

North Somerset Council

REPORT TO THE LICENSING COMMITTEE

DATE OF MEETING: 12 JUNE 2015

SUBJECT OF REPORT: ADOPTION OF SECTION 17 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

TOWN OR PARISH: ALL

OFFICER/MEMBER PRESENTING: DEPUTY HEAD OF LEGAL AND DEMOCRATIC SERVICES

KEY DECISION: NO

RECOMMENDATIONS

(i) that Section 17 of the Local Government and Housing Act 1989 be adopted so that political balance does not apply to appointments to Licensing Committees of three councillors under the Licensing Act 2003 and other legislation within the remit of this Committee

(ii) that wherever possible a sub-committee be comprised of more than one political group and gender.

1. SUMMARY OF REPORT

To waive the legal requirement that committees be politically balanced with respect of Licensing Sub Committees under the Licensing Act 2003 and other legislation within the remit of this Committee.

2. POLICY

North Somerset Council Statement of Licensing Policy requires a sub-committee to be convened to hear applications where representations have been received from interested parties and responsible authorities.

3. DETAILS

The Local Government and housing Act 1989 requires that all committees and sub committees of a local authority are politically balanced. An exception can be made in terms of section 17 of the Local Government and Housing Act 1989 where no member of the committee appointing the sub-committee votes against the proposal.

Licensing Sub Committees are required to be convened at short notice to deal with applications under the Licensing Act 2003 where representations have been received. Representations can only be made by those living within the vicinity of the application site and the responsible authorities. The Licensing Committee which the authority are required

to convene is limited in number from 12 to a maximum of 15 members. Therefore to enable a sub-committee to be convened from the members' of the committee, it is essential to have the maximum flexibility in membership. Otherwise the authority is at risk of not being able to determine applications within the requisite timescale.

The sub-committee cannot include as a member the ward councillor for the area of the application site, nor any councillor who has made representations or had any direct or indirect involvement in the application. This also hinders filling places on the sub-committee in accordance with political balance more difficult.

If this Committee is minded to waive political balance the decision must be unanimous among those attending i.e. there must be no-one voting against the recommendation, although abstentions are allowed. It is also a matter for the committee to decide, despite agreeing to the waiver of political balance to wherever possible, include those of another party within the three councillors and wherever possible to include both genders within its configuration.

Street trading and taxi licensing applications, as well as the other licensing matters that were determined by the Planning and regulatory Committee have now been transferred to this Committee. Accordingly, it is proposed that the licensing sub-committee set up to hear these application is convened in exactly the same way as for Licensing Act 2003 and Gambling Act 2005 applications. This will ensure consistency of approach and will prevent confusion when a sub-committee is being convened. A sub-committee of three members not based on political balance will also be easier to convene, to hear and determine all applications.

The Licensing Act 2003 and the Licensing Act 2003 (Hearing) Regulations 2005 require notice of hearing to be given to those parties entitled to attend the hearing and be heard. The notice of hearing must specific, amongst other things, the procedure to be followed at the hearing. Subject to the provisions of the regulations, the Licensing Authority can determine the procedure to be followed.

It is open to the Committee to decide that each sub-committee should determine its procedure and explain this to the parties at the beginning of the hearing.

The hearings of the sub-committee will be quasi judicial and able to be challenged in the Magistrates Court of the High Court by way of judicial review. It is therefore essential that the issues are determined on the facts of the case. Hearings should not be politically influenced because if this were the case it could lead to an appeal to the Magistrates Court or an application for Judicial Review.

4. CONSULTATION

o specific consultation, this report is consultation for the purposes of the recommendation.

5. FINANCIAL IMPLICATIONS

None

6. RISK MANAGEMENT

7. EQUALITY IMPLICATIONS

Trying to seek gender equality at hearings will assist with perceived fairness of the views of the committee.

8. CORPORATE IMPLICATIONS

None

9. OPTIONS CONSIDERED

Retaining the political balance at each sub-committee would make it difficult to arrange sub-committee hearings and may contribute to perceived unfairness of the sub-committee decision making process.

AUTHOR

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BACKGROUND PAPERS

None