

LICENSING (2003 Act) COMMITTEE**(6.15pm –7.46pm)**

PRESENT: Councillors Liddle (Chair), Benstead, Blencowe, Boyce, Churchill, Dixon, Downham, Kightley, Phillips, C Rosenstiel, J Rosenstiel and Slatter

FOR THE INFORMATION OF THE COUNCIL**05/L/01 MINUTES**

The minutes of the meeting held on 23 November were confirmed by the Committee as a correct record and signed by the Chair.

05/L/02 APOLOGIES

Apologies for absence were received from Councillors Bailey and R Smith.

05/L/03 DECLARATIONS OF INTEREST

Councillors C Rosenstiel and J Rosenstiel declared personal interests as members of CAMRA.

05/L/04 PUBLIC QUESTION TIME

No members of the public wished to address the committee.

05/L/05 LICENSING ACT 2003 - PROCEDURAL MATTERS

The Council's solicitor tabled a more complete version of the LACORS guidance than that included in the agenda and also the newly published proposed "Hearing Procedure" along with an additional draft recommendation (labeled ix) regarding the procedure.

The Head of Environmental Services then introduced the report and said that 500 letters had been sent to existing licence holders. He drew members' attention to section 3.13 of the report about the LACORS guidance which dealt specifically with whether members should consider applications for premises within their ward.

Councillor C Rosenstiel highlighted the importance of different councillors taking on different roles – advocacy on behalf of constituents and determination of the licence. Councillor Blencowe drew the parallel with what currently happened on planning applications.

The Director of Environment & Planning emphasised the distinction between members determining licensing applications about which they had local knowledge as ward councillors and the need to demonstrate that there was no bias on their part arising from representations to them by their constituents who were "interested parties".

The Head of Environmental Services said that enquiries of all local authorities in the immediate area indicated that all were following the LACORS guidance.

The following members spoke against following the LACORS guidance for the following reasons:

Councillor Slatter supported the view that the two roles be managed in the same way as currently works on planning applications with a ward councillor not on the committee acting as advocate for constituents.

Councillor C Rosenstiel said the ward councillors were able to manage the two roles on area committees and so long as members were vigilant about avoiding the pitfall of pre-determination he could see no problem.

Councillor Dixon was of the view that it was possible to listen to the concerns of constituents which became part of one's local knowledge while not taking on an advocacy role on their behalf. He could see that there would be more of a problem in rural villages but not in a city like Cambridge.

The following members expressed reservations:

Councillor Benstead said it could be very difficult to keep the two roles separate especially as the sub-committees of 3 members were so small and that the perception of the public was the critical factor.

Councillor Blencowe supported that view particularly in relation to Market Ward as all 3 members of the ward would sit on sub-committees, though not all at the same meeting. It meant that there was no councillor for that ward who was not involved in the sub-committee and that could affect public perception.

Councillor C Rosenstiel explained that he and Councillor J Rosenstiel (both being ward councillors of Market Ward) were on the Licensing (2003 Act) Committee as they were permitted by the 2000 Act to do this as Executive Councillors and it relieved the burden of committee work on back bench councillors.

The Chair acknowledged that public perception was a critical issue.

The Director of Environment & Planning agreed that Planning and Licensing should be treated in a similar way and avoiding the perception of bias was critical. He said that if members voted against the LACORS guidance then other safeguards would need to be put in place.

The Licensing Officer quoted from the government's guidance which said that if any ward councillor considered they were biased then they should disqualify themselves from sitting on the hearing.

Members also considered some of the practicalities of the issue:

Councillor J Rosenstiel asked if a member of the Licensing (2003 Act) Committee could attend a sub-committee considering licences as a ward councillor taking an advocacy role if s/he were not sitting on that sub-committee determining the applications.

Councillor Dixon asked whether declaration of a prejudicial interest on one hearing meant that you were disqualified from the whole day of hearings.

Councillor C Rosenstiel asked if having a quorum of 3 were practical given the possibility that members might discover during a meeting that they had a prejudicial interest.

Councillor Churchill asked if it were possible for members of any sub-committee to have enough notice about which licences were to be considered on each sub-committee date such that a substitute could be found with plenty of notice.

The Licensing Officer thought that it was possible to be an advocate on a sub-committee the member was sitting on and later confirmed that this was the case. She clarified that the legislation was very clear that 3 was a quorum and that it was not similar to how the magistrates' courts worked at present.

The Head of Environmental Services said that the choice about following the LACORS guidance on the issue of ward councillors and potential bias was for the members to make. Officers were being very cautious. They did see the members' advocacy role as very important but needed to ensure that there was no hint of perceived bias in hearings to limit the number of appeals.

The Chair proposed an alternative recommendation to replace the one in the report at 2.1 (vii):

That ward councillors sit on sub committees where that committee is considering applications in that member's ward so long as the member is sure they have no bias or prejudicial interest in any item on the agenda.

Resolved (by 9 votes to 0) that ward councillors sit on sub committees where that committee is considering applications in that member's ward so long as the member is sure they have no bias or prejudicial interest in any item on the agenda.

The Committee then raised concerns to do with other parts of the report.

Councillor Slatter was concerned that, in Appendix A, which listed recommended delegated functions that the matter would come to Sub-committee only if the police objected. What about objections from the child protection agency, for example?

Councillor C Rosenstiel was most concerned about the fact that letters were not going to be written to interested parties in the area as one way of informing the public about applications. He was particularly concerned that the public might be disadvantaged if the notice on the premises was put up in a non-obvious place or, in the case of student residents, out of term time.

Councillor Dixon appreciated what the regulations provided for but asked if it were not possible for the officers to add to that advice at their discretion.

The Head of Environmental Services explained that one part of the problem was limited resources with only 2 staff to deal with a possible 500 applications. The officers were aware of the importance of members' advocacy role for all affected parties, businesses

as well as residents. He hoped this would include alerting the ward residents and businesses to the published list of applications received which would be on the website as well as sent to members on a regular basis. There were now many more “responsible authorities” including the planning authority, environmental health, the child protection agency, fire and police authorities so issues to do with the suitability of any applicant should be addressed. He asked members to appreciate that the new act was different to the planning process in regard to informing the public, a process which had been copied for informing nearby residents about applications for public entertainment licences although this had only been done over the past 3 years. He acknowledged members’ concerns and that it was all unknown territory at present. He suggested that a review of how the whole process was working be undertaken very soon after the start of hearings.

The Licensing Officer indicated that as of that day no applications had yet been received. She thought that legal advisers to potential applicants were being more cautious in their approach.

Councillor Slatter asked that the Hearing Procedure include more than one councillor acting as Chair in any one meeting to spread the load on the Chair and to give new Chairs a chance to gain experience in manageable amounts.

The Committee then voted on the remaining recommendations including two additional recommendations as follows:

Resolved (by 10 votes to 0) to agree recommendations (i) to (vi) and (viii):

- (i) To confirm the scheme of officer delegation at Appendix A
- (ii) To authorise the Head of Environmental Services, in consultation with the Head of Legal & Democratic Services, to determine whether a complaint is irrelevant, frivolous or vexatious
- (iii) To delegate authority to the Head of Environmental Services to authorise officers generally under the Act and specifically under Parts 3 and 4 and section 108(5) of the Act
- (iv) To authorise the Head of Environmental Services to keep and maintain a licensing register in accordance with section 8 and Schedule 3 of the Act and relevant regulations
- (v) To authorise the Head of Environmental Services to require the production of licences under section 56(2) of the Act
- (vi) To authorise the Head of Environmental Services to take all such other steps as are needed or, in his view, are appropriate, to implement the new licensing regime, save for such matters as are reserved by statute or by resolution for decision by elected members
- (viii) To delegate authority to the Head of Environmental Services to grant up to 2 section 34 permits for amusement with prizes machines in premises licensed for the sale of alcohol for consumption on the premises.

Additional recommendation (ix): **Resolved** (by 10 votes to 0) to approve the Hearing Procedure in principle with authority delegated to the Head of Legal Services to review and amend the procedure, as appropriate, in the light of LACORS, or any other relevant, guidance and any amendments to the hearings regulations in consultation with the Chair and Spokesperson of the Committee.

Additional recommendation (x): **Resolved** (by 10 votes to 0) to agree that the whole process be reviewed after 3 months of hearings of the first applications have taken place.

05/L/06 **DATE OF NEXT MEETING**

It was agreed that members would be consulted about the date of the next meeting when there was new business to be considered.

The meeting ended at 7.46pm

CHAIR