

**Gambling, Licensing & Regulatory Committee** 8 August 2023

Report from the Director – Environment, Transport and Planning

**Licensing Act 2003 & Gambling Act 2005 Sub-Committee Hearings**

**Summary**

1. This report asks Members to determine the format of licensing sub-committee hearings held by the City of York Council (the Council), as the licensing authority, when determining applications made under the Licensing Act 2003 (the 2003 Act) and Gambling Act 2005 (the 2005 Act) which have been opposed.
2. The Council's current practice of holding remote of sub-committee hearings has been queried by some members of this Committee therefore it is important that Members agree whether to hold sub-committee hearings remotely or in person moving forward.

**Recommendations**

3. Members are asked to determine the format of sub-committee hearings held by the Council. If Members determine a change to the current format, an implementation date for this change should also be agreed.

**Reason:** To make sure sub-committee hearings are held in accordance with the requirements of the Licensing Act 2003 and Gambling Act 2005, and their associated Regulations and Guidance.

**Background**

4. In accordance with the requirements of the 2003 and 2005 Acts, and through its delegation scheme, the Council has established a Licensing Committee, comprising of 15 Members. When required a sub-committee, comprising of three Members who serve on the Licensing Committee, will determine an application. Sub-committee hearings must be held in accordance with The Licensing Act 2003 (Hearings) Regulations 2005 (the 2005 Regulations) or The Gambling

Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (the 2007 Regulations).

5. It is a legal requirement of the 2003 Act and the 2005 Act that sub-committee hearings must be held to determine applications that are opposed. The Act stipulate when a hearing is required. Sub-committee hearings must be held in accordance with the 2005 Regulations and the 2007 Regulations.
6. Prior to the Covid 19 Pandemic the Council held sub-committee hearings in person at West Offices. As with all Council meetings these hearings had to be held remotely due to the pandemic. Since the pandemic the Council has continued to hold these hearings remotely.
7. To date the Council has not held a sub-committee hearing in relation to a gambling application, but the Council has held numerous sub-committee hearings to determine applications made under the 2003 Act. These sub-committee hearings have been held in accordance with the requirements of the 2003 Act and the associated 2005 Regulations, whether they were held in person or remotely. All parties to the hearing who register to speak are given an equal opportunity to be heard.
8. The London Borough of Lewisham Council has recently been legally challenged, at Magistrates Court, with regards to holding a report hearing to determine an application under the 2003 Act. The District Judge sitting agreed that remote hearings are permitted under the 2003 Act and the associated 2005 Regulations.

## Consultation

9. A formal consultation has not taken place, but officers have informally sought the views of other licensing authorities and licensing agents of applicants and representors.
10. Responses have been received from the following licensing authorities with regards to how they hold sub-committee hearings:

Authority	In person / remote	Comments
Kirklees	In person	
NYC – Scarborough area	In person	
NYC – Craven area	In person	
NYC – Ryedale area	In person	

NYC – Selby area	In person	Have the flexibility to go remote if required
Hull	In person	In appropriate circumstances they would consider holding remotely or as a hybrid
Leeds	In person	A requirement of their standing orders

11. Agents of applicants/representors have given the following feedback:

- For difficult or heavily contested hearings or those involving many attendees I prefer hearings in person.
- In person hearings allow parties to meet, discuss and hopefully limit issues prior to the hearing itself, or find more common ground in the hearing.
- Advocacy is more efficient and effective in person.
- A downside of in person meetings can be the travel time and costs involve, which can include an overnight stay.
- General preference for hearing to be held in person.
- There are some circumstances where a remote hearing makes sense, e.g. in a situation where there is an outstanding residential objector who has not engaged and has not indicated an intention to attend the hearing, or where the remaining issues are narrow.
- The best situation from our point of view would be where the default is in person hearings, with remote as an option which can be requested by any party, and which is approved if there is no objection from other parties.
- Easier to engage with people in the same room.
- Hybrid hearings do not work.
- I am in favour of hearings being held remotely – easier to facilitate, people have more availability online, no one has to travel long distances.

## Options

12. Option 1 – Determine that Licensing Act 2003 and Gambling Act 2005 sub-committee hearings will continue to be held remotely.
13. Option 2 – Determine that Licensing Act 2003 and Gambling Act 2005 sub-committee hearings will be held in person. Stipulating an implementation date for when this change will take effect.

14. Option 3 – Determine that format of Licensing Act 2003 and Gambling Act 2005 sub-committee hearings will be determined on a case-by-case basis depending on the nature of the application and the number of representations.

That the Chair and Vice Chair of this Committee will agree a procedure to aid officers when determining the format of the meeting. Stipulating an implementation date for when this change will take effect.

15. Options 4 – Determine that format of Licensing Act 2003 and Gambling Act 2005 sub-committee hearings will be held in a hybrid format, with Members and officers attending in person at West Offices and the applicant and representors being given the option to participate in person or remotely. Stipulating an implementation date for when this change will take effect.

## **Analysis**

16. Sub-committee hearings can legally be held in all formats listed above at Options 1-4.
17. The council has established processes in place to hold sub-committee hearings remotely and in person.
18. Options 3 and 4 would create additional work for officers and the sub-committee Chair as detailed below.
19. Option 3 would require a clear procedure and criteria to aid officers to determine whether a hearing is to be held in person or remotely. Applicants and/or representors may expect to have a say in whether the hearing is held in person or remotely.
20. Option 4 could have logistical implications; officers and the sub-committee Chair would have to monitor that parties who have opted to participate in the hearing remotely are present throughout the hearing and that any loss of connection is picked up and resolved, as well as manage the in-person meeting. Hybrid hearings may become disjointed and parties joining the meeting remotely could challenge that the hearing was not conducted in a fair manner.
21. There are benefits and disadvantages against holding sub-committee hearings in person at West Offices and remotely through video conferencing.

## In Person

<b>Benefits</b>	<b>Disadvantages</b>
<ol style="list-style-type: none"><li>1. Easier for all parties to engage prior to and during the meeting.</li><li>2. No external interruptions.</li><li>3. If required while considering the decision, it is easier for Members to call all parties back into the meeting to ask for clarification on a certain point(s).</li></ol>	<ol style="list-style-type: none"><li>1. Meeting room availability at West Offices.</li><li>2. Travel to West Offices – this can be an additional cost for the applicant and/or representors and their professional representatives.</li><li>3. Difficulties (for example mobility issues) for the applicant and/or representor and their professional representatives to attend West Offices.</li></ol>

## Remote

<b>Benefits</b>	<b>Disadvantages</b>
<ol style="list-style-type: none"><li>1. Meeting room availability and cost is not a concern.</li><li>2. No one has to travel to West Offices – which is a likely cost saving for the applicants and/or representors and their professional representatives.</li><li>3. Greater accessibility for people to attend.</li><li>4. Representors may be more likely to attend a hearing:<ol style="list-style-type: none"><li>a) They may find in person hearings intimidating;</li><li>b) It may be more convenient for them to participate for an hour from home/work rather than take half or the whole day to attend in person.</li></ol></li><li>5. Hearings are accessible to the public as they are</li></ol>	<ol style="list-style-type: none"><li>1. Internet reliability.</li><li>2. Applicants and/or representors not having access to the internet.</li><li>3. Parties to the hearing could be put at a disadvantage if they are not confident or familiar with communication platform (Zoom).</li><li>4. Parties not feeling included or been able to engage properly as they have had to ring into the meeting.</li><li>5. External interruptions.</li></ol>

<p>webcast live, and available to watch at any time.</p> <p>6. Transparency for a wider audience.</p> <p>7. Recordings of hearings can assist if complaints are received regarding the conduct of the hearing.</p>	
--	--

## Council Priorities

22. The Council must comply with the requirements of the 2005 Regulation and the 2007 Regulation when a licensing sub-committee hearing is held. Complying with these Regulations supports the Council's Plan as an open and effective Council.

## Implications

23. The implications arising from this report are:

- **Financial:** There are no direct financial implications associated with this report for the Council. There could be financial implication for parties attending in person sub-committee hearings with additional costs for travel.
- **Human Resources:** There are no Human Resources implications associated with this report.
- **Equalities:** The Council needs to take into account the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between person who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).  
An Equalities Impact Assessment has been completed with regards to holding sub-committee hearings in person and/or remotely. Positive and negative findings/impacts have been identified all equality groups for both formats. All impacts have been identified as low. The Assessment can be found at Annex 1.  
The Assessment should be reviewed following the determination of this matter.

- Legal:** Premises licensing hearings are held under the provisions of the Licensing Act 2003 and specifically the 2005 Regulations made under that Act that deal with the proceedings of the sub-committee. The 2005 Regulations enable the Licensing Authority, subject to the basic procedural framework in the 2005 Regulations, to determine the procedure to be followed at sub-committee hearings. Whether a hearing is conducted remotely or in person is a matter of procedure in the discretion of the Licensing Authority. This was confirmed in April 2023 by a decision of the magistrates' court following a challenge to London Borough of Lewisham's use of a remote hearing. Whilst, as a decision of the magistrates' court, this judgment is not technically binding on any other case, it is so far the only case that has considered the issue and it is persuasive authority. It is the view of Legal Services that remote hearings are lawful under the 2003 Act. The Licensing Authority also has the necessary legal power to determine that Gambling Act 2005 hearings can be held either remotely or in person. There is a legal requirement to hold licensing sub-committee hearings in a fair manner. This applies whether a hearing is held remotely or in person. The procedures to be followed at a hearing should apply equally to all hearings, irrespective of whether they are conducted remotely or in person.
- Crime and Disorder:** The Policy and the CIA promotes the licensing objective "the prevention of crime and disorder".
- Information Technology (IT):** There are no IT implications associated with this report.
- Other:** There are no other implications associated with this report.

## Risk Management

24. There are no known risks associated with this report as it relates to the format of sub-committee hearings. Legal action could be taken against the Council if it fails to hold sub-committee hearings in accordance with the requirements of the 2003 or 2005 Acts, and/or 2005 or 2007 Regulations.

## Contact Details

**Author:**

**Chief Officer Responsible for the report:**

**Lesley Cooke**  
Licensing Manager  
Phone: 551515

**James Gilchrist**  
Director (Environment, Transport and  
Planning)

**Report  
Approved**



**Date** 27/07/2023

**Specialist Officer Implications: None**  
**Wards Affected:**

**All**



### **Background Papers:**

Licensing Act 2003 - [Licensing Act 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/30/section/1)

Gambling Act 2005 - [Gambling Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/19/section/1)

The Licensing Act 2003 (Hearing) Regulations 2005 - [The Licensing Act 2003 \(Hearings\) Regulations 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2005/1080/section/1)

The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 - [The Gambling Act 2005 \(Proceedings of Licensing Committees and Sub-committees\) \(Premises Licences and Provisional Statements\) \(England and Wales\) Regulations 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2007/1080/section/1)

### **Annexes**

Annex 1: Equalities Impact Assessment