

JOINT LICENSING AND LICENSING ACT COMMITTEE AGENDA



Wednesday 25th January 2006

**10.30 am
or immediately following the Licensing Act Committee
whichever is the later**

in Committee Room "B"

MEMBERS: LICENSING/LICENSING ACT COMMITTEES:

Councillors Cambridge, Cook, Flintoff, Griffin, Hall, Jackson, Kaiser, Lilley, Morris,
Rayner, Richardson, Rogan, Tumilty, Wallace and Worthy

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. ITEMS FOR DISCUSSION**
 - 4.1 Proposed Consolidation of Licensing Committees - *Head of Public Protection and Housing*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

Report of: HEAD OF PUBLIC PROTECTION AND HOUSING

Subject: Proposed Consolidation of Licensing Committees

1. PURPOSE OF REPORT

- 1.1 To provide Members with an opportunity to discuss the potential to consolidate the Licensing Committee and the Licensing Act Committee into one new Committee.

2. BACKGROUND

- 2.1 On 16th December 2004 Council resolved that a Licensing Act Committee be established to discharge the Council's functions under the Licensing Act 2003.
- 2.2 Council further resolved that the operation of the new Committee be reviewed after six months.
- 2.3 Due to the volume of work experienced during the Licensing Act's transitional period, this review was delayed but is now being undertaken.
- 2.4 A report has been prepared for the Constitution Committee detailing the issues concerned with consolidating the Licensing Committee and Licensing Act Committee into one Committee. This report is attached as Appendix I.

3. ISSUES

- 3.1 Members views on the potential consolidation of the Licensing Committees will be reported to the Constitution Committee on 31st January 2006.

4. RECOMMENDATIONS

- 4.1 Members are invited to comment on the attached report.

Report of: Head of Public Protection and Housing
Democratic Services Team Leader
Chief Solicitor

Subject: REVIEW OF FUTURE ARRANGEMENTS FOR
LICENSING COMMITTEES

1. PURPOSE OF REPORT

- 1.1 To consider whether the Licensing Act Committee and the Licensing Committee should be combined into one Committee.
- 1.2 To consider whether membership of the Committee dealing with Licensing Act matters should remain at fifteen.
- 1.3 To consider whether all licence applications should be heard by sub-committees and if so, the constitution of such sub-committees.

2. BACKGROUND

- 2.1 On 16th December 2004, the Constitution Committee recommended to Council that a Licensing Act Committee be established to discharge the Council's responsibilities relating to the Licensing Act 2003.
- 2.2 Council resolved that this Committee be established and that the situation be reviewed after six months. This review was delayed due to the transitional period of the Licensing Act and the large number of applications being considered by the Committee itself.
- 2.3 The Licensing Act 2003 requires local authorities to establish Committees consisting of between ten and fifteen members, with sub-committees of three members to consider licence applications.
- 2.4 Due to the high volume of work expected during the Licensing Act transitional period it was resolved that the new Licensing Act Committee should operate independently of the already established Licensing Committee although many of the same Members serve on both.
- 2.5 As the transitional period has now been successfully completed and the number of licence applications to be heard by the Licensing Act Committee has reduced to a more manageable level, It is now appropriate to consider whether it would be appropriate for both Committees to combine.
- 2.6 If Council is minded to combine both Committees it would also be appropriate to consider whether some of the functions currently undertaken by the

Licensing Committee should be reviewed. This may include whether licence applications, such as those from taxi drivers, should be considered by a sub-committee rather than the full Committee as is presently the case.

3. ISSUES

3.1 COMBINING COMMITTEES

3.2 It is a statutory obligation for the Council to maintain a Licensing Committee to consider Licensing Act matters. This Committee must consist of between ten and fifteen members.

3.3 The current Licensing Act Committee consists of fifteen Members. Membership was set at the maximum permitted level in order to facilitate the expected heavy demand on Members time during the busy transitional period and also to ensure that conflicts of interest for members could be more easily avoided.

3.4 The Licensing Committee, which hears all licensing matters other than those related to the Licensing Act, consists of nine members.

3.5 Committee meetings alternate each month meaning that each Committee sits approximately every two months.

3.6 The Licensing Committee considers matters of policy but also hears individual licence applications, such as those from taxi drivers whose fitness to hold a licence has been placed into question.

3.7 If Council were minded to resolve that all licence applications should be considered by sub-committee, this would reduce the workload placed on the current Licensing Committee and therefore perhaps reduce the overall workload for a combined Committee to an acceptable level.

3.8 CONSTITUTION OF COMMITTEE

3.9 Members may wish to consider whether a new combined Committee should consist of fifteen Members or whether this should be reduced. As detailed earlier in this report, it is a legal requirement that a Committee responsible for hearing Licensing Act matters consists of no less than ten Members.

3.10 It is therefore possible to reduce the size of any new Committee to as low as ten but as sub-committee members will be drawn from this Committee, any reduction in the number would mean more frequent sub-committee meetings for the remaining members. The maximum size of the committee with five sub committees gives greater flexibility in the arrangement of meetings, avoids situations of member conflicts of interest more easily, and spreads the workload across a larger group of members. Ensuring that all members of the parent committee are involved in the sub committees also gives all members

experience of the implementation, and indeed ownership, of the Licensing Policy.

3.11 If sub-committees were to be used to consider all licence applications, including taxi driver applications, the number of sub-committee meetings may be higher than the current level. However, it is not envisaged that the sub committee workload would reach the level experienced during the transitional period.

3.12 FUTURE ROLE AND CONSTITUTION OF SUB-COMMITTEES

3.13 As the current Licensing Committee sits approximately every two months, and taking into account the time needed to publish agendas etc, a licence applicant may be required to wait for up to ten weeks before their licence application can be considered. For many people, such as taxi drivers, this could mean not being able to work for up to ten weeks.

3.14 If Council were minded to agree that sub-committees should hear all licence applications, including Licensing Act applications and taxi applications, it would be possible for a sub-committee to hear all pending licence applications at one sitting. Using the experience recently gained from administering the Licensing Act, these sub-committees could be called as and when required. The new parent Licensing Committee could then continue to meet on a quarterly basis, the same as the current Licensing Act Committee.

3.15 It is a legal requirement that Licensing Act sub-committees are made up of three Members. It is therefore suggested that this may be an appropriate number for sub-committees considering all other licensing matters such as taxi driver applications.

3.16 Choosing the same number of Members for all licence applications would allow one sub-committee to hear all licensing matters brought before it. This would not be possible if sub-committees varied depending upon the type of licence due for consideration.

4. LEGAL ISSUES

4.1 A number of legal/constitutional issues need to be recognised and reflected in the arrangements.

4.2 With one exception, the power of the committee established under the 2003 Act to deal with Licensing Functions under that Act is a power to discharge the functions of the Council as the licensing authority. This means that the power is vested directly in the Committee, rather than the Council i.e. when acting in relation to 2003 Act functions, the committee would not be exercising delegated powers, and is not accountable to the Council as a body.

4.3 The one exception to the principle set out in the last paragraph is with regard to the approval and publication of the Licensing Policy. The legislation is such

that the Council is able to exercise the function of approving and publishing the Licensing Policy – though the Council can, if it thinks fit, by delegated authority, enable the Licensing Committee to deal with that function also.

- 4.4 The legislation enables the committee set up to deal with 2003 Act functions also to deal with other matters related to licensing – such as hackney carriages etc. If the combined committee is to deal with other forms of licensing then in doing so, the committee would be exercising powers delegated to it by the Council. Functions delegated by the Council can be exercised by the Council before the delegated power has been exercised.
- 4.5 Though of unlikely practical significance, it could be of importance to recognise this distinction, which can most succinctly be put in this way
- (a) When dealing with 2003 Act licensing functions (but not the Licensing Policy), the committee is exercising its own statutory powers
 - (b) When dealing with anything else, the committee is exercising powers delegated to it by the Council.
- 4.6 A combined committee will thus need to have delegated to it the powers to deal with the matters referred to at 4.5(b) above.
- 4.7 It may also be appropriate at this time to consider whether all of the functions and delegations detailed in Appendix I remain appropriate for a Licensing Committee.
- 4.7 A copy of this report is to be presented to a joint meeting of the Licensing/Licensing Act Committee to be held on 25th January and it is proposed that their views will be reported to the Constitution Committee at its meeting on 31st January 2006.

5. RECOMMENDATIONS

- 5.1 That the Constitution Committee be recommended to consolidate the Licensing Act Committee and the Licensing Committee into one Committee that would be referred to as the Licensing Committee.
- 5.2 Subject to approval of 5.1, that : -
- (i) the new Committee consist of fifteen Members;
 - (ii) the remit and functions of the new Committee shall be as detailed in Appendix I; and
 - (iii) all licence applications be considered by three person sub-committees.

Licensing Act 2003

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If an objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is relevant frivolous vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

Other Matters

FUNCTION	DELEGATION
1. All licensing and registration functions set out in Part B of Schedule 1 to the Local authority (Functions and Responsibilities) (England) Regulations 2000 (No2853) except those relating to Commons Registration, Roads and Highways (Planning Committee)	Director of Neighbourhood Services Power to carry out all of the functions of the Committee in paragraphs 1-8 adjacent with the exception of the power to refuse, revoke or suspend any licence or registration.
2. Functions relating to health and safety at work (as set out in Part C to the Regulations).	Power to refuse, revoke or suspend any licence or registration in cases where eligibility criteria are not met or in cases where there is judged to be a clear risk to the well-being of the public which needs to be addresses as a matter of urgency.
3. Functions relating to sea fisheries.	
4. Power to make closing orders with respect to take away shops.	
5. The discharge of any functions relating to the control of pollution or the management of air quality	
6. The service of an abatement notice in respect of a statutory nuisance.	
7. The inspection of the authority's area to detect any statutory nuisance	
8. The investigation of any complaint as to the existence of a statutory nuisance.	