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Committee Administrator

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This meeting will take place at Phoenix House and members of the Public and Press are able to attend via Zoom. If you are intending to attend in person please contact the committee clerk in advance, in order that numbers of people can be appropriately managed in physical meeting rooms.

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MID DEVON DISTRICT COUNCIL

LICENSING COMMITTEE

A MEETING of the **LICENSING COMMITTEE** will be held in the Phoenix Chambers, Phoenix House, Tiverton on Thursday, 27 October 2022 at 10.30 am

STEPHEN WALFORD

Chief Executive

19 October 2022

Councillors: J Cairney (Chairman), J Bartlett, R J Chesterton, Mrs F J Colthorpe, D R Coren, J M Downes, D J Knowles, Miss J Norton, D F Pugsley, Mrs E J Slade, L D Taylor and A Wilce

Those attending are advised that this meeting will be recorded.

A G E N D A

MEMBES ARE REMINDED OF THE NEED TO MAKE DECLARATIONS OF INTEREST PRIOR TO ANY DISCUSSION WHICH MAY TAKE PLACE

- 1 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of Substitute Members (if any).
- 2 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**
To record any interests on agenda matters.
- 3 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the agenda from members of the public and replies thereto.
- 4 **MINUTES** (*Pages 3 - 4*)
To consider whether to approve the minutes as a correct record of the meeting held on 26th August 2022
- 5 **Remote Licensing Hearings** (*Pages 5 - 10*)
To consider the proceedings of the Licensing Committee when discharging the Council's licensing functions under the Licensing Act 2003 and in particular to determine whether or not remote (virtual) licensing hearings should continue to be held when it is considered appropriate to do so.

Meeting Information

From 7 May 2021, the law requires all councils to hold formal meetings in person. The Council will enable all people to continue to participate in meetings via Zoom.

If you want to ask a question or speak, email your full name to Committee@middevon.gov.uk by no later than 4pm on the day before the meeting. This will ensure that your name is on the list to speak and will help us ensure that you are not missed. Notification in this way will ensure the meeting runs as smoothly as possible.

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access to the Mayoralty Room on the first floor of the Town Hall or the Exe Room in Phoenix House is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Carole Oliphant on:

Tel: 01884 234209

E-Mail: coliphant@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **LICENSING COMMITTEE** held on 26 August 2022 at 10.00 am

Present

Councillors

J Cairney (Chairman)
J Bartlett, D R Coren, J M Downes,
Miss J Norton and Mrs E J Slade

Apologies

Councillor(s)

R J Chesterton, Mrs F J Colthorpe, D J Knowles and
L D Taylor

Also Present

Councillor(s)

A Wilce and R J Dolley

Also Present

Officer(s):

Tanya Wenham (Operations Manager for Public Health and Housing Options), Deborah Sharpley (Solicitor), Carole Oliphant (Member Services Officer) and Jessica Rowe (Member Services Apprentice)

1 ELECTION OF CHAIRMAN (VICE CHAIRMAN OF THE COUNCIL IN THE CHAIR)

Cllr J Cairney was duly elected Chairman of the Licensing Committee for the municipal year 2022-2023

2 ELECTION OF VICE CHAIRMAN (0.04.35)

Cllr Mrs E J Slade was duly elected Vice Chairman of the Licensing Committee for the municipal year 2022-2023

3 APOLOGIES AND SUBSTITUTE MEMBERS (05.35)

Apologies were received from Cllrs Mrs F J Colthorpe, R J Chesterton, D J Knowles and L D Taylor.

Cllr A Wilce attended via ZOOM.

4 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0.06.14)

Members were reminded of the need to make declarations where appropriate

5 PUBLIC QUESTION TIME (0.06.33)

There were no members of the public present

6 MINUTES (0.07.15)

The minutes of the meeting held on 3rd December 2021 were agreed as a true record and duly **SIGNED** by the Chairman.

7 ENFORCEMENT UPDATE (0.07.59)

The Operations Manager for Public Health & Housing Options gave an overview of the service and noted that:

- Due to unforeseen circumstances that staffing levels and lack of expertise, inspections had been limited
- There had been no direct enforcement of Licensing Premises due to the staffing issues
- 2 subcommittee licensing hearings had been held, both of which were granted
- There had been regular liaison with the Police and Environmental Health on Temporary Event Notices
- With a new team and specialist support now in place, a program of training and increased enforcement and pro-active inspections is now planned
- Premises applications had increased from 69 in 2020-2021 to 276 to date in 2022-2023 and were back to pre covid levels
- A qualified Animal Welfare Inspector had been employed to complete premises inspections and provide in depth reports
- There were 3 new applications for dog breeders pending and 2 renewals

Members were saddened to hear the loss of qualified staff and questioned how the team's enforcement obligations could be met.

The Operations Manager for Public Health & Housing Options responded by stating that looking after the health and safety of the public was a priority. Where public health had been assessed as at risk enforcement was undertaken and/or a hearing arranged. They were building competency across the team. The team had a clear development plan and agency staff had been employed to provide training to new staff members. The Operations Manager indicated that she monitored the team's key performance indicators on a monthly basis

Members requested that a report on results against the teams current key performance indicators be presented to the next meeting of the Committee.

(The meeting ended at 10.25 am)

CHAIRMAN

SPECIAL LICENSING COMMITTEE 27 OCTOBER 2022

REMOTE LICENSING HEARINGS

Cabinet Member(s): Dennis Knowles, Cabinet Member for Community Wellbeing

Responsible Officer: Maria de Leburne, Interim Monitoring Officer

Reason for Report: To consider the proceedings of the Licensing Committee when discharging the Council's licensing functions under the Licensing Act 2003 and in particular to determine whether or not remote (virtual) licensing hearings should continue to be held when it is considered appropriate to do so.

Recommendation: The Committee resolves that licensing hearings under the Licensing Act 2003 may continue to be held remotely (virtually) when considered appropriate to do so.

Financial Implications: None

Budget and Policy Framework: None

Legal Implications: The proposal to amend the Licensing Committee rules is lawful. Section 9(2) of the Licensing Act 2003 provides that regulations may make provisions for the proceedings of Licensing Sub-Committees including public access to the meetings. Subject to such regulations, each Licensing Committee may regulate its own procedure and that of its Sub-Committees. The Licensing Act 2003 (Hearings) Regulations 2005 are made pursuant to section 9(2) of the Act. Remote hearings are permitted under the language of the Regulations and Act. The Licensing Committee is entitled to set its own procedures, subject to the Regulations. Given that the Regulations are silent on the subject of remote hearings, the Committee can lawfully set its own procedures for virtual hearings.

Risk Assessment: None

Equality Impact Assessment: An EIA has not been undertaken for this report. However on each occasion that a remote hearing is to be considered an Public Sector Equality Duty assessment should be undertaken so that the Council does not discriminate against any relevant persons with protected characteristics.

Relationship to Corporate Plan: This report links directly to the Licensing Authority functions of the Council with the primary aim of protecting public safety and ensuring the well-being of our community and licensed service users. It therefore contributes to the priority of Community within the Corporate Plan.

Impact on Climate Change: None directly arising from the report.

1.0 Introduction/Background

1.1 The Council is obliged by virtue of section 6 of the Licensing Act 2003 (“the 2003 Act”) to establish a Licensing Committee consisting of at least 10 but no more than 15 Members of the Council. MDDC’s constitution states that the Licensing Committee has 12 members. All matters, save for those matters expressly dealt with by full Council, relating to the discharge by the Council of its licensing functions under the 2003 Act are referred to this Committee and the Committee must discharge those functions on behalf of the Council. The proceedings of the Licensing Committee are governed by the 2003 Act and Regulations made under that Act.

1.2 On 28 April 2021 the High Court decided that as from 7 May 2021 meetings of local authorities in England held under the Local Government Act 1972 must take place in person. The emergency Regulations that were introduced because of the Covid-19 pandemic in the early stages of the first lockdown permitting remote (virtual) local authority meetings expired on 7 May 2021. The High Court decision focused on local authority meetings held under the provisions of the Local Government Act 1972 and not local authorities (acting in their capacity as licensing authorities) holding licensing hearings under the provisions of the 2003 Act and 2005 Regulations made under that Act.

1.3 As stated above, the Licensing Committee is not a Committee that is established under the Local Government Act 1972. It is established by virtue of the 2003 Act. Committees of this nature are sometimes referred to as “statutory committees” because they must be established by law rather than at the discretion of the Council. The usual mechanism used to establish Committees and Sub-Committees is the Local Government Act 1972. However, the 1972 Act is clear that Licensing Committees exercising licensing functions under the 2003 Act cannot be established using the 1972 Act. The 2003 Act provides for licensing hearings before Sub-Committees of Members of the Council. This enables parties to be “heard”. The 2003 Act and the 2005 Regulations do not specify how a person is to be “heard”.

1.4 Section 9 of the 2003 Act says that regulations may be made about the proceedings of Licensing Committees and Sub-Committees i.e. licensing hearings and the public access to such hearings, agendas and record of decisions. The published regulations that deal with the proceedings of licensing hearings are The Licensing Act 2003 (Hearings) Regulations 2005. The 2005 Regulations use language such as “attendance”, “appearance”, “leave” and “return” and say that the hearing must ordinarily be in public. The 2005 Regulations do not prevent the use of remote hearings. The “attendance”, “appearance” etc. of parties at hearings can be achieved remotely (virtually) and the Committee can therefore determine if licensing hearings should proceed by way of virtual hearings in the future notwithstanding the fact that meetings held under the Local Government Act 1972 cannot be held in this way. Those participating in the hearings can “attend” and be “heard” remotely.

1.5 Regulation 21 of the 2005 Regulations enable the Licensing Committee, subject to the provisions of the 2005 Regulations, to determine the procedure to be followed at licensing hearings. When deciding whether or not a licensing hearing should be held remotely, the Committee must recognise that some of the parties may be without any, or good, internet facilities or be unfamiliar with communication platforms used for such hearings which could mean that such parties cannot participate fully in a hearing. In such circumstances and other circumstances, such

as the need to promote equality and inclusion under the Equality Act 2010, some hearings may need to take place with the physical attendance of the Members of the Committee and the parties in a particular location.

1.6 Following the High Court decision then Members of the Licensing and Regulatory Committees were sent an advisory note in relation to this issue on 21 July 2021 (**Appendix A**).

1.7 There have been several licensing and regulatory hearings held remotely since May 2020, with parties “attending” the hearing and being “heard”. The hearings were all concluded without any great difficulty and both the Members and the parties were able to fully participate in the proceedings.

Contact for more Information: Maria de Leiburne, Interim Monitoring Officer, 01884 234210 mdeleiburne@middevon.gov.uk

Circulation of the Report: Cabinet Member for Community Wellbeing, Cllr Knowles and Operations Manager to Public Health, Tanya Wenham.

List of Background Papers:

The Licensing Act 2003

The Licensing Act 2003 (Hearings) Regulations 2005

The Local Government Act 1972

The judgment in R (Hertfordshire County Council) v Secretary of State [2021] EWHC 1093 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2021/1093.html>

Institute of Licensing article ‘Can remote licensing hearings continue?’ published 29 April 2021 <https://www.instituteoflicensing.org/news/can-remote-licensing-hearings-continue/>

Journal of Licensing, volume 31 at pages 19 – 25 (Institute of Licensing) [Is it really lawful to conduct licensing sub-committee hearings remotely? A sceptical view](#)

Journal of Licensing, volume 32 at pages 49 – 54 (Institute of Licensing) [Is it really unlawful to conduct licensing sub-committee hearings remotely?](#)

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Following the challenge in the High Court earlier this year the Lawyers in Local Government (LLG) have published guidance, together with the Association of Democratic Services Officers, on remote hearings. In this guidance it deals with the Licensing regime and states the following:

Commentators in this area have advocated that licensing sub-committees are not precluded from holding remote/virtual hearings as they are unaffected by the requirements relating to the LGA 1972. One of the bases for that argument is that section 101(15) of the LGA 1972 states that nothing within that section applies in relation to any function of a licensing authority under the Licensing Act 2003, and that this therefore means that the LGA 1972 is not relevant.

As such the view is that licensing sub-committees are not affected by the LGA 1972 and sub-committees can hold remote/virtual meetings. Although they point out that there are opposing views.

The guidance recommends as the matter remains untested, and advocate a risk-based approach, determined by individual local authorities in light of their own circumstances.

In addition to this guidance a very well-respected licensing barrister, Philip Kolvin QC, has stated:

"... Remote local authority meetings required legislative permission and still do. Remote licensing hearings don't.

This is not to say that Licensing Sub-Committees are compelled to hold remote hearings. It up to them. When deciding whether to do so in some or all cases, they may bear in mind the costs savings to applicants of physical attendance by themselves and their professional representatives, the convenience for local residents, and even councillors, of being able to key in from home or work, and the ability to focus minds by imposing strict time limits on submissions.

They might equally take the view that online attendance disadvantages those without good internet facilities, or unfamiliarity with communication platforms, and that presence facilitates a less formal and more fluid debate. It is all a matter for them. In my experience, however, there is much to be said for virtual meetings and it would be a shame if anyone thought that they were legally precluded."

As a result of the LLG guidance and Kolvin QC's views the current Monitoring Officer and Legal Services have advised Licensing Officers and Member Services that it is permissible to hold remote licensing sub-committees as long as all are satisfied that there are no issues with councillors, members of the public (where appropriate) and the licence holders' ability to join into and participate in the meetings.

This decision is to be made by Licensing Officers and Member Services on a case by case basis, with advice from Legal Services where required.

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