



<u>Committee and Date</u>
Council
19 December 2019

<u>Item</u>
Public

PROPOSED REMOVAL OF LICENSING ACT HEARING PROCEDURE FROM THE COUNCIL'S CONSTITUTION

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1. Summary

- 1.1 The purpose of this report is to seek the Council's approval to remove, from the Council's Constitution, the procedure for the holding of hearings in respect of licensing matters under the Licensing Act Sub-Committee Procedure Rules ('the Licensing Act Hearing Procedure') in order to facilitate a more flexible process that better represents the intentions of the Licensing Act 2003 (Hearings) Regulations 2005.

2. Recommendation

- 2.1 That the Council agrees to remove, from the Council's Constitution, the procedure for the holding of hearings in respect of licensing matters as set out in Part 4 of the Constitution under Annex A (D58 to D60) of the Licensing Act Sub-Committee Procedure Rules with immediate effect.

REPORT

3. Risk Assessment and Human Rights Act Appraisal

- 3.1 Licensing Act hearings do not occur on a very frequent basis; however, they do occur and, when required, are resource and time intensive for all parties involved. It is, therefore, critical that the Licensing Act Hearing Procedure is as efficient as is pragmatically possible.

- 3.2 The Licensing Act 2003 (Hearings) Regulations 2005 ('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 Licensing Act Sub-Committee with a well-rounded view of the issues surrounding an application before the application is determined.
- 3.3 The Chair of a Licensing Act hearing retains the discretion to determine the process of each individual hearing; however, having a framework to follow makes the process more transparent and less daunting for all parties involved. It also assists the Chair to direct the order of business and to ensure that hearings focus on the licensing objectives that have given rise to the representations that 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.
- 3.4 Recent Licensing Act hearings have highlighted that the current Licensing Act Hearing Procedure set out in the Council's Constitution for conducting hearings does not meet the objectives referred to in paragraphs 3.2 and 3.3 above. It is not as streamlined as it could be and does not facilitate a timely or logical process that is comprehensible for all parties involved.
- 3.5 It is not clear at what point or for what reason the Licensing Act Hearing Procedure became part of the Council's Constitution as there is no requirement in the Licensing Act 2003 or the relevant Regulations for the procedure to form part of the Constitution.
- 3.6 Procedurally there are no specific benefits, either to the Licensing Act Sub-Committee or to the parties involved in the hearing, to having the Licensing Act Hearing Procedure form part of the Constitution. In fact, it overly

formalises a process that is clearly intended, by the Regulations, to be flexible and responsive according to the needs of each specific application being considered. The inclusion of the Licensing Act Hearing Procedure in the Constitution also makes it less reactive to change, for example, when the Statement of Licensing Policy is reviewed.

3.7 Conversely, if the Licensing Act Hearing Procedure were to become part of the ordinary business for the Strategic Licensing Committee, this will enable the hearing process to be reviewed and amended more readily to ensure the Council is able to react to change and respond to procedural issues as and when they arise.

3.8 The Strategic Licensing Committee is made up of members who have practical experience of conducting Licensing Act Sub-Committees and are, therefore, in a good position to determine a proportionate, pragmatic and fair procedure that benefits all parties.

3.9 As a result, the Strategic Licensing Committee recommends to the Council that the current Licensing Act Hearing Procedure is removed from the Constitution. The relevant report that was considered by the Committee is available on the Council's website at <https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3986&Ver=4>.

4. Financial Implications

4.1 There are no direct financial implications associated with this report; however, by ensuring the Licensing Act Hearing Procedure is as effective as possible, it is anticipated that this will assist the most efficient use of resources to operate the hearing process.

5. Background

5.1 Hearings under the Licensing Act 2003 ('Licensing Act') are convened by the Council and conducted by three members of the Strategic Licensing

Committee who sit as the Licensing Act Sub-Committee. A hearing, although similar to, is not intended to replicate a court setting and the Licensing Act 2003 (Hearings) Regulations 2005 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.
- 5.3 In the financial year 2018/19 seven hearings were held; one 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, to date, been three hearings, all of which were reviews of premises licences.

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

Licensing Act 2003

Licensing Act 2003 (Hearings) Regulations 2005

‘The Section 182 Guidance’ - Revised guidance issued under section 182 of the Licensing Act 2003 (April 2018)

Report to Strategic Licensing Committee on 2 October 2019 entitled “Licensing Act Sub-Committee – Licensing Act Hearing Procedure”

<https://shropshire.gov.uk/committee-services/ielistdocuments.aspx?CId=166&MId=3986&Ver=4>

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

Local Member: Cover all areas of Shropshire

Appendices: None