

UPDATES TO LICENSING SUB-COMMITTEE HEARING PROTOCOLS TO PROVIDE FOR REMOTE HEARINGS AND ADMINISTRATIVE ADJOURNMENTS

Committee name	Licensing Committee
Officer reporting	Mark Braddock, Democratic Services
Papers with report	None.
Ward	All

HEADLINES

The Licensing Committee is requested to consider two amendments to the hearing protocols under both the Licensing and Gambling Acts to improve the efficiency of proceedings by enabling the opportunity to hold remote hearings and also adjourn scheduled hearings outside the meeting, where required.

RECOMMENDATION:

That the Committee review and adopt the proposed two additions to the hearing protocols as set out in the report.

SUPPORTING INFORMATION

Democratic Services has sought a definitive legal view from the Borough Solicitor who has helpfully given advice on two aspects of how hearings are conducted which some Members have requested clarification on in recent weeks:

1. Can hearings be held remotely, including Councillors on the sub-committee?
2. Can the sub-committee adjourn administratively without having to convene formally?

The Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 ("together hereafter the Regulations") provide that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.

The procedure to be followed is set out in the relevant hearing protocols which are approved by the Licensing Committee.

Holding of Licensing Sub-Committee hearings remotely

The Borough Solicitor confirms that the Council has the necessary legal power to determine that these hearings can be held either remotely or in person. The Licensing Act 2003 [Hearings] Regulations 2005 are silent on the issue of whether hearings can

be held remotely, but the important point is that they do not expressly or impliedly prohibit remote proceedings taking place.

Furthermore, the Borough Solicitor also advises that the “place of hearings” requirement, set out in the Regulations, is not confined to a physical geographical location and “place” has a broader meaning which can include an online location.

Should the Licensing Committee wish to amend the hearing protocols to enable remote hearings, the Borough Solicitor advises that it should be distinct that the Sub-Committees has a clear choice as to whether they hold hearings remotely or in person, with no compulsion for either form.

The ability to hold remote hearings could be beneficial at certain times, where for example parties are finding it difficult to attend in person or if further social distancing restrictions are brought in. However, it would ultimately be a decision for the Chairman and sub-committee members to proceed on such a basis.

If the Committee are minded to provide for the option of remote hearings, then the following additional wording can be added into paragraph 9 of the hearing protocols:

‘It is lawful for the Sub-Committee to hold the hearing remotely and therefore it is entirely within the discretion of the Sub-Committee to decide whether a particular hearing is held remotely or in person. Notice will be given in writing by Democratic Services in advance of the hearing to all parties concerned if the Sub-Committee decides to hold a hearing remotely and all necessary information required to facilitate the proper conduct of the hearing will also be provided by Democratic Services. For the avoidance of doubt, the procedures to be followed at the hearing, including whether the hearing is to be held in public or private, will apply equally to all hearings, irrespective of whether they are conducted remotely or in person’.

Adjourning a hearing outside the meeting

Whilst the hearing protocols provide for hearings to continue in the absence of a particular party attending, they also provide for the sub-committee to adjourn to a later time and date, for example, where a party gives late notice that they cannot attend.

It is important to ‘adjourn’ rather than cancel and reschedule the hearing, as this ensures the application or review can still be determined within the legal timescales.

Clarification on the process of adjourning a hearing has been sought, to make better use of Members’ and other parties time and not having to attend the hearing formally, for it to then to only be adjourned say a few minutes later.

The Borough Solicitor advises that Members have two choices, other than meet formally to adjourn. Firstly, they can resolve to adjourn formally at a remote hearing if this is more convenient. Secondly, it is advised that there is no legal difficulty with Members being able to “adjourn administratively”. The Regulations are not prescriptive on this point but there would be no prohibition on an adjournment being agreed by Members on the sub-committee outside the formal hearing, e.g. by email or other electronic means.

If the Committee are minded to provide the option of adjourning administratively, then the following additional wording can be added into paragraph 7 of the hearing protocols:

‘The Authority is able to lawfully adjourn the hearing without the need to formally meet to agree an adjournment. It follows that the Authority can agree to an adjournment both at a hearing itself or it can adjourn “administratively” outside of a hearing/meeting through the mechanism of e-mail or other acceptable electronic means which it considers appropriate. The Authority should clearly record its reasons in writing for agreeing the adjournment’.

The formal record of any prior adjournment will be within the relevant minutes for that application or review when finally heard.

A final, but important point to note, is that these changes only apply to hearings under the Licensing and Gambling Acts as they operate under different legislation. They cannot apply to Licensing Sub-Committee meetings to consider other matter under the Committee’s remit such as street trading, sex establishment or scrap metal decisions. Furthermore, they cannot apply to other ordinary committees of the Council operating under the Local Government Act 1972, which are currently required to be “in person” and where any adjournments must be determined formally at the relevant meeting.

Financial implications

None directly from this report

Legal implications

These are set out in the report.

BACKGROUND PAPERS

- The Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007
- LBH Hearing Protocols