

MEMBERS INVOLVEMENT IN LICENSING APPEALS AND THE INTRODUCTION OF SUMMARY REVIEW PROCESS

1. This report examines the process involved in appeals made to the magistrates court against decisions of the Licensing Act and Gambling Act Sub committees. It looks at the options for member involvement in that process and seeks a determination of future policy. The report also advises members of the impact of the Violent Crime Reduction Act 2006 on the hearing process.

Background

Member involvement in Appeals

2. Both the Licensing Act 2003 and the Gambling Act 2005 contain provisions for appeals to be made against decisions of the licensing authority. In general appeals can be made by an applicant, a representor and in the case of the Gambling Act, the Gambling Commission.
3. Appeals relating to premises licences are made to the magistrates court and must be lodged within 21 days of the decision of the licensing authority being notified to the appellant.
4. On appeal the magistrates court may
 - a) dismiss the appeal
 - b) substitute for the decision appealed against any decision that the licensing authority could have made
 - c) remit the case to the licensing authority to decide in accordance with the direction of the court
 - d) make an order about costs
5. In coming to any decision the court should have regard to the statutory guidance and to the licensing authority's local policy statement. There is no requirement however that it is bound by those documents and is entitled to vary from either if it is considered justified to so do.

6. Local experience is that appeals not involving a detailed examination of the law are considered by magistrates but where a more complex interpretation of legislation is required then the appeal is heard by a district judge.
7. In all cases there will be at least one case management meeting when all parties discuss the issues to be raised in the appeal so the appropriate amount of court time can be allocated. The appeal itself would take a minimum of half-day in court. As it is usual practice for the licensing authority to instruct counsel then a pre-hearing meeting with the barrister is usually required.
8. The more complex, and usually higher profile, appeals are far less simple. In the recent past they have involved a series of pre-hearing case management meetings, up to 3 days hearing in the court and several briefings with counsel. The process necessarily involves the council's legal adviser, licensing officers and other witnesses as maybe required.
9. As the appeal is effectively a new hearing, new evidence and information maybe presented, the application maybe varied from that originally heard by the licensing authority and indeed may evolve during the course of the hearing. This process mirrors the ethos of the legislation of agreement by mediation. Any decision made is completely outside the control of the licensing authority
10. In this environment, the issue is how much do members wish to be involved and how can that be facilitated.
11. As a result of a recent informal meeting with members of this committee the councils legal advisors will brief counsel to the effect that, if during the course of negotiations an application is changed to such a material extent that it becomes different to what was determined by the licensing authority, that he is to seek to have the application referred back to the council. The licensing officers will advise all members of the committee by E-mail the results of any appeal.

Summary Reviews

12. On 1st October 2007 section 21 of the Violent Crime Reduction Act 2006 became operational. This section allows for a senior police officer of police to apply to the licensing authority for a review of premises which retail alcohol and are associated with serious crime or disorder.
13. Serious crime and disorder are those crimes which would normally attract a custodial sentence for a first time offender of more than 3 years; or that the conduct involves the use of violence, results in substantial financial gain or is conducted by a large number of people in pursuit of a common purpose.
14. On receipt of an application under this section the licensing authority must, within 48 hours, consider whether it is necessary to take interim steps pending the determination of the review. A review must be held within 28 days.
15. Interim steps may include modification of conditions, exclusion of sale of alcohol, removal of designated premises supervisor or suspension of the

licence. The licensing authority must also decide whether the interim steps should have immediate effect or be deferred to a stated date. This determination may take place without the holder of the premises licence being present.

16. The holder of the premises licence may make representations with regard to the interim steps proposed. If such a representation is received then the licensing authority must hold a hearing within 48 hours.
17. Members should note the very tight timescales involved. These matters must be dealt with by the Gambling and Licensing Acts committee or a sub committee thereof. These decisions cannot be delegated to officers. 48 hours does not include time that is not on a working day.

Consultation

18. An informal meeting of the Gambling and Licensing Acts committee was held on the 5 July 2007 when the issues surrounding two recent Licensing Act appeals were discussed.

Options

Member involvement in Appeals

19. Option 1 That all members of the sub committee who determined the application attend all meetings and the full appeal hearing.
20. Option 2 That the Chair of the sub committee who determined the application attend all meetings and the full appeal hearing.
21. Option 3 That all members of the sub committee who determined the application be advised of the dates of all meetings and the full appeal hearing and decide if and when they are available and wish to attend.
22. Option 4 That the Chair of the sub committee who determined the application be advised of the dates of all meetings and the full appeal hearing and decide if s/he are available and wish to attend.
23. Option 5 That officers keep the Chair of the sub committee advised of the outcome of all meetings and seek guidance where the situation and timescales permit.

Analysis

24. Option 1 This would be extremely time consuming for 3 members to attend all meetings and hearings. It could also be viewed as being an inefficient use of resources. In the case of a hearing there would likely not be the opportunity for members to be briefed and come to any consensus view should that be required. It would however allow for maximum member involvement.

25. Option 2. This would be very demanding on one member and may involve several full days attendance. It maybe during that period no issues arise on which members views would be required. It would keep the Chair involved in the entire process. The Chair however might not represent the views of all members of the sub committee.
26. Option 3 This would enable all members of the sub committee to select availability. The issues raised in options 1&2 would still be valid with the added issues that continuity would be difficult to maintain. Members would not be committed to attending on each and every day giving flexibility
27. Option 4 This would enable the Chair to select availability. Additional briefing would be required to make sure the Chair was appraised of issues arising when not in attendance. The Chair might not represent the views of all sub committee members.
28. Option 5 This would represent the minimum member involvement. The Chair would not attend any meetings but would be kept informed of all developments. The Chair would not be committed to any attendance at meetings or the hearing. Should officers require member advice during a hearing then attempts could me made to obtain this over the telephone if contact details were made available.

Corporate Priorities

29. There is no direct link to any of the council's priorities

Implications

Financial

30. There are no financial implications.

Human Resources (HR)

31. There are no human resource implications.

Equalities

32. There are no equality implications.

Legal

33. The approach adopted is considered to be appropriate and consistent with legislation

Crime and Disorder

34. There are no crime and disorder implications.

Information Technology (IT)

35. There are no information technology implications.

Property

36. There are no property implications.

Other

37. There are no other implications.

Risk Management

38. There are no known risks associated with this decision.

Recommendations

39. a) In respect of member involvement in the appeal process members are asked to approve Option 4:

That the Chair of the sub committee who determined the application be advised of the dates of all meetings and the full appeal hearing and decide if s/he is available.

Reason: This option represents the most flexible and resource efficient method of involving members in the appeal process.

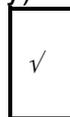
40. b) In respect of the summary reviews members note the process and recognise that sub committees may need to be convened at very short notice

Reason : to comply with legislation.

Contact Details

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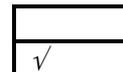
Chief Officer Responsible for the report:
Andy Hudson
Assistant Director (Neighbourhoods and
Community Safety)
Report Approved



Date 20/9/07

Specialist Implications Officers: None
Wards Affected:

All



For further information please contact the author of the report

Background Papers:
Licensing Act 2003
Violent Crime Reduction Act 2006

Annexes: None