



Committee and date  
Strategic Licensing  
Committee.

29 September 2010  
10.00am

Item No

**6**

Public

## LICENSING COMMITTEE STRUCTURES AND OPERATIONS

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### Summary

This report proposes new arrangements for the Committee Structure to discharge the Council's duties in respect of licensing and safety matters that are due to be considered by Council at their meeting on the 30<sup>th</sup> September 2010.

The current arrangements were established at the formation of Shropshire Council and do not appear to present the most efficient or effective way for Shropshire Council to discharge its duties in respect of licensing.

### Recommendations

That Strategic Licensing Committee support the proposals to Council that from 1<sup>st</sup> April 2011

- A. That the Strategic Licensing Committee is increased in number, from 11 to 15, reflecting the political balance of Shropshire Council.
- B. Council dissolves the three Area Licensing and Safety Committees.
- C. Council amends the Constitution to transfer the existing responsibilities of the Area Licensing and Safety Committees to the Strategic Licensing Committee.
- D. The Strategic Licensing Committee is invited to establish one standing Licensing and Safety Sub-Committee of 5 members in proportion to the political balance within the Council to discharge the Council's licensing and safety functions not reserved to Council or within the remit of the Strategic Licensing Committee, other than those under the Licensing Act 2003 and the Gambling Act 2005.
- E. The Strategic Licensing Committee is invited to establish Licensing Act Sub-Committees as required consisting of 3 Members of the Strategic Licensing Committee who do not have a prejudicial interest in the subject matter and who are not representing one of the parties, appointed by the Assistant Director Public Protection (referred to in the Council's Scheme of Delegation) to discharge the Council's duties under the Licensing Act 2003 and the Gambling Act 2005, meeting as and when required.

## Report

1. The Implementation Executive at its meeting on the 15<sup>th</sup> January 2009 established the structure and operation of the various committees of Shropshire Council for the purpose of discharging the Council's duties in respect of the Licensing Act the licensing of Taxi and Private Hire Vehicles other licensing matters and matters relating to health and safety.
2. This was subsequently revised by the Strategic Licensing Committee at the meeting on the 29<sup>th</sup> September 2009.

### **CURRENT COMMITTEE FRAMEWORK**

#### **Strategic Licensing Committee**

3. 11 Members of the Authority reflecting political balance of Shropshire Council. No substitutes are allowed on this committee when considering Licensing Act 2003 matters.
4. Constituted to consider all functions in relation to licensing policies that are not reserved to Council in relation to licensing; the setting of fees and making or varying of fares and other changes of Hackney Carriages (including power to determine objections) as contained within section 65 Local Government (Miscellaneous Provisions) Act 1976 and to oversee the work of the Area Licensing and Safety Committees.
5. This is the statutory committee as required by Section 6 of the Licensing Act 2003, and must consist of between 10 and 15 members of the Council.

#### **Area Licensing and Safety Committees (North, Central and South)**

6. 5 Members of the Authority as appointed by the Council drawn from the members in those areas and in proportion to the political balance within the area.
7. Constituted to consider functions relating to licensing and registrations including functions in relation to Health and Safety at Work and functions in relation to the power to make a closing order with respect to take away food shops (s4 Local Government Miscellaneous Provisions) Act 1982 of Schedule 1 to the Functions Regulations.
8. The Committee will also consider applications for licenses issued under the Local Government (Miscellaneous Provisions) Act 1976 including applications for Hackney Carriages and Private Hire licenses.

#### **Area Licensing Sub Committees (North, Central and South)**

9. 3 Members of the Area Licensing Committee who do not have a prejudicial interest in the subject matter and who are not representing one of the parties, appointed by the Assistant Director Public Protection (referred to in the Council's Scheme of Delegation) under the Licensing Act 2003 and the Gambling Act 2005.

10. The Area Licensing Sub-Committee meets as and when necessary.
11. Constituted to consider functions not within the remit of the Strategic Licensing Committee and in particular the functions relating to licensing and registration as set out in part B, functions in relation to Health and Safety at Work as set out in Part C, of Schedule 1 to the Functions Regulations and functions in relation to the power to make a closing order with respect to take away food shops. This includes premises licences, personal licenses and temporary event notices where representation has been made.
12. The sub committee is constituted in Accordance with Section 9 of the Licensing Act 2003 and in accordance with the Act can only consist of 3 members.

### General

13. Substitutes are permitted on the Committees subject to all participating members completing training in licensing matters.
14. The Strategic Licensing Committee is also consulting with Town Councils on delegating decision making on street trading and street collections to the town councils for local determination.
15. The Strategic Licensing committee has met on 3 occasions during the 2009/10 municipal year and the frequency and arrangements for this committee appear satisfactory with the committee settling into its role.
16. The Area Licensing and Safety Committees planned to meet on a four weekly cycle however a lack of business for the South and North Committees has led to the frequency of meeting in those areas moving to six weekly and the cancellation of a number of scheduled meetings. In the 2009/10 municipal year the following business was conducted by the Area Committees:

Area Committee	Number of meetings	Cases heard
North	7	9
South	3	4
Central	11	54

17. The workload of the three Area Licensing sub Committees also varies greatly across Shropshire. During the 2009/10 municipal year the following meetings were held:

Area Sub Committee	Number of meetings
North	5
Central	13
South	1

18. The Strategic Licensing Committee considered this imbalance at the meeting on the 16<sup>th</sup> June 2010 and whilst did not propose amending the substantive structure of the area committees at that time recognised the need for members to be available for sub committees across Shropshire as and when required to even out the workload.

19. The fixed cost of each committee is relatively similar with each committee being serviced by a Licensing Officer, Solicitor and Committee Clerk. Accordingly the relative cost of hearing each case varies dramatically between Committees.
20. The Licensing Service has recently undergone a Lean review and a structural review, moving away from the area based structure established in 2009 to a Shropshire wide service. This has significantly reduced costs with a reduction of two Licensing team leaders and a manager.
21. Operating area committees also poses challenges in ensuring consistency of decision making in what is the application of a quasi judicial process.
22. Given the relatively small number of cases heard in the North and South Area Committees and Sub Committees when compared to the central area, it is considered entirely manageable for a single Committee and sub committee to effectively discharge the Councils duties in respect of Licensing.

## **PROPOSED COMMITTEE FRAMEWORK**

### **Strategic Licensing Committee**

23. 15 Members of the Authority reflecting the political balance of Shropshire Council. No substitutes are allowed on this committee when considering Licensing Act 2003 matters. The increase from the current 11 members is to provide a larger body of members to consider licensing matters with the proposed abolition of the Area Committees.
24. Meeting quarterly in accordance with the programme of meetings determined by the Council at its Annual Meeting.

### **Licensing and Safety Sub-Committee.**

25. 5 Members of the Strategic Licensing Committee, appointed by that Committee as a standing sub-committee, reflecting the political balance of Shropshire Council. Substitutes would be permitted at this Sub-Committee. The Strategic Licensing Committee may choose to appoint a reserve sub-committee(s). Such functions include those not within the remit of the Strategic Licensing Committee as set out in part B of The Local Authorities (Functions an Responsibilities)(England) Regulations 2000 relating to licensing and registrations (excluding Commons Registration) part C including functions in relation to Health and Safety at Work and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982.
26. Meeting on a four weekly cycle.

### **Licensing Act Sub Committee.**

27. 3 Members of the Strategic Licensing Committee who do not have a prejudicial interest in the subject matter and who are not representing one of the parties, appointed by the Assistant Director Public Protection (referred to in the Council's Scheme of Delegation) under the Licensing Act 2003 and the Gambling Act 2005

28. Meeting as and when required.

29. Draft procedure rules for the committees and sub-committees are set out in Annex A and B.

### **Advantages.**

30. There are a number of advantages of simplifying the current arrangements these include;

- A simpler more transparent arrangement for people to understand.
- A reduction in costs of administration and officer support.
- Improved consistency.
- Alignment of political and organisational arrangements.
- Quicker decision making with sub committee hearings every four weeks than the current six week and fewer meeting cancellations.

### **Disadvantages.**

31. There are a number of disadvantages of simplifying the current arrangements these include;

- Potential for requiring customers to travel further for hearings. This can be overcome in part by the committees meeting in or close to the locality of the interested parties.
- Accusations of loss of local decision making.
- Reduction in number of members involved in licensing decision making. Currently 48 members have some Licensing responsibility. Reducing this to a committee of 15 with substitutes reduces the number to 30.

### **Conclusions.**

32. The current Committee arrangements for the council to discharge its licensing obligations appear to be imbalanced across the county. The workload of some committees and sub committees is significantly less than others and therefore the cost of democracy in these circumstances is significantly greater.

33. Adopting simpler, more streamlined, arrangements has advantages of clarity, consistency and reduced costs. It does however have some disadvantages of removing an element of local decision making.

34. Whilst some of the functions of Shropshire Council in relation to Licensing can be delegated to Town and Parish Councils, Shropshire Council will retain a legal obligation in respect of licensing and therefore requires an effective and efficient democratic process to administer this requirement.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Council Constitution.

Local Government (Miscellaneous Provisions) Act 1976

The Local Authorities (Functions and Responsibilities)(England) Regulations 2000

**Human Rights Act Appraisal**

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998.

**Environmental Appraisal.** Replacing Area Committees with a single sub committee meeting throughout Shropshire may increase the mileage travelled by some members attending meetings. It is anticipated that membership will be drawn from across Shropshire thus reducing the impact.

**Risk Management Appraisal**

As a quasi judicial function it is essential that members considering Licensing Act and ambling Act matters are appropriately trained. Passing responsibility for all Licensing matters to a single committee simplifies the management of training and reduces the risk of untrained members considering a case.

**Community / Consultations Appraisal**

No community consultation has been undertaken.

**Cabinet Member:** Mike Owen

**Local Member** None

**Appendix**

Annex A. Licensing Committee And Sub-Committee Procedure Rules

Annex B. Hearings Procedure For The Licensing Sub-Committee

## **ANNEX A.**

### **LICENSING COMMITTEE AND SUB-COMMITTEE PROCEDURE RULES**

1. The Council will have a Strategic Licensing Committee as referred to in Article 8 of the Constitution, plus a Licensing Sub-Committee and a Licensing and Safety Committee or Committees.

2. **Composition**

The Strategic Licensing Committee shall comprise of 15 Members of the Council.

The Licensing Sub-Committee shall comprise 3 members, who do not have a prejudicial interest in the subject matter and who are not representing one of the parties, from the membership of the Strategic Licensing Committee, appointed by the Assistant Director Public Protection to determine applications (referred to in the Council's Scheme of Delegation) under the Licensing Act 2003 and the Gambling Act 2005.

The Licensing and Safety Sub-Committee shall comprise of 5 Members, decided by the Strategic Licensing Committee. Substitutes, as decided by the Committee, are permitted.

3. **Number of Meetings**

The Strategic Licensing Committee will normally meet quarterly in accordance with the programme of meetings determined by the Council at its Annual Meeting. The date and time of any other meeting shall be determined by the Chairman or, in his/her absence, by the Vice-Chairman. The Committee or the Chairman may vary the programme if it is in the interest of the Council.

The Licensing and Safety Sub-Committee shall meet every 4 weeks.

The Licensing Act Sub-Committee will meet as and when necessary.

4. **Quorum**

The Quorum for the Strategic Licensing Committee and the Licensing and Safety Sub-Committee shall be as set out in the Council's procedure Rules in Part 4 of this Constitution, namely one third of its membership subject to a minimum of three.

The Quorum for the Licensing Sub-Committee shall be three.

5. **Role and Function**

35. The Licensing and Safety Sub-Committee will be responsible for considering all of those functions conferred on the Council not within the remit of the Strategic Licensing Committee as set out in part B of The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 relating to licensing and registrations (excluding Commons Registration) part C including functions in relation to Health

and Safety at Work and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982.

## **6. Speaking at Meetings of the Committee**

Interested parties, as defined in accordance with the Licensing Act, will be entitled to speak at all public meetings on Licensing Act and Gambling Act matters in accordance with the procedure rules set out in annex B.

## **7. Bias and Predetermination**

Bias is an attitude of mind that prevents the decision maker from making an objective determination of the issues that he/she has to resolve. There is no need for proof of actual potential bias for there to be a “procedural impropriety”. It is sufficient that there is an appearance of bias. The test for bias is “whether a fair-minded informed observer, having considered the facts would conclude that there was a real possibility of bias”.

Where the decision to be made is quasi-judicial, as at the Licensing and Safety Sub-Committee or the Licensing Sub-Committee, the key issue to ensure the legality of the decision is the “public perception of a probability of unconscious bias”. Members should therefore avoid participating as a member of the Licensing and Safety Sub-Committee and the Licensing Sub-Committee where previous voting or statements of belief may alter that objective impression conveyed.

A member should not reach a final conclusion before he/she comes to take a decision on an issue. A member’s statements and activities should not create the impression that his/her views on a matter are fixed, and that he/she will not fairly consider the evidence or arguments presented to him/her, when he/she is making a decision.

‘Bias’ also includes the situation where it is felt that the decision maker has predetermined the case based on his/her own prejudices. An obvious example is where the impression is clearly given to e.g. members of the public or a lobbyist, beyond conveying a mere disposition, that “the member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues”.

To help avoid accusations of pre-determination and ensure that division members are free to represent their constituents as “interested parties”, division members will not sit on the Licensing Sub-Committee where that Sub-Committee is considering an application in that member’s division.

A member must make a disclosure of his/her position regarding the possibility of political or structural bias, in advance, to the Licensing Sub-Committee which will consult with its Legal Advisor to decide if the member can participate in the decision-making.



## **8. Applications Submitted by the Council**

The Council may apply for its own Premises Licences so as to licence areas of public space. Such applications must be seen to be dealt with fairly. During such an application process it is therefore important to be aware of any potential appearance of bias.

## **9. Lobbying**

The Licensing Act 2003 sets out the grounds for making representations on licence applications and limits the parties which may make such representations. Local Councillors can either sit as part of the Licensing Committees or can represent the interests of their constituents by acting as “interested parties” as long as they do not have any prejudicial interest in the matter.

To avoid an appearance of bias:

- No member sitting on the Licensing Sub-Committee can represent one of the interested parties of the applicant. If she/he wishes to do so she/he must excuse him/herself from the membership of the Sub-Committee which is considering the application and address the Sub-Committee as an ‘interested party’.
- If a member who sits on the Licensing Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that he cannot discuss the matter and refer the lobbyist to his/her division member or the Licensing Officers who can explain the process of decision making. If a member wishes to represent one of the parties as their division councillor, they will not be selected to serve on the Licensing Sub-Committee for that application.
- Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to Licensing Sub-Committee decision. To do so will indicate that the member had made up his/her mind before hearing all the evidence and that their decision may not be based upon the Licensing Objectives not the Licensing Authority’s Statement of Licensing Policy.
- Political group meetings should never be used to decide how any members on the Licensing Sub-Committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration.
- Councillors must not be members of the Licensing Sub-Committee if they are involved in campaigning on the particular application
- Other members (i.e. those which do not sit on the Licensing Sub-Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Sub-Committee members as this can easily be viewed as bias/pressure and may well open that Sub-Committee Member to accusations of such. A full prohibition upon discussing such issues with

Committee members by other members may be impractical and undemocratic.

- Members must NOT pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious).

It should be noted that a member for a division, which would be directly affected by the applications, is most at risk of being accused of bias. Members whose division includes the application, or whose division is likely to be affected by the application, should not sit on the Licensing Sub-Committee considering the application but he/she may wish to act as/or represent an “interested party”.

All of the above guidance also applies where an application is to be considered by the Licensing and Safety Sub-Committee.

## **10. Pre-Application/Pre-Decision Discussions**

Whilst discussions between the licence applicant and the Licensing Officer prior to the submission of an application, or prior to a decision being made are often helpful to both parties, the Licensing Authority must ensure it is not open to accusations or appearance of bias. It must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of “predetermination”.

Licensing and Safety Sub-Committee members and members of the Licensing Sub-Committee should ensure that they DO NOT take part in any pre-application/pre-decision discussions and that applicants are referred to the Licensing Officer.

## **11. Who can put Items on the Committee Agenda**

The Chairman of the Committee (or the Vice-Chairman in his/her absence) and/or the Council Manager and/or the Monitoring Officer and/or the Chief Financial Officer and/or the Licensing Officer may include items for consideration on the agenda for a Strategic Licensing Committee meeting.

## **12. Role of the Licensing Officer**

The Licensing Officer will not generally make recommendations to the Licensing Sub-Committee. A summary report of the application, the representations and the Officer’s comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.

## **13. Decision Making**

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. Decisions must be made according to the licensing objectives of the Licensing Act 2003 as well as the Licensing Authority’s Policy Statement.

**14. Site Inspection**

Site inspections by Licensing Sub-Committee members are generally unnecessary and can put the members and the Licensing Authority at risk of accusations of bias. If a site inspection is required then the reasons will need to be set out to justify the visit.

**15. Application of Council Procedure Rules**

Council Procedure Rule 33.2 (Application to Cabinet, Committees and Sub-Committees) shall take effect subject to these Procedure Rules.

**16. The procedure for the holding of hearings in respect of licensing matters is attached at Annex B.**

## **ANNEX B**

### **HEARINGS PROCEDURE FOR THE LICENSING SUB-COMMITTEE**

1. These rules apply to hearings before the Licensing sub-committees and references to the Committee shall be construed accordingly.
2. Every applicant and any other person making representations will be given a minimum of ten calendar days' notice of a meeting of the Committee, unless he/she indicated that a shorter period is acceptable, or current legislation dictates a shorter period.
3. At the time notice is given of a Committee meeting, the applicant will be informed of all representations received by the Council. The applicant will also be informed of the Council's case and any observations received from the police, and/or other consultees, so as to enable him/her to adequately prepare for the hearing of his/her application.
4. Any person objecting to the grant of a licence or consent shall be invited to attend and address the Committee when the application is heard. Where a number of similar representations, or a petition, have been received the objectors will normally be invited in advance of the hearing to appoint a spokesperson to address the Committee.
5. All committee members will be sent a copy of every document received from the applicant and any third party.
6. At the beginning of every hearing the Chairman will first identify all Councillors and Officers in attendance and will then explain the procedure to be followed.

The Committee may change the order in which any stage of the hearing takes place but must allow the applicant an opportunity to sum up after all other parties have been heard.

7. The Chairman will invite the applicant to introduce him/herself and his/her representatives, if any, and any witnesses. If the applicant is not represented, the Chairman will ask him/her if they knew this was permissible and invited him/her to make clear whether or not he/she wishes to be represented at the hearing.
8. The Committee shall hold its hearings in public but may exclude the public from all or part of a hearing where it considers that:
  - (i) In the case of a hearing under the Licensing Act 2003 the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public; or
  - (ii) In the case of any other hearing, confidential or exempt information within the meaning of Section 100A Local Government Act 1972 is likely to be revealed.

For the purposes of paragraph 8(i), a party and any person assisting or representing a party may be treated as a member of the public.

9. The hearing will take the form of a discussion, led by the authority and all representatives and questions shall be put through the Chairman.
10. It is essential that all members of the Committee remain present throughout the hearing. They should confine themselves to asking questions about the application. Whilst hearsay evidence is acceptable, the Committee must not take into consideration any gossip, speculation or unsubstantiated innuendo.
11. Where all parties agree in writing then the Committee may determine an application without following stages 12 to 33 below provided it has notified all parties that a hearing has been dispensed with.
12. Where a party fails to attend a hearing then the Committee may either adjourn the hearing or hold it in the party's absence. Where it holds a hearing in the absence of a party it will consider any representations or notice given by that party.
13. Before the hearing takes place all parties must submit any written evidence upon which they wish to rely. If all parties agree the Committee may (at its discretion) consider any written evidence produced at the hearing.
14. Where a party wishes to call witnesses, question another party or witness or address the authority then the Committee may impose a maximum period of time within which any or all of these must be completed. Any such maximum time period must be the same for each party.
15. The Committee will consider whether to allow witnesses of the parties to be heard, of which notification must have been given in accordance with the regulations at the start of the hearing.
16. The applicant or advocate will state the applicant's case, and may call witnesses.
17. The representative of the local authority may ask questions of the applicant or advocate, or any witness.
18. Other interested parties may ask questions of the applicant or advocate or any witness.
19. The members of the Committee and the officer appointed as legal advisor to the Committee may then ask questions of the applicant or advocate, or any witness.
20. The representative of the local authority will state the authority's case and may call witnesses (which may include officers such as police or fire officers or other such witnesses).
21. The applicant or advocate may ask questions of the representative of the local authority or any witness.

22. Other interested parties may ask questions of the representatives of the local authority or any witness.
23. The members of the Committee and the officer appointed as legal advisor to the Committee may then ask questions of the representative of the local authority or any witness.
24. Other interested persons will be given the opportunity to speak on the application of the representative of the local authority or any witness.
25. The representative of the Council may ask questions of those listed at (19) above, or any witness.
26. Members of the Committee and the officer appointed as legal advisor to the Committee may ask questions of the other interested persons, or any witness.
27. The applicant or advocate may ask questions of the other interested persons, or any witness.
28. The representative of the local authority will then be invited to sum up; no new material may be introduced at this stage.
29. Other interested parties will then be invited to sum up; no new material may be introduced at this stage.
30. The applicant or advocate will then be invited to sum up; no new material may be introduced at this stage.
31. The Committee with the officer appointed as legal advisor to the Committee will deliberate in private on the issues.
32. Should the Committee feel that it requires some additional information before reaching a decision the Chairman may invite all parties to return while the points at issue are settled.
33. The Committee will announce the decision to the parties at the end of the hearing where possible; the decision being confirmed in writing within seven calendar days. In the event that the Committee indicates that the decision will not be announced at the hearing, the determination will be made within five working days beginning with the day, or the last day on which the hearing was held unless a shorter time is specified by regulations.
34. The Committee may do anything it considers necessary during a hearing under the Licensing Act 2003 or the Gambling Act 2005 to cure any prejudice caused to a party by a failure to follow these procedure rules and/or the Licensing Hearings Regulations.