

Subject: Constitutional matters re Licensing Committee and future arrangements for Licensing Panel Hearings

Date of Meeting: Licensing Committee

Report of: Executive Director, Corporate Services

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1. The report sets out the position in relation to the licensing Committee, its terms of reference and related matters including the appointment of the licensing panels and urgency sub-committee.
- 1.2. The report also notes the powers of the Licensing Committee to make its own arrangements in relation to the conduct of Licensing Panels convened under the Licensing Act 2003 (Licensing Panels). The report proposes that members review the current arrangements, make a resolution and also delegate authority to the Director of Corporate Services after consultation with lead members to determine the future conduct of Licensing Panels until further review at the next committee in June 2025. The intention is to retain flexibility in the arrangements and to be able to respond to the latest public health and government advice.

2. Recommendations

- 2.1. That the committee's terms of reference, as set out in Appendix A to this report, be noted.
- 2.2. That the Committee establish the Licensing Panel as a sub-committee (the membership of such Licensing Panel shall consist of three Members from the trained Members on the Licensing Committee, who will be able to sit on a panel and substitute for any designated Member of the Panel) to deal with licensing applications in accordance with the Terms of Reference are set out at Appendix A to this report.

- 2.3. That the Committee agree to disapply the proportionality rules so far as a Licensing Panel is concerned in accordance with the Local Government (Committees and Political Groups) Regulations 1990;
- 2.4. That the establishment of an Urgency Sub-Committee consisting of the Chair of the Committee and two other Members (nominated in accordance with the scheme for the allocation of seats for committees), to exercise its powers in relation to matters of urgency, on which it is necessary to make a decision before the next ordinary meeting of the Committee be approved.
- 2.5. That Committee notes the ongoing risk of fluctuation in relation to Covid infection rates as well as the additional benefits of holding virtual meetings in terms of enabling participation in the Licensing process and **resolves** that Licensing Panels continue to meet virtually until June 2025. This does not preclude holding a panel hearing in person where the individual circumstances of an application may warrant it.
- 2.6. That Committee delegates authority to the Corporate Director – Corporate Services, after consultation with the Chair and deputy to determine arrangements for Licensing Panel hearings if any changes are required before the next available Licensing Committee.
- 2.7. That the Committee recommends that in exercising this authority the above officer takes into account all relevant factors including latest public health and government guidance, the situation with other council meetings and the need to ensure fair and transparent procedures in accordance with the Hearings Regulations 2005.

3. **Context and background information Licensing Committee**

- 3.1. **Terms of Reference:** A copy of the terms of reference for the committee is attached in Appendix A.
- 3.2. **Membership:** The membership of the committee is set at 15 Members of the Council.
- 3.3. **Licensing Panel:** All Members of the Licensing Committee will be trained and form a pool of councillors for the sub-committee and will be called on to form a licensing panel. However, any trained Member of the Licensing Committee will be able to sit on a panel and substitute for any designated Member of the Sub-Committee.

- 3.4. **Urgency Sub-Committee:** The Constitution states that 'each Committee of the Council except the Audit & Standards Committee may appoint an Urgency Sub-Committee to exercise its powers. The Membership of such Urgency Sub-Committee shall consist of the Chair of the Committee, and two other Members nominated by the Group Leader or Leaders as appropriate to meet the requirements for the allocation of seats between political groups. Under current allocations this would mean an urgency sub-committee will consist of two Members from the Administration and one Member from the Official Opposition on the Council.
- 3.5. Such Urgency Sub-Committees may exercise their powers in relation to matters of urgency on which it is necessary to make a decision before the next ordinary meeting of the Committee. Every decision of each Urgency Sub-Committee shall be reported for information to the next ordinary meeting of the Committee as appropriate.'
- 3.6. Following the outbreak of the Covid-19 pandemic the Government enabled local authorities to hold 'virtual' meetings under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) (Amendment) Regulations 2020 ('the Regulations'). These Regulations expired on the 7th May 2021 and a recent Court decision confirmed that the Council must run those of its meetings which are governed by the Local Government Act 1972 with members and the public in attendance at a physical meeting.
- 3.7. However, Licensing Panels are established under different legislation (the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.) This means that Licensing Committees are empowered to regulate their own procedures and those of its sub-committees (the Licensing Panels). There is a high Court case pending at which it is hoped to be confirmed that remote licensing panels are lawful as was decided by the magistrate's Court below.
- 3.8. At previous Licensing Committees members delegated authority to the Corporate lead for Strategy Governance and Law after consultation with the Chair and group spokespersons to determine arrangements for Licensing Panels until further review by this committee. The decision was taken to continue to hold the panel hearings virtually via Teams pending review by this committee.
- 3.9. The minutes of this Committee held in February 2022 and since illustrate that many members remain supportive of virtual meetings as it was felt that there

were also other advantages of remote attendance for both members and the wider public. It was considered that it encouraged wider participation in the licensing process generally, being less formal than an in-person meeting, more accessible and more convenient saving time on travel. The remote panels will continue to be webcast. Therefore, where the legal flexibility exists, as in this case, it seems sensible to continue with the virtual meetings.

- 3.10. The committee is thus invited to review the arrangements and decide if virtual meetings should continue or if attendance of members at Hove Town Hall is preferred with remote attendance still an option for other parties. The situation can be kept under review as appropriate in light of the latest public health advice, the conduct of other Council meetings, and the national picture. A decision to continue with virtual meetings does not preclude holding a hearing in person where the individual circumstances of an application warrant it.

4. Analysis and consideration of alternative options

- 4.1. Under the Licensing Act 2003, section 9, the committee must appoint its sub-committee.
- 4.2. Delegation to officers avoids the need to convene further urgent committee meetings should circumstances change and enables a flexible response to changing national or local conditions.
- 4.3. The delegation is only temporary and will be reviewed in a year at the committee in June 2025. The alternative option would be to revert to all in person meetings for these meetings. This is not recommended for the reasons set out in the report.

5. Community engagement and consultation

- 5.1. These are regulatory hearings and the proceedings must give all parties the ability to participate as appropriate and enable the press and public to see and hear them.

6. Conclusion

- 6.1. The Licensing Committee is empowered to appoint and determine procedures for its subcommittees (licensing panels) and is able to delegate this function, after appropriate consultation, to senior officers for a temporary period in the interests

of effective and flexible decision making.

7. Financial implications

- 7.1. There are no additional financial implications arising from this report Name of finance officer consulted: Michael Bentley Date consulted: 20 June 2024

8. Legal implications

- 8.1. The Licensing Committee can determine its own procedures for its subcommittees (hearing panels) pursuant to s 9 Licensing Act 2003. There is no reason under the Licensing Act (see Section 10) why such determination cannot also be delegated to officers in an appropriate manner as outlined in the report. Arguably each licensing panel could determine its own procedure at the outset, but this is not practical given the need for advance notifications under the Hearings Regulations. Name of lawyer consulted: Elizabeth Culbert/ Liz Woodley - Date consulted: 19 June 2024

9. Equalities implications

- 9.1. The Council has a public sector equality duty under s149 of the Equality Act 2010. In the exercise of its functions the Council must have due regard to the need to eliminate unlawful discrimination, harassment, and victimisation; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those that do not. Decisions as to procedures will always take this into account.

10. Sustainability implications

- 10.1. No direct sustainability implications.

11. Other Implications

- 11.1. **Public health implications:** Any decision to move to more face-to-face meetings will be informed by the latest public health guidance. Good practice would indicate that Members should not attend meetings where they have respiratory infections, and that good ventilation continues to be advised.

