

Meeting of:	<b>Statutory Licensing Committee</b>
Date of Meeting:	<b>Tuesday, 08 February 2022</b>
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Review of Licensing Sub-Committee Hearing Procedure
Purpose of Report:	To seek Members' approval for proposed changes to the procedure for Licensing Sub-Committee Hearings.
Report Owner:	Director of Environment and Housing
Responsible Officer:	Will Lane, Operational Manager for Neighbourhood Services Yvonne Witchell, Licensing Team Manager
Elected Member and Officer Consultation:	Principal Lawyer Democratic Services
Policy Framework:	This report is a matter for decision by the Statutory Licensing Committee.
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>This report advises Committee and seeks their approval on proposed changes to the procedure for Licensing Sub-Committee hearings. These changes reflect common practice across Local Authorities relating to how Sub-Committees' decisions and reasons thereof are communicated with Applicants following their hearings.</li> </ul>	

## **Recommendation**

1. That the revised Licensing Sub-Committee hearing procedure (attached at Appendix A to the report) be endorsed subject to any amendments recommended by Committee.

## **Reason for Recommendations**

1. To ensure that applicants are provided with accurate and up-to-date procedural guidance ahead of their hearings.

## **1. Background**

- 1.1 Following discussions held at the Institute of Licensing's (IOL) Training Conference event in November 2021, the Chair of the Vale of Glamorgan Council's Statutory and Public Protection Licensing Committees approached Officers within the Licensing Authority and suggested that procedure be reviewed with regard to the way decisions and reasons were communicated with Applicants.

## **2. Key Issues for Consideration**

### **Changes to Licensing Sub-Committee Procedure**

- 2.1 Under the Vale of Glamorgan's current procedure for Licensing Sub-Committee hearings, the Applicant and Licensing Officer vacate the hearing when the Sub-Committee retire to deliberate in private and are subsequently invited to re-join the hearing (either in person or remotely, COVID-19 restrictions permitting) in order for the Sub-Committee's decision and relevant reasons to be conveyed to them verbally by the Chair.
- 2.2 In accordance with The Licensing Act 2003 (Hearings) Regulations 2005, with the exception of hearings held under specific circumstances, a Licensing Sub-Committee "must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held."
- 2.3 Many other Local Authorities therefore end hearings at the point when the Sub-Committee retire to deliberate in private, with no expectation for parties to re-join subsequently, and with the Licensing Officer usually contacting the Applicant later that day (or within five working days) to advise of the decision.
- 2.4 The proposed changes to the procedure would adopt this same approach and bring the Vale of Glamorgan's practice in line with that of other Local Authorities.
- 2.5 The proposed changes would also afford Sub-Committees more time to ensure that the reasons provided for their decisions are as robust as possible should an

appeal be made by the applicant.

- 2.6 The relevant changes have been marked using red text on pages 7 and 12 of the draft revised procedure (attached at Appendix A to the report). Other minor changes have also been made to reflect the most up to date remote meeting arrangements and language adopted by Democratic Services, and these are noted in red throughout the document for Members' information.
- 2.7 Subject to Members' feedback, once approved the procedure will be circulated to applicants along with other guidance documentation prior to the meeting date.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1 The Well-being of Future Generations (Wales) Act 2015 ('the 2015 Act') sets out new ways of working – of planning and making decisions – for local authorities and other public bodies it lists. The proposal supports the well-being objective of working with and for our communities.

### **4. Resources and Legal Considerations**

#### **Financial**

- 4.1 There are no direct financial implications.

#### **Employment**

- 4.2 There are no direct employment implications.

#### **Legal (Including Equalities)**

- 4.3 In accordance with The Licensing Act 2003 (Hearings) Regulations 2005, with the exception of hearings held under specific circumstances, a Licensing Sub-Committee "must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held."

### **5. Background Papers**

None.



**THE VALE OF GLAMORGAN COUNCIL**

**LICENSING ACT 2003**

**SUB-COMMITTEE HEARING PROCEDURE VIA REMOTE ATTENDANCE**

This procedure is issued in relation to the Coronavirus Act 2020 and the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).

Issued: FEBRUARY 2022

For further information please contact Democratic Services on (01446) 709856 or email [democratic@valeofglamorgan.gov.uk](mailto:democratic@valeofglamorgan.gov.uk)

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## 1. INTRODUCTION

Objectives of the Licensing Hearing process during the Coronavirus (Covid-19) Outbreak:

- To ensure that applicants and those persons making representations have the right to a hearing prior to the determination of the application by the licensing authority and are not disadvantaged by the measures in place to protect public health.
- To ensure that licensing authority discharges its functions under the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).

The relevant regulations can be found here:

<http://www.legislation.gov.uk/ukxi/2005/44/regulation/19/made>

The Coronavirus Act Regulations mean that measures have to be put in place for the determination of licensing applications which cannot be dealt with under the Scheme of Delegation to Officers and the existing Licensing Sub-Committee procedure (Appendix A).

- The licensing authority may decide to hold a hearing using remote access provided:
- All parties can fully present their case having regard to the fact that the onus is on the participant to ensure compatibility, competence and technical ability to participate remotely,
- Each person participating has access to an electronic device to permit them to hear and be heard. The right to a fair hearing is not affected so as to prejudice or make the hearing manifestly unfair. With this in mind any technical breakdown of the proceedings will not automatically render the proceedings unfair or prejudicial.
- Although the council may facilitate a hearing through video conferencing a remote access by video link is not a mandatory requirement for participation in a hearing. All parties must have suitable means of dialling into the meeting by telephone.
- The licensing authority considers that the hearing is capable of being heard in accordance with the regulations.

## **2. MEMBERSHIP OF LICENSING SUB-COMMITTEES**

The membership of Sub-committees shall continue to be in accordance with the Licensing Act 2003 and Council Constitution and consist of three Members of the Licensing Committee. However, should a Member be taken ill once the hearing has commenced, there will be an additional Member on standby and the hearing will start again.

## **3. LEGAL OFFICER AND OTHER OFFICERS ATTENDING THE MEETING**

Each committee will be assisted by a Legal Officer, a representative from Democratic Services, and other officers who may be required to give assistance with technical support required for a remote hearing.

## **4. PREPARATION FOR THE HEARING**

Notice of hearing, the prescribed timescales for notices and the hearing itself will be in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).

The current practice of promoting mediation shall apply to all applications and shall be undertaken by the Licensing Team. If representations are not withdrawn, a licensing officer will notify the Democratic Services team that a hearing is necessary.

A licensing officer will contact the applicant and all those persons who have made representations by appropriate means to confirm with all parties;

- That as a minimum, they have the facility to join the meeting by telephone.
- whether they are able to participate in a remote hearing by telephone and video conference if available, and
- Those persons making representations will also be asked to consider electing a single spokesperson to act on their behalf at the remote hearing.

At this point a licensing officer will establish whether a party requires translation or signing services to participate in a hearing and advise Democratic Services accordingly.

Once the information has been received, a licensing officer will report back to Democratic Services for a decision to be made on whether a remote hearing may proceed.

The hearing will be dealt with by remote hearing if the parties are able to fully present their cases, have access to the electronic means to allow them to hear

and be heard, and the Legal Officer considers that the hearing is capable of being heard fairly and transparently.

Prior to the hearing, all parties will receive details of the platform to be used and receive technical guidance on how to access and participate in the meeting.

## **5. NOTICE OF HEARING**

Notice of hearing shall be sent to all parties at least ten working days before the commencement of the hearing. A copy of this procedure and technical guidelines will accompany the Notice.

All parties will receive a hard copy of, or hyperlink to, the published Sub-Committee report to be considered at the hearing.

Ahead of the day of the hearing, all parties will receive the necessary telephone number and hyperlink to enable access to the remote platform.

All parties are advised that the proceedings of the hearing will be **live streamed and** recorded and where possible/**appropriate**, may be uploaded to the Vale of Glamorgan Council website.

## **6. DAY OF THE HEARING**

On the day of the hearing, all parties will be asked to be ready with their connection device 10 minutes before their allocated time.

A Democratic Services Officer will then contact the applicant and other parties to advise that the Sub-Committee is now ready for their application to be heard.

## **7. SUB-COMMITTEE PROCEDURE**

The relevant technical guidelines should be followed to participate in the meeting and the meeting will follow the procedure set out in Appendix A with the following amendments:

### **Appendix A Step 3**

Where the procedure refers to the Legal Officer or Chair, they may also be assisted in operating the remote platform by a Democratic Services Officer or IT Officer.



## **Appendix A Step 4**

### **General**

All parties will be expected to be fully familiar with the Sub-Committee report prior to the meeting. The Licensing Officer will ask if all parties have read the report, deal with any clarifications on the report content, and advise the Sub-Committee of any additional documents submitted for consideration at the meeting (i.e. those documents which are permitted to be admitted under the Licensing Act 2003 (Hearings) Regulations 2005 (as amended)).

### **Documentation**

The applicant is encouraged to submit a written version of their presentation to the Sub-Committee which will also be sent to the other parties. Similarly, if other parties wish to submit amplification of their representations, they may do so subject to the following:

Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 requires that in considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. To enable the smooth running of a remote hearing all parties are requested to submit if possible, any additional written material no later than two working days' before the hearing to allow for the circulation of the document to all other parties.

All parties must note that amplification of existing representations is permitted, but must comply with Regulation 19:

Representations and supporting information

19. The authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to—

(a) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and

(b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

### **Presenting the application or representations**

There is no prescribed time limit set for a ~~non~~-remote hearing. In a non-remote hearing, presentation of evidence and questions can last for about 45 minutes to an hour, at which point the Sub-Committee will retire to make their decision. This will vary according to the circumstances and the needs of running a remote hearing.

## 8. DETERMINING THE APPLICATION

Once the hearing has concluded, the Sub-Committee will deliberate in private and reach a determination, however in some circumstances this may take up to five working days. The Licensing Officer will contact the Applicant to advise of the decision, and written notification will be issued to all parties as soon as possible after the meeting. If parties have access to email, this will be the quickest method to receive the decision.

## 9. TAKING PART IN THE HEARING

Some of this guidance will apply to all participants, while some will apply to specific participants. This will be clearly indicated throughout the guidance.

## 10. ALL PARTICIPANTS

### Device

- Before the date of the hearing, follow the instructions sent to you to check that the device you plan to use is fully compatible with the remote platform.
- If multiple devices are available to you (e.g. a phone and a laptop), and if you wish to participate via video link we recommend using the device with the biggest screen. This will be the one that most likely gives you an option to see all participants, rather than being restricted to only viewing the participant who is currently speaking. You must bear in mind that **participating via the video conference access** is not mandatory and **it is beneficial** to have a charged phone on standby.
- Take some time before the date of the hearing to familiarise yourself with where the microphone and headphone plug-in is on your device, as knowing where to find these will be helpful if you are required to speak more loudly and/or hear more clearly. The best audio quality will likely be achieved by plugging a separate microphone into the device – most modern headphone sets include a microphone.
- Make sure before the hearing starts that your equipment is fully charged or has the capacity to charge without impeding your audio/visual settings while the hearing is ongoing. Keeping your device plugged in

to a power source if possible as this will give you confidence that the battery will last for the duration of the hearing.

### **Room setting and position**

- Please take some time to consider where you'll be able to make yourself comfortable so that you can focus on the discussion at hand.
- If participating with video, where possible it is best to try and find a space with a plain background **or activate a background image**. Other participants may find it distracting to see photos or shelves full of books or ornaments in the background. Also consider lighting – if a light source is behind you in the shot your face will likely end up looking darker on screen. Equally, too strong a light in front of you might have a 'bleaching' effect. Most devices will allow you to access your camera ahead of the hearing so you can identify where best to position yourself.
- If participating with video, aim to position your device appropriately so that your head and shoulders are in the shot (similar to a passport photo).
- Make sure that you can easily view any necessary documentation. You will have paper copies sent to you in the post, but if you choose to have these sent to you electronically please ensure you are set up so that you can see both the documents and the video conference easily.
- If referring to a document during the hearing, please be specific regarding which Appendix it is in as well as the page number and please allow time for others to locate the same document.
- Have a pen and paper ready to use. Conversation won't flow as naturally as it would with people in the room together, and the Chair will be moderating the order in which participants speak. You may therefore find it helpful to take notes of any points you would like to make so you can refer back to them when it is your turn to speak.
- Before the hearing starts, please ensure that any other nearby electronic devices are set to silent, or mute notifications on the device you're using. If you experience interference during the call, this could be caused by other devices nearby so you may want to turn off any other devices or remove them from the same room as you.

### **Speaking**

- If you are not currently speaking, please mute your microphone. This will help to reduce the level of disruptive and distracting background noise and assist all participants in hearing one another as clearly as possible

- If you wish to speak, please indicate this via the instructions sent to you for the remote platform and wait until the Chair asks you to speak.
- If a question is asked of one participant directly, that participant will be the first person afforded an opportunity to respond. It is crucial that all participants respect this process and listen to the Chair to ensure everyone has a fair opportunity to make their points without being talked over.
- If any participant repeatedly disregards this process and talks over other participants without waiting for the Chair to confirm it is their turn, the Legal Officer or other officer present will be able to mute their microphone.
- When speaking, don't shout. You will be advised if your volume of speech is too low, it will usually require participants to either move closer to their microphone or to adjust their microphone/volume settings.
- It is important that all participants communicate as much as possible verbally, as not everyone will be able to see gestures or facial expressions. Confirmation will be given at the start of the hearing which participants have screen access and whether any aren't visible on camera.
- You will receive advice on what happens if there are connection problems to the meeting.

## 11. THE CHAIR

- Once all participants have joined the meeting, check that all are comfortably set up and ready to participate, and have easy access to the documentation.
- All parties will be introduced by a Democratic Services Officer **or asked to introduce themselves in turn on request.**
- Make sure all participants are aware of how the discussion will be moderated. It will be difficult to moderate the flow of the discussion completely, and it is therefore a good idea to try and keep discussion structured on a topic-by-topic basis as much as possible:
- It's a good idea to routinely check in with the Democratic Services Officers as to whether all participants are still connected and haven't been 'lost'. Should confirmation be received that a participant is having technical difficulties, the Chair~~man~~ should advise all participants that a short adjournment is necessary and ask all to mute their microphones until the hearing can resume.

## 12. SUB-COMMITTEE MEMBERS

- Please ensure that you are set up in a space that is private and where you will not be interrupted or overheard while hearings are ongoing.
- Hearings will usually commence at 10.00 am however the ~~Legal~~ **Democratic Services** Officer will ensure that the 'meeting' has started and is available to be joined from 9.30am onwards.
- We ask that you take steps to join the meeting (see technical guidance for instructions) by 9.45am, which will allow officers time to assist with any technical difficulties if needed.
- Should the meeting commence at a different time, joining the meeting will follow the above, e.g. you should be logged in and ready fifteen minutes before the start of the meeting.

**LICENSING ACT 2003 -  
LICENSING COMMITTEE PROCEDURES**

**FOR SUB-COMMITTEE HEARINGS VIA REMOTE ACCESS**

The purpose of this procedure is to ensure hearings of the Licensing Sub-Committee are dealt with in a just, timely and effective way. Throughout the hearing the Licensing Authority shall focus on particular representations or objections made and will consider the relevant licensing objectives. During the hearing all parties will be restricted to raising issues directly relevant to the application, representation or notice.

**Procedure**

**Step 1** Legal Officer to the Committee outlines procedure for hearing to those present.

**Step 2** Appoint Chair~~man~~.

As a Chair~~man~~ will have to be appointed at each Sub-Committee hearing the Clerk (**Democratic Services Officer**) to the Committee will request a nomination, a vote will be taken and the Chair~~man~~ for the duration of the Sub-Committee hearing will be announced.

**Step 3** The Chair~~man~~-will introduce the Sub-Committee, announce the item, welcome those present, establish the identity of all who will be taking part and ask if they have made written representations to the Authority.

*(N.B. Where a party expected to attend does not, the Sub-Committee will consider whether to adjourn the hearing or continue in the absence of the party. Where a party has requested another person be allowed to appear at the hearing as a witness the Sub-Committee will consider the request.*

*With the permission of the Sub-Committee, questions may be asked of any party to the hearing by any other party.*

It must further be noted that all questions must be made through the Chair~~man~~ and not directly to the applicant or responsible authorities without prior approval of the Sub-Committee Chair~~man~~)

*The order of questioning shall be Applicant, Responsible Authorities, Interested Parties, Members of the Sub-Committee.)*

- Step 4** The Licensing Officer outlines the application, confirms the application details, introduces the report and gives an update on any recent changes.
- Step 5** The Chair~~man~~ will then invite the applicant or their representative to present their case and bring forward any witnesses after which the applicant and witnesses can be questioned in turn by all other parties.
- Step 6** The Responsible Authorities. The Chair~~man~~ will call on any of the relevant responsible authorities to provide factual information about their involvement with the premises, make reference to the comments in their reports, provide any necessary updates and call any witnesses, after which they can all be questioned in turn by all other parties.
- Step 7** The Chair~~man~~ will invite the Interested Parties to speak and bring forward any witnesses to their case who can be questioned in turn by all other parties.
- Step 8** Those making representations will be invited to sum up or may nominate a representative to sum up on their behalf. The order will be responsible authorities followed by interested parties.
- Step 9** Applicants closing statement. The applicant or their representative can make a brief closing statement summarising his or her case and making any closing remarks.
- Step 10** Final clarification for Members. Sub-Committee Members have a final opportunity to seek clarification on any points raised.
- Step 11** The Sub-Committee retire to deliberate **in private** accompanied only by the Legal Officer and the Committee Clerk.
- Step 12** **The Sub-Committee will usually reach a decision at the conclusion of a hearing however, this may take up to five working days depending on the nature of the Application. Once a decision has been reached the Licensing Officer will be advised of the outcome by the Committee Clerk.**
- Step 13** **The Licensing Officer will subsequently advise the Applicant of the Sub-Committee's decision, with reasons thereof to be provided to the Applicant within five working days of the Sub-Committee hearing.**

**NOTES:**

*N.B. It must be noted that any legal advice given to the Sub-Committee during their deliberations will be repeated publicly and comments invited where appropriate.*

*The Licensing Officer will remind the applicant that the decision will also be sent to them in writing. At this point there can be no further questions or statements.*

#### *Adjournments*

*The Sub-Committee may adjourn the hearing where considered necessary for the consideration of representation or notice.*