



**Notice of a public meeting of
Licensing and Regulatory Committee**

To: Councillors Melly (Chair), Clarke, Kent, Kilbane,
Ravilious, Rose, Wells, Cuthbertson, Hook, Knight,
Mason, Smalley, Widdowson, Nicholls and Warters

Date: Tuesday, 8 August 2023

Time: 5.30 pm

Venue: The George Hudson Board Room - 1st Floor West
Offices (F045)

AGENDA

1. Declarations of Interest (Pages 1 - 2)

At this point in the meeting, Members and co-opted members are asked to declare any disclosable pecuniary interest, or other registerable interest, they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the member during the meeting.

[Please see attached sheet for further guidance for Members].

2. Minutes (Pages 3 - 12)

To approve and sign the minutes of the meeting held on 13 June 2023.

3. Public Participation

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

**Please note that our registration deadlines are set as 2
working days before the meeting, in order to facilitate the**

management of public participation at our meetings. The deadline for registering at this meeting is **5:00pm on Friday 4 August 2023.**

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill in an online registration form. If you have any questions about the registration form or the meeting, please contact Democratic Services. Contact details can be found at the foot of this agenda.

Webcasting of Public Meetings

Please note that, subject to available resources, this meeting will be webcast including any registered public speakers who have given their permission. The meeting can be viewed live and on demand at www.york.gov.uk/webcasts.

During coronavirus, we made some changes to how we ran council meetings, including facilitating remote participation by public speakers. See our updates (www.york.gov.uk/COVIDDemocracy) for more information on meetings and decisions.

4. Licensing Act 2003 & Gambling Act 2005 Sub-Committee Hearings (Pages 13 - 32)

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.

5. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Angela Bielby

Contact Details:

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For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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Declarations of Interest – guidance for Members

- (1) Members must consider their interests, and act according to the following:

Type of Interest	You must
Disclosable Pecuniary Interests	Disclose the interest, not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Directly Related) OR Non-Registrable Interests (Directly Related)	Disclose the interest; speak on the item <u>only if</u> the public are also allowed to speak, but otherwise not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Affects) OR Non-Registrable Interests (Affects)	Disclose the interest; remain in the meeting, participate and vote <u>unless</u> the matter affects the financial interest or well-being: (a) to a greater extent than it affects the financial interest or well-being of a majority of inhabitants of the affected ward; and (b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest. In which case, speak on the item <u>only if</u> the public are also allowed to speak, but otherwise do not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.

- (2) Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.
- (3) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations,

and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.

City of York Council

Committee Minutes

Meeting	Licensing and Regulatory Committee
Date	13 June 2023
Present	Councillors Melly (Chair), Clarke, Kent, Kilbane, Ravilious, Rose, Wells, Cuthbertson, Hook, Mason, Widdowson, Nicholls and Warters
Apologies	Councillors Knight and Smalley

Chair's Welcome [17:32]

Cllr Melly, newly appointed Chair of the Committee, welcomed all to the meeting and recorded thanks to previous Members of the Committee.

Election of Vice Chair for the meeting

Cllr Cuthbertson was appointed as Vice Chair for the meeting.

1. Declarations of Interest [17:34]

Members were asked to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda, if they had not already done so in advance on the Register of Interests. None were declared.

2. Minutes [17:35]

Resolved: That the minutes of the meeting held on 4 April 2023 be approved and then signed by the Chair as a correct record.

3. Public Participation [17:35]

It was reported that there had been three registrations to speak at the meeting under the Council's Public Participation Scheme.

Wendy Loveday had registered to speak on matters within the Committee's remit. As she was unable to attend the meeting, the Chair read out a statement on her behalf. The statement requested the reopening of Penley Grove Street and Lowther Street.

William Swords spoke on matters within the Committee's remit. He asked the Committee to reconsider the type of vehicle in the issuing of hackney carriage licences and detailed the reasons for the request.

Antony Schiller (Solicitor for Applicant) had registered to speak on agenda item 6 Application for a Private Hire Operators licence - Mohammed Iqbal, trading as York Cars (Private Hire). He spoken on the application when it was taken during the meeting.

In response to a request from a Member, the Chair undertook to contact speakers after the meeting.

4. Renewal of Sex Establishment Licence for The Adult Shop, 70B Gillygate, York, YO31 7EQ [17:44]

[The meeting adjourned from 17:44 until 17:46]

Members considered a report which sought the determination of an application to renew a Sex Establishment Licence for a sex shop which has been made under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by Policing and Crime Act 2009 in respect of The Adult Shop, 70B Gillygate, York, YO31 7EQ.

The Licensing Manager outlined the report, detailing the annexes. She then detailed the options available for consideration by the Committee. She was asked and explained the policy for sex establishment licences could be reviewed at any time.

[Cllr Mason joined the meeting at 17:49]

By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee had the following options available to them in making their decision:

Option 1: Grant a renewal of the licence as requested.

Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.

Option 3: Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

Cllr Kilbane moved option 1 to grant a renewal of the licence as requested. This was seconded by Cllr Mason. The Senior Solicitor advised that as Cllr Mason had only missed the outline of the report it would not be inappropriate for him to vote on the item. On being put to the vote it was unanimously:

Resolved: That, in accordance with option 1 to grant a renewal of the licence as requested.

Reason: To consider renewal of the sex establishment licence as required by the legislation.

5. Hackney Carriage Fares [17:51]

Members considered a report that asked Members to determine a request from the Hackney Carriage Associations with regards to the maximum fares to be paid in respect of the hire of a City of York licensed hackney carriage vehicles. This request related to a variation of the table of fares.

The Taxi Licensing Manager outlined the report noting that all three taxi associations in York had agreed the request. In response to Member questions, the Taxi Licensing Manager explained:

- The incremental charges in the tariffs
- There was a requirement in the Bylaws that fares were advertised in vehicles
- The overall increase for tariffs was 13%.
- The process for consultation
- Mobility aids did not count as luggage
- How the request for the increase in fares was advertised
- The fare increase comparisons would be included in the report next time a determination was made
- There had been no objections to the fare increases and the increases would come into effect from the 14th day following the determination of the request should there be no objections. If there had been an objection the request that was not withdrawn, the request would come back to the Committee.
- The fares put forward by the trade compared with York and North Yorkshire. The annual % rise in fare rates had been provided by the trade.
- Confirmation was given that the proposed fares put forward were the maximum allowed fares.

By virtue of Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 (1976 Act) the Committee had the following options available to them in making their decision:

Option 1 – ask officers to publish in a local newspaper the variation to the table of fares proposed by the Hackney Carriage Associations, giving a specified period of 14 days within which objections can be made. If no objections are received or if so received are withdrawn then the new fares will be implemented on the date specified in the advert.

Option 2 – determine an alternative variation to the table of fares, and ask officer to publish in a local newspaper the variation to the table of fares determined by Members, giving a specified period of 14 days within which objections can be made.

Option 3 - reject the request from the Hackney Carriage Associations to vary the table of fares.

Cllr Warters moved option 1 to ask officers to publish in a local newspaper the variation to the table of fares proposed by the Hackney Carriage Associations, giving a specified period of 14 days within which objections can be made. If no objections are received or if so received are withdrawn then the new fares will be implemented on the date specified in the advert. This was seconded by Cllr Cuthbertson. On being put to the vote with eleven in favour, one against and one abstention, it was:

Resolved: That, in accordance with option 1 to grant a renewal of the licence as requested.

Reason: To determine the table of fares that will apply to charges in respect of the hire of City of York's licensed hackney carriage vehicles.

[The meeting adjourned from 18:22 to 18:34].

6. Application for a Private Hire Operators licence - Mohammed Iqbal, trading as York Cars (Private Hire) [18:34]

Members considered a report which sought determination of an application made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 by Mohammed Iqbal, trading as York Cars (Private Hire) operating from Unit 1, Heritage Park, Outgang Lane, York, North Yorkshire, YO19 5UP.

In coming to their decision, the Committee took into consideration all the evidence and submissions that were presented, as follows:

1. The Taxi Licensing Manager's report and his comments at the meeting. He outlined the information set out in the report and annexes.

In response to Members' questions, he also confirmed that:

- Officers were aware that the applicant was not the director of Gladstone Garage.
- If the application was approved, York Cars could operate from two premises.
- The complaints were about three different cars.
- Additional condition 8b was part of the planning consent and licensing officers would work with planning officers on this.
- The outcome of the investigation.
- That 91 was the last tier for the number of cars.

2. The application form, and the submissions made by Mr Schiller, the Solicitor for the Applicant at the meeting. In response to Member questions, Mr Schiller explained that:

- The applicant had drivers not licensed in York and 75% of the drivers were licenced in York.
- The application was not in respect of the registered company for Gladstone Garage.

[At this point the Senior Solicitor was asked what weight could be given to complaints and she advised Members of the fit and proper test as outlined in Annex 4. She added that Members needed to carefully consider the relevance of parking issues. The Licensing Manager noted that planning permission had been granted].

- It was for the committee to decide if they wanted to attach additional conditions.
- The applicant was already deemed fit and proper.
- Why proposed condition 8b was unenforceable.
- How the applicant would deal with complaints under his grievance procedure.
- If a vehicle was allocated a job under the private hire operators licence the applicant would need to know the requirement of that job.

[Cllr Widdowson left the meeting at 19:26]

- Regarding the applicant's relationship with the operator of Gladstone Garage, the applicant was applying for a private hire

operator's licence in his own name, and he had no control over Gladstone Garage. The applicant did not have a connection with Gladstone Garage as it was a separate legal entity.

- Condition 8 was not reasonable and necessary.
- He did not know how many drivers licensed in York passed the knowledge and safety test. [At this point the Taxi Licensing Manager confirmed that two of those drivers had passed the test].

Officers were asked and clarified that:

The annexes for the Blossom Street York Cars premises were included at annex 7 and that proposed condition 8 did not apply to the existing licence.

[Cllr Hook left the meeting at 19:41]

Officers clarified that the conditions attached were reasonable. They clarified proposed condition 8 and explained that in there was non compliance with regard to parking, this would be for the council to resolve. Regarding authority of other vehicles this would be with police and parking officers at the council. Officers confirmed that if the licence was granted for 12 months it would be under officer delegation to renew the licence. Officers were asked and clarified that drivers could only undertake the knowledge and safety test six times. They confirmed that the procedure for the test could be considered as part of the Statement of Licensing Policy review. Officers were asked and noted that they did not recall a specific email relating to comments made by the applicant at a previous committee meeting. They clarified the guidance relating to fit and proper was provided by the Institute of Licensing and that Members could amend conditions. Mr Schiller then made his closing statement in which he outlined the reasons for application to be granted.

By virtue of paragraphs 55, and 57 of the Local Government (Miscellaneous Provisions) Act 1976, the Committee have the following options available to them in making their decision:

Option 1 - Grant the licence as requested, with the standard and additional conditions attached, for a period of one year.

Option 2 - Grant the licence with modified / additional conditions imposed by the licensing committee for a period of one year.

Option 3 - Refuse the application, providing the grounds for refusal.

Following consideration of the options, and debate Cllr Kent proposed option 2 for the licence to be granted with the standard conditions and

the modified / additional conditions imposed by the licensing committee as set out below for a period of one year. This was seconded by Cllr Kilbane. Modified / additional conditions were debated further. Following a vote with ten in favour and one abstention, it was:

Resolved: That Option 2 be approved and the licence be granted with the standard conditions and the modified / additional conditions imposed by the licensing committee as set out below for a period of one year in accordance with section 55(1) of the Local Government (Miscellaneous Provisions) Act 1976.

The additional conditions are as follows:

- (a) Not to use any driver licensed by any other authority onto the operator's platform who is known to have taken and failed the York Knowledge and Safeguarding Test within the previous 3 years, unless the driver has subsequently passed.
- (b) To require any other authority licensed drivers who wish to be recruited onto the operator's platform to state:
 - [1] if they have previously taken and failed the York knowledge and safeguarding test within the previous 3 years
 - [2] the current live points on their DVLA licence. Drivers' responses to be notified to the City of York Council.
- (c) To require any other authority licensed drivers who wish to be on-boarded to the operators platform to sign an appropriate form (in accordance with the requirements of the GDPR and Data Protection Act 2018) authorising information as to their having taken, or otherwise, the City of York Knowledge and Safeguarding Test, and current live points of their DVLA licence as well the result of any such test, to be given to the operator and/or their representatives.
- (d) To require that before fulfilling a sub-contracted booking from the operator, each other authority licensed driver must complete topographical training, namely 2-3 hours of in-house training consisting of classroom or in-car training, including the York Pedestrian Zone, city centre roads and routes, and important venues such as hospitals, the railway station, tourist attractions, etc.
- (e) To require that before fulfilling a sub-contracted booking from the operator, each other authority licensed driver must take and pass

a driving assessment administered by a DVSA accredited assessor, such as The Blue Lamp Trust, Green Penny or any such other organisation as may be authorised by or agreed with the City of York Council to undertake the said driving assessment.

- (f) To keep records of topographical training and driving assessment for each other authority licensed driver. The said records (including driving assessment certificate) to be kept throughout the period the driver works with the company and for 6 months thereafter. To produce such records on request of an authorised officer of the City of York Council
- (g) A parking condition, the wording of which is delegated to officers on consultation with the Chair and Vice Chair.
- (g1) The licensed operator shall provide parking for five vehicles, working for York Cars, on site at the operator base.
- (h) A condition regards Booking and Dispatch Staff DBS checks
- (h1) The licensed operator shall ensure that booking and dispatch staff provide a basic disclosure, criminal record check as a requirement of employment. A record of this check will be kept in a register of booking and dispatch staff. The register should be available for inspection by authorised officers of the council.

Reasons:

- (i) The Committee were satisfied that:
 - a) The applicant was a fit and proper person to hold an operator's licence and
 - b) The applicant was not disqualified by reason of your immigration status from operating a private hire vehicle.
- (ii) The Committee considered that the additional conditions are reasonably necessary in order to ensure that any bookings sub-contracted to drivers licensed by authorities in districts other than York are carried out safely and that such drivers are not deterred from taking the York Knowledge and Safeguarding Test.

Member request [20:35]

A Member requested that a forward plan be added to future meeting agendas, that there be an update on the Drive operators licence application and that licensing hearings revert back to being held in

person.

Cllr Melly, Chair

[The meeting started at 5.30 pm and finished at 8.36 pm].

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Agenda Item

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

Benefits	Disadvantages
<ol style="list-style-type: none"> 1. Easier for all parties to engage prior to and during the meeting. 2. No external interruptions. 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). 	<ol style="list-style-type: none"> 1. Meeting room availability at West Offices. 2. Travel to West Offices – this can be an additional cost for the applicant and/or representors and their professional representatives. 3. Difficulties (for example mobility issues) for the applicant and/or representor and their professional representatives to attend West Offices.

Remote

Benefits	Disadvantages
<ol style="list-style-type: none"> 1. Meeting room availability and cost is not a concern. 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. 3. Greater accessibility for people to attend. 4. Representors may be more likely to attend a hearing: <ol style="list-style-type: none"> a) They may find in person hearings intimidating; 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. 5. Hearings are accessible to the public as they are 	<ol style="list-style-type: none"> 1. Internet reliability. 2. Applicants and/or representors not having access to the internet. 3. Parties to the hearing could be put at a disadvantage if they are not confident or familiar with communication platform (Zoom). 4. Parties not feeling included or been able to engage properly as they have had to ring into the meeting. 5. External interruptions.

<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>	
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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/2005/1081/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/2007/1081/section/1)

Annexes

Annex 1: Equalities Impact Assessment

City of York Council
Equalities Impact Assessment

Who is submitting the proposal?

Directorate:	Places		
Service Area:	Public Protection (Licensing)		
Name of the proposal :	Licensing Act 2003 and Gambling Act 2005 Sub-Committee Hearings		
Lead officer:	Lesley Cooke		
Date assessment completed:	26 July 2023		
Names of those who contributed to the assessment :			
Name	Job title	Organisation	Area of expertise

Step 1 – Aims and intended outcomes

1.1	<p>What is the purpose of the proposal? Please explain your proposal in Plain English avoiding acronyms and jargon.</p>
	<p>To determine the format of licensing sub-committee hearings, whether hearings should be held remotely or in person. The Council has the Licensing Authority currently holds sub-committee hearings remotely, this practice has been queried.</p>
1.2	<p>Are there any external considerations? (Legislation/government directive/codes of practice etc.)</p>
	<p>Licensing sub-committee hearings must be held in accordance with the requirements of the:</p> <ul style="list-style-type: none"> • Licensing Act 2003 • The Licensing Act 2003 (Hearings) Regulations 2005 • Gambling Act 2005 • The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

1.3	Who are the stakeholders and what are their interests?
1.4	What results/outcomes do we want to achieve and for whom?
	All parties to the hearing who register to speak: <ul style="list-style-type: none"> - Applicant whose application is determine by the sub-committee. - Representors (responsible authorities named within the above acts and other parties such as local resident) whose representation will be taken into consideration by the sub-committee when determining the application.
	This section should explain what outcomes you want to achieve for service users, staff and/or the wider community. Demonstrate how the proposal links to the Council Plan (2019- 2023) and other corporate strategies and plans.
	To aid Members in determining the format of licensing sub-committee hearings.

Step 2 – Gathering the information and feedback

2.1	What sources of data, evidence and consultation feedback do we have to help us understand the impact of the proposal on equality rights and human rights? Please consider a range of sources, including: consultation exercises, surveys, feedback from staff, stakeholders, participants, research reports, the views of equality groups, as well your own experience of working in this area etc.	
	Source of data/supporting evidence	Reason for using
	Informally sought views of council officers	They have knowledge and experience of licensing sub-committee hearings

Informally sought views of licensing agents of applicants and representors	As above

Step 3 – Gaps in data and knowledge

3.1	What are the main gaps in information and understanding of the impact of your proposal? Please indicate how any gaps will be dealt with.	
	Gaps in data or knowledge	Action to deal with this

Step 4 – Analysing the impacts or effects.

4.1	Please consider what the evidence tells you about the likely impact (positive or negative) on people sharing a protected characteristic, i.e. how significant could the impacts be if we did not make any adjustments? Remember the duty is also positive – so please identify where the proposal offers opportunities to promote equality and/or foster good relations.
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Equality Groups and Human Rights.	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
Age	In person hearings – attending West Offices - Additional cost for those wishing to participate in the hearing. - A factor that may restrict/prevent them attending a hearing in person. - Prefer attending in person hearings. Remote hearings - No access to the internet. - Not confident or familiar with communication platform (Zoom). - Not confident or familiar with ringing into a remote hearing. - Greater accessibility to attend a hearing.	(-) (-) (+) (-) (-) (-) (+)	L L L L L L L
Disability	As above		
Gender	As above		
Gender Reassignment	As above		
Marriage and civil partnership	As above		
Pregnancy and maternity	As above		
Race	As above		

Religion and belief	As above		
Sexual orientation	As above		
Other Socio-economic groups including :	Could other socio-economic groups be affected e.g. carers, ex-offenders, low incomes?		
Carer	As above		
Low income groups	As above		
Veterans, Armed Forces Community	As above		
Other	As above		
Impact on human rights:			
List any human rights impacted.	As above		

Use the following guidance to inform your responses:

Indicate:

- Where you think that the proposal could have a **POSITIVE** impact on any of the equality groups like promoting equality and equal opportunities or improving relations within equality groups
- Where you think that the proposal could have a **NEGATIVE** impact on any of the equality groups, i.e. it could disadvantage them

- Where you think that this proposal has a NEUTRAL effect on any of the equality groups listed below i.e. it has no effect currently on equality groups.

It is important to remember that a proposal may be highly relevant to one aspect of equality and not relevant to another.

<p>High impact (The proposal or process is very equality relevant)</p>	<p>There is significant potential for or evidence of adverse impact The proposal is institution wide or public facing The proposal has consequences for or affects significant numbers of people The proposal has the potential to make a significant contribution to promoting equality and the exercise of human rights.</p>
<p>Medium impact (The proposal or process is somewhat equality relevant)</p>	<p>There is some evidence to suggest potential for or evidence of adverse impact The proposal is institution wide or across services, but mainly internal The proposal has consequences for or affects some people The proposal has the potential to make a contribution to promoting equality and the exercise of human rights</p>
<p>Low impact (The proposal or process might be equality relevant)</p>	<p>There is little evidence to suggest that the proposal could result in adverse impact The proposal operates in a limited way The proposal has consequences for or affects few people The proposal may have the potential to contribute to promoting equality and the exercise of human rights</p>

Step 5 - Mitigating adverse impacts and maximising positive impacts

5.1	Based on your findings, explain ways you plan to mitigate any unlawful prohibited conduct or unwanted adverse impact. Where positive impacts have been identified, what is been done to optimise opportunities to advance equality or foster good relations?
Licensing sub-committee hearings must be held in accordance with the legislation details in section 1.2 above. In person and remote hearings both meet the legal requirements. Members must consider the 'positive and negative' impact of in person and remote hearings.	

Step 6 – Recommendations and conclusions of the assessment

6.1	Having considered the potential or actual impacts you should be in a position to make an informed judgement on what should be done. In all cases, document your reasoning that justifies your decision. There are four main options you can take:
- No major change to the proposal – the EIA demonstrates the proposal is robust. There is no potential for unlawful discrimination or adverse impact and you have taken all opportunities to advance equality and foster good relations, subject to continuing monitor and review.	

- **Adjust the proposal** – the EIA identifies potential problems or missed opportunities. This involves taking steps to remove any barriers, to better advance quality or to foster good relations.
- **Continue with the proposal** (despite the potential for adverse impact) – you should clearly set out the justifications for doing this and how you believe the decision is compatible with our obligations under the duty
- **Stop and remove the proposal** – if there are adverse effects that are not justified and cannot be mitigated, you should consider stopping the proposal altogether. If a proposal leads to unlawful discrimination it should be removed or changed.

Important: If there are any adverse impacts you cannot mitigate, please provide a compelling reason in the justification column.

Option selected	Conclusions/justification
No major changes to the proposal	No potential for unlawful discrimination or adverse impact has been demonstrated. The format of licensing sub-committee hearings can be reviewed at anytime if required.

Step 7 – Summary of agreed actions resulting from the assessment

7.1 What action, by whom, will be undertaken as a result of the impact assessment.			
Impact/issue	Action to be taken	Person responsible	Timescale

Step 8 - Monitor, review and improve

8.1	How will the impact of your proposal be monitored and improved upon going forward? Consider how will you identify the impact of activities on protected characteristics and other marginalised groups going forward? How will any learning and enhancements be capitalised on and embedded?

