

LATE BUSINESS SHEET

Report Title: Agenda Item 9 – Licensing Protocol

Committee: Standards Committee

Date: 27 June 2023

Reason for lateness and reason for consideration

The Standards Committee has been asked to consider a report on the new Licensing Protocol which has been published and is attached item 9. The Committee are now further asked to consider an addendum which contains the minutes of the Licensing Committee held on the 22nd of June which considered this Protocol as the parent committee and put forward some minor changes which are attached at appendix 1 of the addendum. This addendum seeks onward recommendations for adoption of the Protocol by the Full Council on 17 July 2023, with the changes outlined in appendix 1 and 1.1.

The Protocol will be added to the Constitution and needs the agreement of the Standards Committee in line with their terms of reference requirement of considering amendments to the Constitution and recommending proposals to the full Council for approval.

Under s100B(4)(b) of the Local Government Act 1972, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency by reason of special circumstances. These circumstances are so that the proposal, including the comments of the Licensing Committee which met on the 22nd of June, can be considered by the Standards Committee in a timely manner at the meeting on the 27th of June 2023 and if approved can progress to the next Full Council on the 17th of July 2023. This will allow the protocol to be added to the Constitution and allow clarity and understanding on the process for holding online Licensing subcommittee hearings. This was agreed as a late paper due to these circumstances by the Chair on the 19th of June 2023

Addendum

FILMING AT MEETINGS

The Chair referred to the filming of meetings and this information was noted.

2. APOLOGIES

Apologies had been received from Councillor Peacock, Councillor Blake, Councillor Bartlett and Councillor da Costa.

3. URGENT BUSINESS

It being a special meeting, under Part 4, Section B, Paragraph 17, of the Council's Constitution, no other business shall be considered at the meeting.

4. DECLARATIONS OF INTEREST

None were declared.

5. DEPUTATIONS / PETITIONS / PRESENTATIONS / QUESTIONS

It being a special meeting, under Part 4, Section B, Paragraph 17, of the Council's Constitution, no other business shall be considered at the meeting.

6. CHANGES TO THE PROTOCOL FOR LICENSING SUB-COMMITTEES

Ms Michelle Williams, Principal Litigation Lawyer and Ms Daliah Barrett, Licensing Team Leader, presented the item.

The Committee discussed the protocol rules and heard that:

- Rule 29 partly referred to a facility to submit information confidentially to the to the Council. It would be expected that the party communicating the confidential information to also send the Council a copy of the document that was unredacted so that the confidential information could be inspected in addition to the redacted copy. It would be for the Council to decide whether or not the information was actually confidential. The rule was mainly there to deal with the main confidential information that the Council were provided with; the names and addresses of interested parties possibly opposing an application. The information could only be kept truly confidential if there was a threat to those individuals if their details were disclosed. If there was no threat, it may be that the information would have to be shared with the other parties, although the other parties would be asked to keep their information confidential. It was the legislation which set out the ground

rules in terms of whether, particularly in terms of names and addresses, if they could be kept confidential. The legislation stated that if there was a threat, a reason would need to be substantiated to determine if there was a threat to the individual.

- An individual wanting to complain about a licenced premises was able to do so and there was a mechanism within the Council for it to even be an anonymous complaint. In terms of the Licencing legislation itself, the Licensing Authority could not accept a representation on an application where the representor had not provided their name and address.
- If allegations were being made, the applicant or licence holder had the right to know the case against them. In terms of licencing regulations, those making representations no longer were subject to a proximity test whereby they had to live within a certain radius of the locality. An applicant had a right to know if someone complaining about a premises how far the objector lived away from the premises (unless there was a substantiated threat).
- Rule 29 would be changed to read that any party submitting their information could make a request for certain details to be kept confidential so it was somewhat clear that the determination on whether or not certain information was kept confidential would ultimately be made by the Licensing Authority (or the Council).
- Pages 32 and 33 of the agenda papers relating to Licensing hearings and Gambling hearings appeared to have different procedures for applicants. The protocol in relation to Licensing hearings appeared to suggest that in most cases, a further opportunity would be provided for the applicant or licence holder to attend another hearing if they were absent from the meeting, but the protocol in relation to hearings relating to the Gambling Act appeared to suggest that the hearing would proceed in the absence of the applicant or licence holder. This would be changed so that both protocols were consistent.
- In relation to Rule 49, other local authorities operated some sort of a five-minute time limit to present freely at a Licensing Sub-Committee. If the speaking party presented justified reasons why they needed more than five minutes, the Chair had the discretion to extend the time. Participants speaking at length could result in a meeting that could not be concluded, partly due to the 10:00pm meeting guillotine operated by the Council. The parties also had time to make concluding remarks which were not timed. There previously had been no time limits on speaking whatsoever. In the event of an application which had many representations, those meetings could be lengthy and may not be conclude by 10:00pm.
- It was important to note that the applicant would have submitted their application and the representations would have been put in writing, so participants would generally be summarising their position and the applicant would be addressing the representations that had been made. The hearings often had an ongoing dialogue between all parties throughout the meeting and the legislation required that parties to be allowed an equitable amount of time to present their case. Therefore, in a hearing, for example, where there were 10 objectors to one applicant,

the Chair could engage discretion to ensure that both sides were offered an opportunity to speak for an equitable period of time.

- Many applicants had legal representation and parties could ask in advance for additional time before the hearing via the Licensing Officer.
- The summary procedure rules had been amended to reflect that, in normal circumstances, the parties would be given five minutes to speak, so all of the parties would be aware of this in advance. If they required more time, than they would know that the Chair had the discretion to extend it, and this was a request that could be made.
- Under the legislation, any application that had not received objections could be dealt with by the Licencing Authority and must be granted. Where objections had been received and the applications could not be ameliorated, those applications would be put forward to be heard before the Licencing Sub-Committee.
- Rule 14 stated that a councillor could not take part in the decision relating to an application in their ward, not that they could not make representations against a particular application in their ward. This rule had been put in place in case of an allegation of an appearance of bias.
- Ward councillors could make a representation against a particular application in their ward or speak on behalf of residents who had submitted a representation who then may nominate a ward councillor to speak on their behalf, possibly as a substitute speaker.
- Rule 62 and 63 appeared to have a loophole whereby a hearing could theoretically conclude between the hours of 9:30pm and 10:00pm allowing a new hearing to also start between 9:30pm and 10:00pm. Therefore, Rule 62 would be extended to read that no new hearings would commence after 9:30pm.
- Appropriate wording would be added to Rule 67 to ensure that the sentencing was complete.

Rule 56 would be changed to read “The Chair shall be responsible for the orderly conduct of the hearing. If any Member or a party loses their connection during a remote hearing, the meeting will be adjourned until they are able to rejoin and any evidence or representation they have missed will be rerun”.

At this point in the proceedings, at 7:47pm, Councillor Diakides left the meeting room.

Subject to the changes outlined above, the Committee.

RESOLVED:

1. To agree the updated Licensing Protocol attached at Appendix 1 of the report.
2. To agree the updated Licensing Hearings Procedure Summary attached at Appendix 2 of the report.

3. To agree updated Licensing Hearings Review Procedure Summary attached at Appendix 3 of the report.
4. To agree the updated Gambling Act 2005 Hearings Procedure Summary attached at Appendix 4 of the report.
5. **To recommend the approval of the protocol to the Standards Committee on 27 June 2023 for their onward recommendation for adoption by the Full Council on 17 July 2023.**

