



LICENSING COMMITTEE

Monday 15 July 2019

LICENSING SUB-COMMITTEE PROCEDURES

EXECUTIVE SUMMARY

1. East Suffolk Council's Licensing Committee needs to agree and adopt the procedures to be followed at Licensing Sub-Committee hearings.
2. The adopted procedures need to be fair, reasonable and transparent to comply with Article 6 of the European Convention on Human Rights (right to a fair trial/hearing) and to reduce the risk of legal challenge to the Sub-Committee's decisions.

Is the report Open or Exempt?	Open
-------------------------------	------

Wards Affected:	ALL
------------------------	-----

Cabinet Member:	Councillor Rudd, Cabinet Member with responsibility for Community Health
------------------------	--

Supporting Officer:	Christopher Bing Legal and Licensing Services Manager 01394 444408 chris.bing@eastsuffolk.gov.uk
----------------------------	---

1 INTRODUCTION

- 1.1 Licensing Sub-Committees need to follow agreed procedures when considering licensing applications. The purpose of procedures is to ensure Sub-Committees have a consistent approach to determining applications which is fair, reasonable and transparent to comply with Article 6 of the European Convention on Human Rights (right to a fair trial/hearing) and to reduce the risk of legal challenge to the Sub-Committee's decisions on the grounds of apparent bias, predetermination, illegality and/or procedural impropriety.
- 1.2 Suffolk Coastal District Council and Waveney District Council had similar Licensing Sub-Committee procedures but there were a few differences. The main differences were the process for electing the Chairman of the Sub-Committee, declarations of lobbying and allowing the reserve/substitute member to retire with the Sub-Committee to observe its deliberations for training purposes.
- 1.3 The Licensing Committee needs to agree the procedures that East Suffolk Council Licensing Sub-Committees will follow.

2 LICENSING ACT 2003 AND GAMBLING ACT 2005 SUB-COMMITTEES

- 2.1 Licensing authorities have some discretion as to the precise procedure they follow in determining applications made under the Licensing Act 2003 and the Gambling Act 2005. However, there are statutory/mandatory requirements laid down in the Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 which the licensing authority's procedure must not conflict with.
- 2.2 These statutory/mandatory requirements include:
 - 2.2.1 explaining to the parties the procedure to be followed;
 - 2.2.2 giving parties an equal opportunity to address the committee;
 - 2.2.3 allowing parties to call witnesses;
 - 2.2.4 permitting parties to question any other party or person representing a party where the relevant committee considers that in all the circumstances it is appropriate to do so;
 - 2.2.5 taking into consideration documentary or other information produced by a party; and
 - 2.2.6 conducting the Sub-Committee hearing in the form of a discussion led by the committee.
- 2.3 The procedure followed must be fair, reasonable and proportionate to comply with natural justice (that each party has the right to a fair hearing and the right to be heard by an impartial tribunal) and Article 6 of the European Convention on Human Rights (right to a fair trial/hearing) requirements.
- 2.4 The procedure followed must also be consistent with the Committee Procedure Rules in the East Suffolk Council's Constitution.
- 2.5 The decision of a Sub-Committee which had not complied with the statutory/mandatory requirements laid down in the hearing regulations and/or the natural justice/human rights requirements and/or the Committee Procedure Rules in the Council's Constitution would be vulnerable to challenge on grounds of illegality and/or procedural impropriety.

3 PRIVATE HIRE/TAXI SUB-COMMITTEES

- 3.1 There are no statutory hearing regulations for private hire/taxi licensing. Therefore, the licensing authority has significant discretion as to the procedure it follows with these types of application. However, the procedure followed must still be fair, reasonable and

proportionate to comply with natural justice (that each party has the right to a fair hearing and the right to be heard by an impartial tribunal) and Article 6 of the European Convention on Human Rights (right to a fair trial/hearing) requirements. The procedure followed must also be consistent with the Committee Procedure Rules in the Council's Constitution.

- 3.2 Again, the decision of a Sub-Committee which had not complied with the natural justice/human rights requirements or the Committee Procedure Rules in the Council's Constitution would be vulnerable to challenge on grounds of illegality and/or procedural impropriety.

4 MATTER 1 – ELECTING THE CHAIRMAN OF THE SUB-COMMITTEE

- 4.1 East Suffolk Council's Committee Procedure Rules require Chairman of Committees to be elected. The use of the word "Committee" in the procedure rules should be read as including Sub-Committees.
- 4.2 Electing the Chairman demonstrates the Sub-Committee's commitment to openness and transparency. It can give the parties confidence in the Sub-Committee's procedures and decision making and reassurance that they will receive a fair hearing.
- 4.3 Whilst it is not the case that the decision of any Sub-Committee which did not elect the Chairman would be void, the electing of a Chairman would remove any prospect of challenge on this basis and would accord with the provisions of the Council's Constitution.
- 4.4 It is recommended that the Chairman should be elected in public at the commencement of each hearing of the Licensing Sub-Committee, by way of a nomination and a seconder, to provide the greatest protection from, and reduce the risk of, any legal challenge to the Sub-Committee's decision.

5 MATTER 2 – DECLARATIONS OF LOBBYING AND RESPONSES TO LOBBYING

- 5.1 Declarations of lobbying, and the response a Councillor gave to any approaches received, is not a legal necessity. However, it is recommended that the Sub-Committee procedure allows for such declarations to protect the member, and in turn the licensing Sub-Committee's decision, from allegations of apparent bias or pre-determination.
- 5.2 Being lobbied, and responding to lobbying, does not prohibit a member from participating in determining a matter so long as they are not predetermined on the matter under consideration and remain open minded as to their decision until after they have had the opportunity to consider all the evidence and arguments presented at the hearing.
- 5.3 Councillors should take a cautious approach when responding to lobbyists for or against an application they will be determining, in advance of the hearing. A neutral response, that the member has noted the contents of the representation and will consider the matter with an open mind when it comes to committee, is recommended. However, Section 25 of the Localism Act 2011 does provide that the prior indication of a view by a member does not equate to predetermination and this statutory provision can be relied upon if necessary, to defend a member from allegations that they were predetermined at the hearing.
- 5.4 In response to a lobbying declaration, the legal adviser could explain about apparent bias, predetermination and Section 25 of the Localism Act 2011 and, if appropriate, suggest that a member may wish to consider recusing themselves from a hearing.

- 5.5 It is recommended that members of Licensing Sub-Committee be given the opportunity to declare whether they have been lobbied by an applicant or objector, and their response to any approach, to protect themselves and the integrity of the hearing process in the event of challenge on the grounds of apparent bias or predetermination.

6 MATTER 3 – THE RETIRING OF THE RESERVE/SUBSTITUTE MEMBER WITH THE SUB-COMMITTEE FOR TRAINING PURPOSES

- 6.1 There is no legal restriction on a Councillor, who is not a member of the Sub-Committee, from retiring with the 3 members of the Sub-Committee to observe their deliberations for training purposes. However, the reserve/substitute member cannot participate in the deliberations or play any role in the decision making.
- 6.2 The reason for the reserve/substitute member retiring with the Sub-Committee should be made clear to the parties and the public in attendance. The parties should also be given the opportunity to object.
- 6.3 It is recommended that the reserve/substitute member be permitted to retire with the Sub-Committee to observe the deliberations and see how the decision is arrived at, with the consent of the parties in attendance, for training purposes.

7 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 7.1 Licensing plays an important role in the building of a strong, sustainable, and dynamic local economy and in ensuring East Suffolk remains a safe place for our communities.

8 REASON FOR RECOMMENDATIONS

- 8.1 The Licensing Sub-Committee procedures need to be fair, reasonable and transparent to comply with Article 6 of the European Convention on Human Rights (right to a fair trial/hearing) and to reduce the risk of legal challenge to the Sub-Committee's decisions on the grounds of apparent bias, predetermination, illegality and/or procedural impropriety.

RECOMMENDATIONS

1. That the Chairman should be elected in public at the commencement of each hearing of the Licensing Sub-Committee, by way of a nomination and a seconder, to provide the greatest protection against a legal challenge to the Sub-Committee's decision.
2. That members of Licensing Sub-Committees be given the opportunity to declare whether they have been lobbied by an applicant or objector, and their response to the lobbying, to protect themselves and the integrity of the process in the event of challenge on grounds of apparent bias and predetermination.
3. That the reserve/substitute member be permitted to retire with the Sub-Committee to observe the deliberations and see how the decision is arrived at, with the consent of the parties in attendance, for training purposes.
4. That the procedures at Appendix A to this report be agreed and adopted as the procedures for meetings of East Suffolk Council's Licensing Sub-Committee.

APPENDICES

Appendix A

Draft East Suffolk Council Licensing Sub-Committee Procedures

BACKGROUND PAPERS		
Date	Type	Available From
	Not applicable	