

North Somerset Council

REPORT TO THE LICENSING COMMITTEE

DATE OF MEETING: 18 JUNE 2019

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

TOWN OR PARISH: ALL

OFFICER/MEMBER PRESENTING: 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 the appointment of three Members of the Licensing Committee to Licensing Sub-Committees; and
- (ii) that the hearing procedures be adopted.

1. SUMMARY OF REPORT

A sub-committee comprising three members of the Licensing Committee is convened to determine applications. Meetings not politically balanced are easier to convene and thereby facilitate the administration of licensing functions. Accordingly, the Committee is invited to waive the legal requirement that committees are politically balanced in respect of Licensing Sub-Committees convened under the various legislation within the remit of this Committee.

Hearings are required to follow an agreed format, to be determined by the authority. Currently, the relevant hearing procedures are adopted by the sub-committee at each meeting however it would streamline these processes if procedures are adopted by the Licensing Committee early in the administration.

2. POLICY

The Committee is required to determine applications in accordance with Council policies relating to the administration of functions under the Licensing Act 2003, the Gambling Act 2005, for the licensing of Hackney Carriage and Private Hire Drivers/Operators and also for matters relating to food and miscellaneous licensing.

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 under section 17 of the Local Government and Housing Act 1989, subject to no member of the committee appointing the sub-committee voting against the proposal.

Licensing Sub-Committees have to be convened at short notice to determine applications submitted under the Licensing Act 2003 where representations have been received. To enable a sub-committee to be convened from the membership of this committee it is desirable to have the maximum flexibility, particularly given that the size of the Licensing Committee is restricted to a maximum of 15 members. A 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, and wherever possible sub-committees should also be gender balanced. The requirement that the membership of a sub-committee is proportionate to the overall political balance of the Council presents added difficulty.

If the Licensing Committee is minded to waive political balance the decision must be unanimous among those attending the meeting where this is being considered i.e. there must be no-one voting against the proposal, although abstentions are allowed.

Proceedings are quasi-judicial in nature and It is therefore essential that the issues are determined on the facts of the case as it could lead to an appeal to the Magistrates Court. Additionally, the procedure may be challenged in the High Court by way of Judicial Review. Hearings should not therefore be politically influenced.

Hearings are required to follow an agreed format which can be facilitated by the adoption of hearing procedures. The hearing procedures are attached as an appendix to this report for the Committee's consideration.

4. CONSULTATION

No specific consultation has been undertaken as this report is consultation for the purposes of the recommendation.

5. FINANCIAL IMPLICATIONS

None

6. LEGAL POWERS & IMPLICATIONS

The Local Government and Housing Act 1989 requires that all committees and sub committees of a local authority are politically balanced.

7 RISK MANAGEMENT

Applications are determined on the facts of the case and should not be subject to political influence. Additionally, should the Licensing Committee decide not to adopt Section 17 of the Local Government and Housing Act 1989, the authority could be at risk of not being able to determine applications within the timescales prescribed.

8. EQUALITY IMPLICATIONS

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

9. CORPORATE IMPLICATIONS

None

10. OPTIONS CONSIDERED

Retaining the requirement for political balance for each meeting of a sub-committee, would make it more difficult to arrange hearings and could contribute to perceived unfairness of the decision making process.

AUTHOR

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BACKGROUND PAPERS

None.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Licensing Sub-Committee when considering Licensing Act 2003 applications

The Chairman introduces the Members of the Sub-Committee and officers present, and explains the procedure to be followed:

1. The Chairman invites the Licensing Officer to outline the proposal. All parties may then ask questions for clarification only
2. The Chairman then invites persons who have made relevant representations to clarify the representations. All parties may then ask questions of those making representations or make comment, which will be at the discretion of the Chairman
3. The Chairman invites the applicant/applicant's representative to clarify the application and to address the representations made. All parties may then ask questions of the applicant or make comment at the discretion of the Chairman.
4. The parties are then invited to sum up
5. The Sub-Committee then withdraws to consider the submissions and to make its deliberations
6. On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee will announce the decision

Please note:-

All persons who have written to the Authority in connection with any of the applications on the agenda will have been invited to attend the hearing.

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Licensing Sub-Committee when considering applications for the review of a premises licence under the Licensing Act 2003

The Chairman introduces members of the Sub-Committee and officers present, and explains the procedure to be followed

1 The Chairman invites the Licensing Officer to outline the application. All parties may then ask questions for clarification only

2 The Chairman invites the party having called for a review of the premises licence to clarify the reasons for the review. All parties may then ask questions or make comment at the discretion of the Chairman

3 The Chairman then invites any persons having made relevant representations to clarify the representations. All parties may then ask questions of or make comment at the discretion of the Chairman

4 The Chairman will then invite the premises licence/premises licence holder's representative holder to respond. All parties may then ask questions of or make comment at the discretion of the Chairman

5 The parties are then invited to sum up

6 The Sub-Committee then withdraws to consider the submissions and to make its deliberations

7 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee will announce the decision

Please note:-

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Sub-Committee relating to applications for Hackney Carriage Drivers' Licences, Private Hire Drivers' Licences, Combined Drivers' Licences and Operators' Licences

The Chairman introduces members of the Sub-Committee and officers present, and explains the procedure to be followed:

- 1 The Chairman invites the Licensing Authority's representative to outline the application. All parties may then ask questions
- 2 The Chairman invites the applicant or his/her representative to respond. All parties may then ask questions
- 3 The parties are then invited to sum up
- 4 The Sub-Committee withdraws to consider the submissions and to make its deliberations
- 5 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee announces the decision

Please note:-

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Sub-Committee relating to a review of a Private Hire Driver's Licence, Hackney Carriage Driver's Licence, Combined Driver's Licence, Private Hire Operator's Licence

The Chairman introduces members of the Sub-Committee and officers present, and explains the procedure to be followed:

- 1 The Chairman invites the Licensing Authority's representative to outline the reasons for the review of the licence. All parties may then ask questions
- 2 The Chairman invites the licence holder or his/her representative to respond. All parties may then ask questions
- 3 The parties are invited to sum up
- 4 The Sub-Committee withdraws to consider the submissions and to make its deliberations
- 5 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee announces the decision

Please note:-

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Licensing Sub-Committee when considering applications for Street Trading Consents, Licences or Street Café, Outdoor Seating Area Licences

The Chairman introduces members of the Sub-Committee and officers present, and explains the procedure to be followed:

- 1 The Chairman invites the Licensing Authority's representative to outline the proposal. All parties may then ask questions
- 2 The Chairman invites anyone who opposes the application to address the Sub-Committee. All parties may ask questions
- 3 The Chairman invites anyone who supports the application to address the Sub-Committee. All parties may ask questions
- 4 The Chairman invites the applicant or his/her representative to present the application. All parties may then ask questions
- 5 The parties are then invited to sum up
- 6 The Sub-Committee withdraws to consider the submissions and to make its deliberations
- 8 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee announces the decision

Please note:-

All persons who have written to the Authority in connection with any of the applications on the agenda will have been invited to attend the hearing.

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Licensing Sub-Committee when reviewing Street Trading Consents/Licences

The Chairman introduces members of the Sub-Committee and officers present, and explains the procedure to be followed:

- 1 The Chairman invites the Licensing Authority's representative to outline the reasons for the review. All parties may then ask questions
- 2 The Chairman invites the consent holder/consent holder's representative to respond. All parties may then ask questions
- 3 The Chairman then invites the parties to sum up
- 4 The Sub-Committee withdraws to consider the submissions and to make its deliberations
- 5 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee announces the decision

Please note: -

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.

North Somerset Council

Licensing Sub-Committee

Procedure to be followed for meetings of the Licensing Sub-Committee when considering an objection to a Temporary Event Notice under the Licensing Act 2003

The Chairman introduces the Members of the Sub-Committee and officers present, and explains the procedure to be followed:

- 1 The Chairman invites the Licensing Officer to outline the proposal. All parties may then ask questions for clarification only
- 2 The Chairman then invites the representatives of any statutory body having made an objection to outline the nature of that objection
- 3 The Chairman then invites the applicant/applicant's representative to respond
- 4 The Sub-Committee then withdraws to consider the objection and to make its deliberations
- 5 On returning to the meeting with all parties present, the Chairman/Legal Adviser to the Sub-Committee will announce the decision

Please note:-

The Chairman appointed for the meeting shall have absolute control of the Hearing and the ruling of the Chairman shall be final.

The Legal Advisor to the Sub-Committee can assist the Chairman during the Hearing and may interrupt proceedings when it is considered necessary to ensure that the Sub-Committee is able to determine the application fairly.