

TAUNTON DEANE BOROUGH COUNCIL

Licensing Committee Meeting on 28 February 2005

Report of the Chief Solicitor

Procedure to be followed at Licensing Sub-Committee Hearings

(this matter is the responsibility of Councillor Edwards)

1. Purpose of Report

- 1.1 To seek the Committee's approval of the procedure to be followed at Licensing Sub-Committee Hearings.

2. Summary

- 2.1 This Committee having at its previous meeting agreed to establish sub-committees to deal with contentious matters under the Licensing Act 2003 should now agree the procedure to be followed by the Sub-Committees when they undertake those Hearings.

3. Background

- 3.1 Section 9(2) of the Licensing Act 2003 provides that Regulations may make provision about the proceedings of Licensing Committees and their Sub-Committees including provision about the validity of proceedings. The Regulations can also determine arrangements for public access to these meetings and the publicity to be given to them.
- 3.2 The Government have made the Licensing Act 2003 (Hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005 both of which came into force on the 7 February last.
- 3.3 The main Regulations prescribe the period of time within which a Hearing is to be held, the Form of Notice of the Hearing and the information to accompany that Notice. The Regulations contain a provision that will enable a Hearing to be dispensed with if all parties agree. The Regulations provide that the Hearing shall take place in public except in certain circumstances and prescribe who may attend and be assisted or represented at a Hearing.
- 3.4 Regulation 21 of the main Regulations states "subject to the provisions of these Regulations the Authority shall determine the procedure to be followed at the Hearing". The Authority will require to explain to the parties the procedure which it proposes to follow at the Hearing and Regulation 23 states "a Hearing shall take the form of a discussion led by the Authority and cross-examination shall not be permitted unless the Authority considers the cross-examination is required for it to consider the representations, application or Notice as the case may require".

4. Present Position

- 4.1 There is attached to this report a draft pro forma which sets out the procedure it is suggested should be followed to conduct a Licensing Sub-Committee Hearing. It is

difficult to envisage the form of Hearing specified in the Regulations given that the Council also has to comply with the requirements of the Human Rights Act and meet the constraints imposed by the rules of natural justice. However, the suggested procedure will give some structure to the proceedings as and when they occur.

4.2 Members will appreciate that the procedure detailed above will need to retain a degree of flexibility and it is suggested that the Licensing Sub-Committee should be given freedom to adapt the procedures as they see necessary.

5. Conclusion and Recommendation

5.1 The Licensing Sub-Committee should have a procedure in place for the conduct of its Hearings and the Hearings Regulations require that the procedure be explained to the parties at the Hearing. It has been the practice of the Council's Licensing Board to issue its procedure document prior to Hearings taking place and it is intended to use the same system for Licensing Sub-Committee Hearings.

5.2 You are therefore recommended to approve the procedure to be followed at Licensing Sub-Committee Hearings as set out in the attached document.

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