

23 June 2015

Planning and Licensing Committee

Establishment of Licensing Sub-Committee

Report of: *Christopher Potter, Monitoring Officer and Head of Support Services*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 Following the establishment of a single Planning and Licensing Committee by Annual Council on 20 May 2015, this report prudently highlights the two broad distinct functions which the Committee now exercises, namely as the local planning authority and as the licensing authority.
- 1.2 The former Licensing Committee for the better discharge of its Licensing Act 2003 functions and the Gambling Act 2005 functions operated through a sub-committee.
- 1.3 The report recommends that this newly established Committee continues this practice and uses its powers to establish a licensing sub-committee for this municipal year and forthcoming municipal years to undertake its licensing functions under the Licensing Act 2003 and the Gambling Act 2005.

2. Recommendation(s)

- 2.1 That one Licensing Sub-Committee be appointed under section 102(1)(c) of the Local Government Act 1972, be established under section 9(1) of the Licensing Act 2003 and under all other powers for this municipal year 2015/2016 and forthcoming municipal years, with the terms of reference as set out in the Council's Constitution, and be comprised of three councillors drawn solely from the permanent membership of the Committee.**
- 2.2 That the Committee reviews its Licensing Sub-Committee arrangements each municipal year.**

3. Introduction and Background

- 3.1 Before considering the proposal for the establishment of the Licensing Sub-Committee by this recently created Committee, it is important to understand the nature of the Committee itself (as well as the two broad distinct functions of the Committee relating to the Council's separate roles as the local planning authority and the local licensing authority).
- 3.2 It is a hybrid Committee in that it discharges functions as an 'ordinary committee' under section 101 of the Local Government Act 1972, and also is a 'statutory committee' under section 6(1) of the Licensing Act 2003.
- 3.3 There is no statutory limitation on the numerical membership of the Committee as regards its ordinary committee activities but it is subject by law to the political balance rules.
- 3.4 However, by law the Committee functioning as a statutory committee *in respect of Licensing Act 2003 and Gambling Act 2005* matters must have at least 10 but no more than 15 members of the Council though it is not required by law to be politically balanced but is by local choice. This restriction only applies to these limited licensing functions.
- 3.5 The Council has decided that the Committee should have a permanent membership of twelve councillors and the quorum of the Committee is three councillors for a valid meeting.
- 3.6 Due to this numerical membership restriction when the Committee exercises Licensing Act 2003 and Gambling Act 2005 functions, the substitution of Members on to the Committee (acting as a statutory committee in respect of Licensing Act 2003 and Gambling Act 2005 functions ONLY) is not possible as a matter of law, notwithstanding anything that any Constitution may otherwise provide.
- 3.7 The Committee has eight substitutes but these substitutes can only be used to determine functions of the local planning authority and functions of the local licensing authority which do not relate to the Licensing Act 2003 and Gambling Act 2005 functions.
- 3.8 The Council as Licensing Authority is therefore legally not able to substitute as and when it wishes as to do so it would remove the statutory requirement to establish a licensing committee 'of at least 10 but no more than 15 members of the authority' (section 6(1) of the Licensing Act 2003).

No Council's Constitution can override statutory provision. It cannot be circumvented through the device of having substitutes.

- 3.9 It is stressed that this does not prevent the substitution of members in respect of any other functions of the Committee i.e. other licensing functions and planning functions can be determined through the use of substitute members.
- 3.10 When operating as a statutory committee in its licensing functions, the Committee deals with:
- (i) the Licensing Authority's licensing functions under the Licensing Act 2003 or any related matter (except for functions conferred on the Council as the Licensing Authority under section 5 of the Licensing Act 2003 ['Statement of Licensing Policy']);
 - (ii) the Licensing Authority's licensing functions under the Gambling Act 2005 (except for the functions conferred on the Council as the Licensing Authority under section 166 of the Gambling Act 2005 ['Resolution not to issue casino licences'], and section 349 of the Gambling Act 2005 ['Licensing Policy Authority Statement']).
- 3.11 When sitting as an ordinary committee, the Committee undertakes all other licensing and registration functions of the Council which are delegable (except in so far as the subject matter may fall within the terms of reference of any other committee) and its functions in relation to its role as the local planning authority.
- 3.12 Fortunately given the potential and actual workload, the Committee has statutory powers to appoint/establish and delegate some of its responsibilities to one or more sub-committees.
- 3.13 The Committee has to-date operated a single licensing sub-committee and there has been no need to incur the expense of having more than one.

4. Issue, Options and Analysis of Options

- 4.1 The Committee undertakes a variety of licensing matters.
- 4.2 Although the nature of the work required of the Committee means that Members of the Committee require to be and are trained for the multiple roles before being permitted to sit on the Committee, there is also merit in

further specialism where appropriate, especially given the increasingly complexities of legislation and statutory guidance.

- 4.3 The Committee has power under section 102(1) (c) of the Local Government Act 1972 to appoint one or more sub-committees.
- 4.4 The Committee has power under Section 9(1) of the Licensing Act 2003 to establish one or more sub-committees consisting of three members of the Committee.
- 4.5 Substitution of other Members of the Council (who are not Members of the Committee) onto a licensing sub-committee operating as a statutory sub-committee cannot occur due to the statutory restrictions so members of any such licensing sub-committee must come from the trained pool of Members of the Committee only. Relatively recent case law confirms this.
- 4.6 The Committee has successfully managed its business through the use of just one licensing sub-committee.
- 4.7 The Committee is therefore recommended to appoint/establish a single licensing sub-committee for this municipal year 2015/2016 and subsequent municipal years.
- 4.8 Through the mechanism of agenda management there will be a separation out of the respective functions of the Committee so that planning matters and licensing matters will be distinguished. As regards licensing matters, there will be a further separation out between the Licensing Act 2003 and the Gambling Act 2005 functions and the rest of the licensing functions. This will enable the Committee to easily recognise which element of its functions it is exercising and so make clear whether substitutes can take part.

5. Reasons for Recommendation

- 5.1 The recommendation facilitates the effective conduct of Council business and better focuses limited Council resources to undertake an increasingly complicated function.

6. Consultation

- 6.1 None.

7. References to Corporate Plan

- 7.1 This report support the Modern Council priority improving service delivery and reducing unnecessary bureaucracy.

8. Implications

Financial Implications

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- 8.1 None directly arising from this report though it is important to ensure the most effective use of resources (including training budgets).

Legal Implications

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- 8.2 The legal implications are already set out in the body of the report.
- 8.3 The case of R (Bridgerow Limited) v. Cheshire West and Chester Borough Council [2014] illustrates the importance of understanding the division of functions and properly constituting a sub-committee, including getting its membership correct. The decision of that Council's licensing sub-committee was of no effect in that the chair of their sub-committee had not been member of that authority's licensing committee and so the licensing sub-committee had not been lawfully constituted.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.4 Licensing may involve significant sums of money being at stake and so it is vital that regulatory decisions are properly determined by fully trained Members and dealt with by the most appropriate body if it cannot be done at officer level.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

- 9.1 None.

10. Appendices to this report

None.

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