



LICENSING AND GAMBLING COMMITTEE – 25TH OCTOBER 2018

SUBJECT: REVIEW OF SUB COMMITTEE HEARING PROCEDURES AND REPORT FORMATS

REPORT BY: INTERIM CORPORATE DIRECTOR OF COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 That the Licensing and Gambling Committee consider the proposals set out in the report with a view to amending the procedure and format of the reports relevant to Licensing and Gambling Sub Committee Hearings.

2. SUMMARY

- 2.1 A review has been undertaken of Committee Hearing Procedures in respect both Licensing and Gambling and Taxi & General Sub Committees which identified a number of minor amendments were required to the procedures. Officers have also noted the comments of Members attending internal training sessions earlier in the year and advice provided by a lead licensing practitioner. As a result, the report proposes a number of amendments for consideration by this Committee.

3. LINKS TO STRATEGY

- 3.1 The review of committee procedures / format of reports contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:
- A prosperous Wales
 - A resilient Wales
 - A more equal Wales
 - A Wales of cohesive communities.

4. THE REPORT

- 4.1 Good practice dictates that Officers undertake a regular review of procedures including those concerning Licensing Committee Hearings. As a result of this review, Officers have identified that a number of minor amendments were required to reflect what actually happens in practice and to bring the procedures up to date with current guidance and best practice. For example, reference is made to applicants providing any information that they sought to rely upon at least 28 days before the Hearing. However it is accepted that these timescales are not feasible. Furthermore, Members had previously delivered their decision in respect of Licensing Act 2003 hearings on the day of the hearing, whereas legislation permits decisions to be delivered within 5 working days.

4.2 At a training session provided to Members of the Taxi & General Committee on the 31st May 2018, members raised a number of issues relating to the existing Committee process / format including the attendance of the legal advisor to assist members during the entire hearing procedure.

4.3 In addition, at a training session organised for Members on the 22nd June 2018 a lead licensing practitioner, advised that it was permissible to include officer recommendations in Licensing and Gambling committee reports where currently no recommendation is made.

It is therefore advocated that future reports to the Licensing and Gambling sub Committees will include an officer recommendation based on evidence / information in the possession of the Officers at the time of report preparation and in line with current CCBC Policy and relevant guidance. It is only a recommendation and each case must be considered on its merits. Members may take a different view after considering any additional information or mitigation submitted at the hearing by relevant parties. Members who sit on Planning Committee will also be familiar with this approach as such reports contain an Officer recommendation.

4.4 In accordance with the rules of natural justice and Human Rights all applicants and parties subject to a review of a licence receive a copy of all information to be considered by Members at Committee Hearings.

4.5 Members are asked to consider the proposals for change set out in this report and to agree amendments to the Licensing and Gambling Licensing Committee procedure, a draft of which is attached as Appendix A.

5. WELL-BEING OF FUTURE GENERATIONS

5.1 This report and associated proposals contributes to the Well-being Goals as set out in Links to Strategy above. They are consistent with the five ways of working as defined within the sustainable development principle in the Act. The council is required to provide an efficient and effective licensing service, which are supported by effective procedures and processes for Sub Committee hearings. There is an emphasis on prevention as the process ensures that a number of checks and safeguards are in place before licences are granted, refused or revoked.

6. EQUALITIES IMPLICATIONS

6.1 The council ensures that it treats all individuals and organisations who are applying for licenses with equal respect both when corresponding with those individuals, businesses organisations during the licensing process. Reviewing and updating the hearing procedure will ensure that it is fit for purpose, increase transparency and openness for everyone involved and improve consistency of approach and fairness.

7. FINANCIAL IMPLICATIONS

7.1 None.

8. PERSONNEL IMPLICATIONS

8.1 None.

9. CONSULTATIONS

9.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

10. RECOMMENDATIONS

10.1 Members consider and approve the following proposals

- a) to require attendance of the legal officer throughout the entire Hearing.
- b) the inclusion of an Officer recommendation in future Licensing and Gambling Sub Committee Reports.
- c) to approve the Licensing and Gambling Sub Committee Hearing Procedure attached as Appendix A subject to outcomes of any decisions in relation to a and b above.

11. REASONS FOR THE RECOMMENDATIONS

11.1 To ensure that procedures and processes for Licensing and Gambling Sub Committee Hearings comply with current legislation, guidance and best practice.

12. STATUTORY POWER

12.1 Licensing Act 2003, Gambling Act 2005.

Author: Lee Morgan, Licensing Manager
Consultees: Cllr Denver Preece, Chair, Licensing Committee
Cllr Julian Simmonds, Vice Chair, Licensing Committee
Cllr Eluned Stenner, Cabinet Member for Environment and Public Protection
Mark S. Williams, Interim Corporate Director Communities
Robert Hartshorn, Head of Public Protection, Community and Leisure Services
Robert Tranter, Head of Legal Services and Monitoring Officer
Jacqui Morgan, Trading Standards, Licensing and Registrars Manager
Emma Sullivan, Committee Services Officer Mike Eedy, Finance Manager
James Williams, Senior Solicitor, Legal Services
Anwen Cullinane, Senior Policy Officer (Equalities and Welsh Language)
Shaun Watkins, HR Manager

Appendices:
Appendix A Hearing Procedure Licensing and Gambling Sub Committee

CAERPHILLY COUNTY BOROUGH COUNCIL

LICENSING AND GAMBLING SUB-COMMITTEE PROCEDURES

This Is a Committee Hearing and Not a Court Of Law

Preliminary Matters

1. Copies of all applications and representations will be supplied to the Members who are to form the Committee at the same time as the notice of hearing is issued.
2. Members should study the papers carefully and notify the Committee Clerk immediately of any potential conflict of interest and return the documentation as soon as possible to the Committee Section.
3. It is in the interests of applicants, other relevant persons and responsible authorities that any evidence upon which it is intended to rely is made available to the Licensing Authority well in advance of the hearing. If any party seeks to introduce at the hearing any oral or documentary evidence, which has not previously been disclosed, the Committee will only accept such evidence at their discretion.

Conduct of the Hearing

1. The Chair will start proceedings by introducing the Members and officers present. A final check will then be made to ensure none of the Members have any conflict of interest with any applicant, other relevant person, or supporting witness.
2. The Legal Advisor will then outline the procedure that will be followed at the Committee as that which has been previously circulated.
3. Members of the Committee would have read and familiarised themselves with the papers and the issues and should not therefore require points to be repeated at length.
4. It will be for the Members of the Committee, in conjunction with their legal advisor, to determine whether a particular representation is relevant.
5. The Licensing Officer representing the Licensing Authority will present his/her report. With the consent of the Committee, the Licensing Officer may be questioned.
6. Each Responsible Authority should have submitted written responses on the application; they may however give further clarification and call witnesses. With the consent of the Committee the Responsible Authority may be questioned.
7. If any Other Persons are in attendance, they may wish to speak, to make relevant representations. It is therefore advisable that Other Persons work together to present a common case to the Committee. With the consent of the Committee the spokesperson may be questioned.
8. The Applicant and/or his representatives may then address the Committee in support of the application. The Applicant may call witnesses with the consent of the Committee the Applicant may be questioned.

9. The Licensing Officer may sum up (no new information).
10. Representatives of the Responsible Authority may sum up (no new information).
11. A spokesperson for the Other Persons may sum up (no new information)
12. The Applicant may sum up the case, (no new information).

Determination of the Application

1. The Members will retire to make their decision. The Legal Advisor will accompany Members and advise them on points of law, policy and procedure that may arise during their deliberations. The Legal Advisor will then explain the substance and nature of advice that has been provided to all parties.
2. The parties will be informed that they will be notified of the Members' decision in accordance with the regulations i.e within 5 working days.

Evidence

1. Hearsay evidence is allowed, although the weight the Committee attaches to such evidence may be less, given that it cannot be tested in cross examination. For the same reason, the Committee may accept a petition, which amounts to the written views of the signatories, but again it is subject to the proviso that only limited weight can be attached to it, because the individual views will not have been tested before it.
2. Evidence offered by each Responsible Authority must be within their expertise.
3. Every application will be considered on its own merits.
4. If once in private, Members need clarification they may return to open session to obtain information, and then re-resolve to go into private session.

Legal Advisor

The Committee will rely on its legal adviser as to matters of law and procedure.

This may include, but is not limited to:-

1. Interpretation of the Licensing Act 2003
2. Statutory Guidance and Council Policy
3. Other statutory provisions creating legal duties, such as Section 17 of the Crime and Disorder Act 1998 (duty to do all it reasonably can to prevent crime and disorder) and the Human Rights Act 1998.
4. Admissibility of evidence.
5. The rules of procedure set out in the Regulations or arising because of general principles of administrative law.