



<u>Committee and Date</u>
Strategic Licensing Committee
2 October 2019

<u>Item</u>
5
Public

LICENSING ACT SUB-COMMITTEE – LICENSING ACT HEARING PROCEDURE

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1. Summary

- 1.1 The purpose of this report is to seek member's approval for the proposed new procedure for the conduct of Licensing Act hearings, including the Chair's opening statement and the process to be followed during a hearing.
- 1.2 The report also seeks member's approval for a recommendation to be made to full Council that the procedure for Licensing Act hearings is removed from the Council's Constitution in order to facilitate a more flexible process which better represents the intentions of the Licensing Act 2003 (Hearings) Regulations 2005.

2. Recommendation

- 2.1 That members approve the replacement of the existing hearing procedure and Chair's statement (**Appendix A**) with the proposed new hearing procedure (**Appendix B**) and Chair's statement (**Appendix C**), including any changes deemed necessary.
- 2.2 That members recommend to full Council the removal of the hearing process from the Council's Constitution.

REPORT

3. Risk Assessment and Human Rights Act Appraisal

- 3.1 There are no specific risks associated with this report
- 3.2 The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998.

4. Financial Implications

- 4.1 There are no financial implications associated with this report.

5. Background

- 5.1 Licensing Act hearings are convened by the Council and conducted by three members of the Strategic Licensing Committee who sit as the Licensing Act Sub-Committee. A Licensing Act hearing, although similar to, is not intended to replicate a court setting and the Licensing Act 2003 (Hearings) Regulations 2005 ('the Regulations') determine that it is for Licensing Authorities to decide the process their hearings will follow.
- 5.2 Hearings are required where there have been relevant representations received to a licence application or notice which cannot be resolved within the given consultation period for the particular type of application or notice.

In the financial year 2018/19 seven hearings were held, one of which was for a new premises licence application, four were for full variations to premises licences and two were for reviews of premises licences. In the current financial year there have been three hearings to date, all of which were reviews of premises licences.

Although they are not necessarily frequent, Licensing Act hearings are resource and time intensive for all parties involved, it is therefore critical that the procedure they follow is efficient.

- 5.3 The Regulations state that hearings should take the form of a discussion led by the authority, allowing for some flexibility in proceedings and interaction between the involved parties. This approach means that hearings can be managed according to the specific application being considered, without the imposition of a rigid process which could potentially limit the usefulness of the discussions held. The intention of this approach is to provide the Sub-Committee with a well-rounded view of the issues surrounding an application before determining it.
- 5.4 It is necessary however to have at least a framework in place to direct the order of business during a hearing. This ensures that hearings focus on the licensing objectives that have given rise to the representations which have made the hearing necessary, that they do not stray into undisputed areas, that the principles of natural justice are applied and that each party has an opportunity to be fairly heard.

Whilst the Chair of a hearing does ultimately retain the discretion to determine the process of each individual hearing, having a written procedure to follow makes the process more transparent and less daunting for all parties involved.

- 5.5 It has become apparent that the current procedure for conducting Licensing Act hearings does not meet the objectives in 5.4. It is not as streamlined as it could be and does not facilitate a timely process which is logical and comprehensible for all parties involved. For these reasons the proposed new procedure and Chair's statement have been developed. The new procedure proposes a logical order of proceedings which is easy to follow for all parties and provides anyone unfamiliar with the Licensing Act Hearings with some

basic guidance on what to expect in a hearing, and what will be expected of them. This makes the process more accessible and will lead to more efficient hearings.

- 5.6 The current hearing procedure forms part of the Council’s Constitution. It is not clear at what point this became the case, there is no requirement in the Licensing Act 2003 or Hearings Regulations for the procedure to form part of the Constitution. Any change to the Constitution, including the removal of any items from the Constitution, requires approval by full Council.
- 5.7 Procedurally there does not appear to be any particular benefit, either to the Sub-Committee or to the parties involved in the hearing, in having the hearing procedure form part of the Constitution. It overly formalises a process which is clearly intended by the Regulations to be flexible and responsive according to the needs of the particular application being considered.

The setting of the procedure in the Constitution also makes it less able to be reactive to change as and when it may be required more generally, for example when the Statement of Licensing Policy is reviewed.

- 5.7 For the above reasons it is felt that a hearing process which is not set in the Council’s Constitution would be preferable, making it able to react to change and respond to procedural issues as and when they arise. Decision making regarding the hearing procedure would appear to be better placed as a matter of ordinary business for the Strategic Licensing Committee, as the members who conduct Licensing Act Sub-Committees and therefore have the experience to determine the most appropriate process and when it may need reviewing or amending.

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

Cabinet Member: Councillor Gwilym Butler Portfolio Holder for Communities, Place Planning and Regulatory Services

Local Member: Cover all areas of Shropshire

Appendices:

Appendix A – Existing Hearing Procedure and Chair’s Statement

Appendix B – Proposed Hearing Procedure

Appendix C – Proposed Chair’s Statement