 Parliament passed the Coronavirus Act 2020 on 25<sup>th</sup> March 2020 in response to the Covid 19 pandemic. Section 78 of that Act authorised Regulations (the Flexibility of Local Authority and Police and Crime Panels Meetings (England and Wales) Regulations 2020 which enabled Local Authorities to hold Committee meetings remotely or virtually.

6.2 Hertfordshire County Council and others issued proceedings and sought a declaration from the Courts that Council meetings could continue virtually or remotely after the expiry of the 2020 Act. The Divisional Court in the case of Hertfordshire County Council and others v Secretary of State for Housing, Communities and Local Government [2001] EWHC 1093 (Admin) decided that Council meetings held under the Local Government Act 1972 could not continue remotely. The decision did not however touch on local authorities acting in their capacity as licensing authorities, holding meetings under the Licensing Act 2003 and Gambling Act 2005. Section 101(15) of the Local Government Act 1972 specifically excludes meetings to discharge functions under the Licensing Act 2003 from the normal meetings under the 1972 Act.

6.3 Hearings under the Gambling Act 2005 returned to being held in person in Haringey because the Local Government Act 1972 does not specifically exclude them but hearings under the Licensing Act 2003 and Licensing Act 2003 (Hearings) Regulations 2005 continued to be held remotely in Haringey.

6.4 In April 2003, the Magistrates Court in the case of Walk Safe Security Limited v London Borough of Lewisham, decided that continuing to hold Licensing Act 2003 hearings remotely is lawful and that the Licensing legislation enables Local Authorities to decide for themselves whether to hold meetings remotely or in person. Whilst this decision is not legally binding, it helps to clarify the

legal position and Local Authorities should have a clear protocol for holding remote hearings, that clarifies any uncertainties.

- 6.5 It is proposed to continue to hold Licensing Act 2003 hearings remotely and the Protocol has been updated to reflect that hearings will be held remotely unless the Chair decides that it is in the interests of justice for the meeting to be held in person.

#### Licensing Sub Committees

- 7.1 The Council is obliged by virtue of the Licensing Act 2003 (“the 2003 Act”) to establish a Licensing Committee consisting of at least 10 but no more than 15 Members. All matters save for those expressly discharged by Full Council relating to the discharge of the Council’s licensing functions under the Licensing Act 2003 are referred to the Licensing Committee.
- 7.2 The Licensing Committee establishes Licensing Sub-Committees to conduct hearings.
- 7.3 The Licensing Sub-Committee follows the Protocol for hearings under The Licensing Act 2003 and The Gambling Act 2005 and also follows the Licensing hearings procedure rules hearings summary for these hearings.
- 7.4 The Protocol and Procedure Summaries were last updated around 2014 and now need to reflect the current practice.
- 7.5 It is proposed that those making representations at a Licensing Sub-Committee will be allowed to speak for five minutes with the Chair having discretion to extend the time where appropriate.
- 7.6 The updated protocol also more clearly arranges the speaking order so that the applicant is the first contributing participant to address the Sub- Committee.

### **8. Statutory Officers’ comments (Chief Finance Officer (including procurement), Head of Legal & Governance (Monitoring Officer), Equalities)**

#### Chief Finance Officer

- 8.1 There are no financial implications arising from the recommendations in this report.

#### Head of Legal & Governance (Monitoring Officer)

- 8.2 The Legal Comments are contained within the body of the report.

#### 9. Equalities

9.1 The Council has a public sector equality duty under S149 of the Equality Act 2010 to have due regard to need to:

- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who those characteristics and people who do not.

The proposals carry no implications for any aspect of the duty outlined above.

## **10. Use of Appendices**

Appendix 1: Local Licensing Procedure Rules For Hearings Under The Licensing Act 2003 and The Gambling Act 2005

Appendix 2: Licensing Sub-Committee Hearings Procedure Summary

Appendix 3: Licensing Sub-Committee Review Hearings Procedure Summary

Appendix 4: Licensing Committee Procedure Summary – Gambling Act 2005 – Hearings Regulations

## **11. Local Government (Access to Information) Act 1985**

11.1 Not applicable.