

Meeting of:- Licensing Committee

On:- 14th September 2006

Agenda Item No.:-

Topic:- Review of Hearing Procedures

Type of Report:- For Information

Executive Summary:- The Solicitor to the Council has considered the previous request of the Licensing Committee and recommends that no amendments are made to the procedures at this time. There is a further recommendation that further training is made available to Members on the use of these procedures and also for chairing hearings.

Options: To accept or reject the recommendations.

Risks: If the recommendations are rejected, there is potential for a successful appeal on the grounds of an unfair hearing.

Recommendations

- (1)** That no amendments are made to the hearing procedures.
 - (2)** That the Solicitor to the Council organises a training session, which will comprise a mock hearing, and a Question and Answer session on the use of the procedures.
 - (3)** That Members of the Licensing Committee who wish to chair hearings attend a training course on chairing quasi –judicial meetings.
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Background Papers:- The Licensing Act (Hearings) Regulations 2005

Financial Implications:- None

Equalities Implications:- None

Legal Implications:- see section on Risks

For further details please contact:- Sharon Lowe, Solicitor to the Council on 01376 551414 or by email shalo@braintree.gov.uk

BACKGROUND

At the meeting of the Licensing Committee on 6th July, Members asked the Solicitor to the Council to look at the licensing procedures with a view to amending them to enable participants to respond to questions as they arise. I understand that this request was as a result of a recent hearing when the legal representative for the license holder wished to question a witness immediately after they had spoken.

EXISTING PROCEDURE

Our procedures are similar to those used by other licensing authorities and have been drafted so as to comply with legislation, the rules of natural justice and the right to a fair hearing. They do not permit a person to question a witness immediately after they have spoken as this encourages cross –examination.

THE LAW

The Licensing Act 2003 (Hearings) Regulations 2005 state the hearing should take the form of a discussion led by the authority. A party should be able to present their case and call their witnesses with the other parties then raising points that they would like clarifying/amplifying. The questions should be put through the Chairman, with the party presenting the case deciding who is going to answer the question or clarify the point.

The regulations also state that cross-examination shall not be permitted unless the authority considers that it is required in order to consider the representations, application or notice as the case may require. Members are on a fact-finding exercise and are not a court of Law. There should be no need to cross –examine a witness, unless, for example a party has evidence that another party is lying.

If cross-examination is permitted, then care must be taken to avoid any allegations of intimidation of witnesses, especially if the person asking the questions is legally qualified. To allow this would suggest that there has been an unfair hearing.

I would not advocate a procedure that permitted cross-examination as a routine step but would advise Members to only permit it if there are special circumstances that require it. This would involve Members making a decision on a case by case basis and also recording why they have departed from the usual procedure. Accordingly I do not recommend any changes to the existing procedure at this time.

FUTURE REVIEW OF PROCEDURES

It is our practice to review procedures annually and the next review is due in January 2007. I would suggest that any lessons to be learnt from any future hearings are incorporated into the next review. To scope the review, I am making a further suggestion that at the next meeting of the Licensing Committee there is a mock hearing and a Question and Answer Session in order to identify any other points which could be incorporated in the annual review.

FUTURE TRAINING

It is vitally important that all Members of the Licensing Committee receive regular training on licensing issues, particularly with regard to the hearing process. As part of the Member Development Programme for next year, there is an opportunity to provide training on chairing quasi-judicial meetings. This will be relevant to any Member who chairs meetings which determine licensing applications, complaints on ethical standards and planning applications. I would therefore recommend that those with an interest in chairing a licensing hearing should attend a future training course.