

LICENSING AND SAFETY COMMITTEE

26 APRIL 2005

LICENSING ACT 2003 - GUIDELINES FOR HEARING OF APPLICATIONS

Report from: Mark Bowen, Assistant Director Legal and Contract Services

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1 Summary

- 1.1 The purpose of this report is to ask the Licensing and Safety Committee to consider and approve the proposed guidelines for hearing licensing applications under the Licensing Act 2003.

2 Decision Issues

- 2.1 The committee has delegated powers to determine this matter.

3 Background

- 3.1 The Licensing Act 2003, which came into force on 7 February 2005, requires that the Council determine applications for a number of different matters to include alcohol, entertainment and late night refreshment. The Act requires that applications are determined within strict timescales which would put pressure on the proposed Licensing Hearing Panels to determine applications and appeals.
- 3.2 The committee is empowered to determine a procedure for hearing contested applications and appeals. In the event of the issues being straightforward, the Licensing Manager may deem it appropriate to invite the parties to make representations in writing for consideration by a proposed Licensing Hearing Panel. The regulations state that this may only be done if all the relevant parties agree. However, in more complex cases a full hearing will be necessary.
- 3.3 At the last meeting of the committee in January 2005, when draft regulations were in circulation, members agreed a procedure which broadly followed the system currently used in a magistrates' court. However, the final regulations have since been published and state the following:

Procedure at hearing

”A hearing should take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider representations, application or notice as the case may require.”

- 3.4 The committee is requested to re-consider the procedure to be used at a hearing and agree to follow a more informal format, as prescribed in the regulations to avoid a possible legal challenge in procedural matters, as shown at Appendix A..

4 Financial implications

- 4.1 There are no direct financial implications for Medway Council concerning this matter at present.

5 Legal implications

- 5.1 The legal implications are set out in the body of this report.

6 Recommendation

- 6.1 That the committee approve that applications may be determined by either written representation or by a full hearing, as deemed appropriate by the Licensing Manager in accordance with the provisions of the Licensing Act 2003.
- 6.2 That the committee approve the guidelines to be used at a Licensing Hearing Panel meeting as shown at Appendix A.

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GUIDELINES FOR LICENSING HEARING PANELS

The chairman will control the proceedings and the following is a guideline for each hearing but may be adjusted if appropriate.

1. The chairman briefly explains the proposed format for the meeting and asks everyone to introduce themselves.
2. The Licensing Officer outlines the application.
3. The applicant (or their representative) speaks in support of their application and call any witnesses.
4. Objectors* ask the applicant (or their representative) and witnesses questions.
5. The panel asks the applicant (or their representative) and witnesses questions.
6. Objectors* speak about their representation and call any witnesses.
7. The applicant (or their representative) asks the objectors questions.
7. The panel asks questions.
8. All parties are asked if they wish to add anything further.

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9. The chairman requests everyone to leave the room in order that the panel may reach a decision. The Legal Officer and Committee Co-ordinator to the panel will remain.
 10. Everyone will be invited to return to receive the decision. In the event of complex or lengthy applications, the panel may decide to give its decision at a later date.

* Objectors may include responsible authorities such as the Police, the Fire Brigade, Environmental Health Officers, Development and Building Control Officers, Highway Officers, Trading Standards Officers and local residents. The responsible authorities will be asked to speak first.