

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?](#)