

Brighton & Hove City Council

Licensing Committee (Licensing Act 2003 Functions)

Agenda Item 17

Subject: Review of Licensing Panel hearings arrangements

Date of meeting: 13th October 2022

Report of: Executive Director – Governance, People and Resources

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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 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).
- 1.2 The report proposes that members review the current arrangements and delegate authority to the Director of Governance, People & Resources after consultation with lead members to determine the future conduct of Licensing Panels until further review at the next committee in November 2022. 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 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 recommends that Licensing Panels continue to meet virtually until March 2023. This does not preclude holding a panel hearing in person where the individual circumstances of an application may warrant it.
- 2.2 That Committee delegates authority to the Executive Director - Governance, People & Resources after consultation with the Chair and group spokespersons to determine arrangements for Licensing Panel hearings until the next Licensing Committee in March 2023.
- 2.3 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

- 3.1 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.
- 3.2 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).
- 3.3 At the full Licensing Committees (Licensing Act 2003 Functions) on 24th June 2021, 14th October 2021, and 17 February 2022 members delegated authority to the Executive 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.
- 3.4 There is still uncertainty about future infection rates in the City. Council Committee meetings in person (where required by law) continue to take mitigation measures such as wearing masks and requiring testing. These arrangements were last reviewed in July 2022. It may seem sensible, where the legal flexibility exists as in this case, to continue with the virtual meetings. The minutes of this Committee held in February 2022 illustrate that many members remain largely 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.
- 3.5 The committee is thus invited to review the arrangements and indicate 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 Delegation to officers avoids the need to convene further urgent committee meetings and enables a flexible response to changing national or local conditions.

4.2 The delegation is only temporary and will be reviewed at the next full licensing committee in March 2023.

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 determine procedures for its sub-committees (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: Date consulted (dd/mm/yy):

8. Legal implications

8.1 The Licensing Committee can determine its own procedures for its sub-committees (hearing panels) pursuant to s 9 Licensing Act 2003. There is no reason under the Licensing Act (see Section 10) why such determination cannot 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.

9. Name of lawyer consulted: Elizabeth Culbert Date consulted 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

Public health implications:

- 11.1 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.