

Bristol City Council

Licensing Committee

19 June 2014

1. Annual Business

(Report of Service Director - Legal Services)

A. Membership of Committee

- To note the following council members appointed to serve on the committee for the 2014/15 municipal year:-

Councillors:

Tim Leaman
Alex Woodman
Christopher Davies
Glenise Morgan
Fi Hance
Jay Jethwa
David Morris
Peter Abraham
Ron Stone
Barry Clark
Steve Pearce
Bill Payne
Mhairi Threlfell
Mike Wollacott
Jason Budd

B. Election of Chair - Municipal Year 2014/2015

- To Elect The Chair Of This Committee For The Municipal Year 2014/15.

C. Election of Vice-Chair - Municipal Year 2014/2015

- To elect the Vice Chair of this Committee for the municipal year 2014/15

D. Terms of Reference

- to note the following terms of reference:

Overview

Functions relating to licensing and gambling as set out below.

Licensing Act 2003 ("the 2003 Act")

1. All those matters relating to the discharge of licensing functions that are referred to the committee by virtue of section 7(1) of the 2003 Act;
2. Other functions which full Council has arranged for the Licensing Committee to discharge, namely:
 - a) Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on the highway and related powers (sections 115E, 115F & 115K of the Highways Act 1980);
 - b) Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption (section 13(2) of the Criminal Justice and Police Act 2001 (c.16));
 - c) Power to make or revoke an order designating a locality as an alcohol disorder zone (Section 16 Violent Crime Reduction Act 2006);
 - d) The Council's functions under the third schedule to the Local Government (Miscellaneous Provisions) Act 1982 (as amended); and
 - e) Powers to make and cancel closure notices; make applications for closure orders; issue certificates of termination of closure orders; defend applications for the discharge of closure orders; appeal against the refusal to make closure orders; enforce closure orders; and prosecute for obstruction of authorised officers or for offences in connection with closure orders (sections 19 to 28) of the Criminal Justice and Police Act 2001);

Gambling Act 2005 (“the 2005 Act”)

3. All of those functions under Part 8 of the 2005 Act that are delegated to the Committee by virtue of section 154 of the 2005 Act;
4. Other gambling functions which the full Council has arranged for the Licensing Committee to discharge, namely:
 - a) Duty to comply with requirements to provide information to the Gambling Commission (s.29 of the 2005 Act);
 - b) Functions relating to exchange of information (s.30 of the 2005 Act);
 - c) Functions relating to occasional use notices (s.39 of the 2005 Act);
 - d) Power to designate officer of a licensing authority as an Authorised Person for a purpose relating to premises (section 304 of the 2005 Act);
 - e) Power to make order disapplying section 279 or 282(1) of the Act in relation to specified premises (s. 284 of the 2005 Act);
 - f) Power to exchange information (section 350 of the 2005 Act);
 - g) Power to institute criminal proceedings (section 346 of the 2005 Act);
 - (h) Functions relating to the determination of fees for premises licences (the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (S.I. 2007/479));
 - (i) Functions relating to the registration and regulation of small society lotteries (Part 5 of Sch 11 to the 2005 Act);

E. Dates and Times of Meetings

- to note that meetings of the Licensing Committee and its Sub Committees will be held every Thursday throughout the forthcoming municipal year. The scheduled dates of the Sub-Committees are printed in the Council diary all commencing at 10am. The Committee is asked to note that Bristol is a large authority with a correspondingly high number of meetings dealing with business, especially hearings, that cannot be delegated to officers. Last municipal year there were 55 subcommittee meetings required to conduct a total of 220 hearings, but only 26 of those sub-committees were

scheduled in the Municipal diary. This had the result that numerous special meetings had to be arranged which is both time consuming and disruptive to officers and Members alike. This year it is proposed to schedule one meeting of the sub-committee every Thursday. It is perhaps inevitable that peaks and troughs of business will mean that some meetings will fall away and at other times there will be more than one weekly meeting to deal with, however the revised schedule will ensure that most business can be transacted without the need for additional meetings to be arranged. In addition your officers are proposing a rule change to enable decisions to dispense with a hearing where all parties agree to be taken by a sub committee meeting by telephone.

F. Licensing Procedure Rule.

Subject to complying with regulations (such as those concerned with the conduct of hearings) Section 9(3) of The Licensing Act 2003 gives the Licensing Committee power to regulate its own procedure and that of its sub-committees. Members will be aware that when relevant representations are made on certain applications and notices a hearing must follow unless the licensing authority and all of the parties agree that is unnecessary. Section 10(4) of the Act prohibits this decision being delegated to officers. In such cases members may consider that the ability to make decisions from a remote location would enable faster and more efficient decision making and enable members to undertake other work rather than travel into the meeting venue. In order to facilitate this it is recommended that the following rule be added to the Licensing Procedure Rules:

In the case of sub-committee business under The Licensing Act 2003 that does not require the conduct of a hearing and only where all members of the sub-committee are agreeable, one, two or all of them may participate in a meeting of the sub-committee by means of a conference telephone, or similar communications equipment, by means of which all persons participating in the meeting can hear each other at the same time and can also be heard by any members of the public in attendance at the meeting and participation by such means shall constitute presence at the meeting. A council officer responsible for clerking the committee will be in attendance and will record in the minutes of the meeting the means by which the identity of any member so participating was verified.

G. Establishment of Special Purposes Sub- Committee

In accordance with Licensing committee Procedure Rule (LCR) 1(iii) the annual meeting needs to establish a special purposes sub committee comprising the Chair of the Licensing committee, its Vice chair and one other committee member. Its terms of reference must enable it to deal with any matters of business which would ordinarily be referred to the next ordinary meeting of the committee but which are, in the opinion of the Licensing Manager (in consultation with the Chair) of such urgency that they cannot await the date of the next ordinary meeting.

Recommended.

- That the Licensing committee establish a Licensing (Special Purposes) Sub-Committee with the terms of reference set out in Appendix A;
- that the membership of the special purposes sub committee comprise the Chair, the Vice Chair and one other member;
- that the committee appoint from amongst its number, one other member to serve on the sub committee

H. Establishment of Other Sub-Committees

LCR1(iv) requires that the annual meeting establish any other sub committees considered necessary and in respect of each of them

- (a) agree the membership;
- (b) agree the terms of reference.

In accordance with the Licensing Act 2003 sub committees may be established but they must comprise no more and no less than three members each.

At its meeting on 9 February 2005 the Licensing Committee established Licensing (Hearings) sub committees comprising any three members of the Licensing committee. That meeting appointed each member of the Licensing Committee to serve on any such sub committee (of three) which is convened so as to include him/her in its membership.

It is recommended that this year the Licensing committee continue with this approach.

The recommended terms of reference are set out in Appendix A.

Recommended

- (a) that the Licensing committee establish Licensing (Hearings) sub committees comprising any three members of the Licensing committee and that each member of the licensing committee be appointed to serve on any such sub committee which is convened so as to include him or her in its membership; and
- (b) that each of the sub committees so established shall have the terms of reference as set out in Appendix A

I. Delegations to Sub Committees and Officers

Section 10 of the Licensing Act 2003 allows the Licensing committee to arrange for the discharge of any functions exercised by it –

- a) by a sub committee established by it, or
- b) subject to certain statutory limitations, by an officer of the licensing authority

Section 10 of the Licensing Act 2003 also applies to certain Gambling Act 2005 functions that fall within this Committee's terms of reference, that is, those gambling functions that are referred to in paragraph 3 of the Committee's terms of reference.

In previous years the Committee conferred delegated power on each of the sub committees it established to discharge all functions falling within their terms of reference (which for the avoidance of doubt includes all matters ancillary thereto). It is recommend the annual meeting do the same in respect of any sub committees it decides to establish having considered this report.

The functions referred to in paragraphs 2 and 4 of the committee's terms of reference are governed by different law as far as the ability to delegate the decision making process is concerned. Those matters are delegated to the Committee by the full council in exercise of its powers of delegation under section 101 of the Local Government Act 1972. Under that section the

Committee itself enjoys the power to delegate those matters to one or more of its sub committees and/or to an officer of the council.

It is anticipated that some applications made under the paragraph 2 and 4 functions may prompt the right to be heard in accordance with the rules of natural justice and/or the rights enjoyed by citizens to a public hearing where Article 6 of the Convention applies. Therefore, whilst it is anticipated that most decisions connected with the discharge of these functions will fall to be made by a delegated officer, provision has been made in the recommended Terms of Reference of the hearings sub committees for applications to be referred to such a sub committee by a delegated officer (paragraph 22 of the terms of reference set out in Appendix A refers). This particular provision also enables applications under the Licensing or Gambling Act to be decided by a sub committee notwithstanding the law does not absolutely require this (e.g. because there are no representations). Whilst it is not expected this will often be utilised it does enable matters to be given a public airing where that is judged to be reasonable and appropriate.

Officer delegations

In accordance with LCR1 the annual meeting should review the delegations to officers. The Committee's responsibilities have greatly expanded since its first annual meeting and this report recommends comprehensive delegations to sub committees and officers covering the vast majority of the Committee's responsibilities whilst continuing to ensure that:

- i. Officers are not authorised to make any decision which by law may only be made by Members meeting as a Committee or duly authorized sub committee; and
- ii. The delegations reflect the policy of Bristol city Council with regard to the decision whether certain representations are to be disregarded by virtue of being judged to be frivolous or vexatious

Licensing Act 2003 and Gambling Act 2005

In the discharge of its licensing functions the committee must have regard to the guidance issued by the Secretary of State or the Gambling Commission (as appropriate) and to the Council's own adopted statements of policy. The recommendations in such national guidance reflect the fact that there are many decisions which the law simply does not allow an officer to take. For example an officer cannot determine an application for a premises

licence under either Act where relevant representations have been made.

The Council's published statements of licensing policy recommend that the Licensing Committee follow the delegations recommended in national guidance but that, for the reasons set out in the Council's policy statements, the committee should depart from that guidance in respect of decisions about whether or not representations are frivolous or vexatious.

In previous years the committee has effected its delegations in accordance with the Council's adopted statement of licensing policy and it is recommended that this practice should continue for Gambling Act functions as well as for the Licensing Act functions. This is covered in recommendation 1 below.

In respect of the functions referred to in paragraphs 2 and 4 of the Committee's Terms of Reference the Committee will know that the full council has itself effected delegations to the relevant Director in Part 3 of its constitution. The Committee is informed that the relevant Directors have, in line with what is recommended in that constitution, made arrangements under which appropriate subordinate officers assist them in the discharge of these tasks on behalf of the Council as a whole. It is recommended that the Committee note and approve these arrangements.

It is therefore recommended that:

1. In respect of the functions referred to in paragraphs 1 and 3 of its Terms of Reference the Committee makes the following arrangements:

Subject to the limitations set out in (a) and (b) below officers occupying the following posts:-

- Regulatory Services Manager
- Licensing and Trading Standards Administration Manager
- Senior Enforcement Officer
- Licensing Officer
- Enforcement Officer
- Senior Enforcement Officer
- Trading Standards Officer
- Trading Standards Officer
- Principal Trading Standards Officer
- Accredited Financial Investigator
- Principal Trading Standards Officer
- Senior Trading Standards Officer

Trading Standards Officer
Trading Standards Investigator
Financial Investigator
Fair Trading Officer
Senior Environmental Health Officer (Regulatory Services)
Environmental Health Officer (Regulatory Services)
Principal Environmental Health Officer (Regulatory Services)
Assistant Environmental Health Officer (Regulatory Services)
Senior Pollution Control Officer
Pollution Control Officer
Public Health Services Manager

are authorised to discharge any function which in law may be discharged by an officer of the licensing authority.

Limitations

(a) The power to decide whether representations are frivolous or vexatious may only be made in respect of applications that officers would be empowered to proceed to determine themselves should it be decided that the representation under consideration is either frivolous or vexatious.

(b) An Officer may not decide whether to grant or refuse an application under the Licensing Act 2003 for a personal license in any case where there are unspent convictions.

- In respect of the functions referred to in paragraphs 2 (a) and (b), 4(a) – (f) and 4(g) to (i) inclusive of the Committee's Terms of Reference the committee notes the arrangements made by the full council and the delegated Director under which his subordinate officers assist him in discharging functions on behalf of the Council. The Committee approves the continuation of such arrangements as if they had been made directly and particularly by this committee
 - For the avoidance of doubt the Service Director - Legal Services and officers within his team who assist him in this task shall continue to be authorised to institute and defend legal proceedings of any kind falling within this Committee's terms of reference
4. The possession of delegated powers shall not prevent a delegated officer bringing a matter before an appropriate body of