

Committee: LICENSING COMMITTEE
Date: 14 JANUARY 2004
Agenda Item No: 6
Title: COMMITTEE PROCEDURES
Author: Michael Perry (01799) 510416

Summary

- 1 This report is to set out the options available for Members in dealing with applications for licences under the Local Government (Miscellaneous Provisions) Act 1976 (hackney carriage and private hire licensing), Local Government (Miscellaneous Provisions) Act 1982 (public entertainment) and the Licensing Act 2003 and to seek Members' views on the future conduct of Committee meetings.

Background

- 2 At present the Council is responsible (through this Committee) for granting licences in relation to hackney carriages and private hire vehicles and for public entertainment. From a date to be appointed this Committee will also be responsible for licensing under the Licensing Act.
- 3 The procedure adopted by the Development Control and Licensing Committee (prior to the appointment of this Committee) was that applications for public entertainment licences were dealt with in public but that the press and public were excluded from applications for hackney carriage and private hire vehicle driver licence applications on the ground that the agenda item relating to such cases contained exempt information under paragraph 4 of Part 1 Schedule 12A Local Government Act 1972 – information relating to any particular applicant for or recipient of any service provided by the authority.
- 4 When the Licensing Act 2003 becomes effective Members will be required to determine applications for personal and premises licences for any licensable activity as defined by that Act. Members therefore need to consider whether applications for such licences should be dealt with in public or in the absence of the press and public. Members are also invited to reconsider the existing policy relating to hackney carriage and private hire vehicle driver licensing.
- 5 The relevant law is to be found in the Local Government Act 1972 and the Human Rights Act 1998.
- 6 The 1972 Act provides that all meetings of a Council and its Committees must be held in public. There are however a number of instances where the exclusion of the press and public is permitted. These instances are known as exempt information. Paragraph 4 of Part 1 Schedule 12A of the 1972 Act

referred to above would permit the exclusion of the press and public for the consideration of any applications for licences which fall to be determined by this Committee.

- 7 Article 6 Part 1 Schedule 1 Human Rights Act 1998 provides that in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing by an independent and impartial tribunal. Decisions shall be pronounced publicly but the press and public may be excluded from all or part of the hearing in the interests of morals, public order or national security, where the protection of the private lives of the parties so require or to the extent strictly necessary in special circumstances where publicity would prejudice the interests of justice. Article 8 Part 1 Schedule 1 gives everyone the right of respect for his private and family life. This can only be interfered with in accordance with law and where necessary in the interests of national security, public safety, the economic well being of the country, for the prevention of crime and disorder, for the protection of morals or for the protection of the rights and freedoms of others. Article 10 Part 1 Schedule 1 gives the right to receive information without interference by public authorities. Interference with this right can be justified upon grounds similar to those relating to Article 8.
- 8 It is generally accepted that the effect of the Human Rights Act is to create a strong presumption that hearings should be in public. The public interest in having access to the judicial (and by analogy therefore the quasi judicial process) outweighs the individual's right to privacy. As a consequence small claims hearings in the county courts which were prior to 2000 held in private are now open to the public and in the employment tribunal a decision was set aside as there had not been a public hearing.
- 9 At present liquor licensing is dealt with in the magistrates' courts. All applications for licences are dealt with in open court where the press and public have unlimited access.
- 10 The Licensing Act 2003 divides licences into two categories, premises licences and personal licences. Officers take a view that there is a legitimate public interest in what premises should be licensed and what the terms of the licence should be. Whilst doubtless applications for premises licences would be capable of being treated as exempt information officers can conceive of no circumstances where the privacy of the individual would override the public interest to justify the exclusion of the press and public from the consideration of such applications.
- 11 Applications for personal licences where the applicant has been convicted of a specified offence will require a hearing if there are police objections to the licence being granted (unless the applicant, police and Council all agree that a hearing is unnecessary). The applicant may wish this aspect of his private life to be kept out of the public arena. However it is arguable that the public have a legitimate interest in seeing the type of person the Council is granting licences to. Members will need to form a view as to whether the individual's right to privacy outweighs the public interest. In reaching a conclusion Members will bear in mind that an unsuccessful applicant will have a right of appeal to the magistrates' court where the hearing will be in public. However

an unsuccessful applicant who wishes to preserve his privacy need not appeal.

- 12 If Members determine that applications for premises licences should be dealt with in public it would seem appropriate to reconsider the policy of dealing with hackney carriage and private hire vehicle drives licence applications in the absence of the press and public. This is a long-standing practice and one it is believed is shared by most licensing authorities. When the Human Rights Act was passed there was some debate as to whether private hearings breached the Act. However shortly after the HRA came into force it was decided by the courts that where there was a right of appeal and that the appeal process fulfilled the criteria laid down by the Act this ratified the whole procedure. The practice of private hearings therefore remained unchanged.
- 13 Applications for drivers licences only come before the Committee if the applicant meets the Committee's adopted licensing standards but there are reasons why the Head of Environmental Services considers that the applicant should satisfy the Committee that he is a fit and proper person to hold a license, where the applicant does not meet licensing standards but the Head of Environmental Services considers that there are circumstances in which the Committee may consider making an exception to policy or cases where an existing licence holder ceases to meet licensing standards and a revocation or suspension of his licence is to be considered. In each case the Committee will need to determine whether the applicant/licence holder is a fit and proper person which will involve hearing details of his character and past convictions. Applicants/licence holders may wish this aspect of their private lives to be kept out of the public arena. However it is arguable that the public have a legitimate interest in seeing the type of person the Council is licensing to drive hackney carriages and private hire vehicles. Members will need to form a view as to whether the individual's right to privacy outweighs the public interest. In reaching a conclusion Members will bear in mind that an unsuccessful applicant will have a right of appeal to the magistrates' court where the hearing will be in public. However an unsuccessful applicant who wishes to preserve his privacy need not appeal.
- 14 Since its appointment this Committee has met as a full committee. This has generally been appropriate as there have been policy issues to be considered and it is appropriate that as many Members of the Committee as possible should take part in those decisions. However it is considered that for the full Committee of 10 Members to sit in the determination of individual applications breaches Article 6 Part 1 Schedule 1 HRA referred to above and arguably Article 3 Part 1 Schedule 1 – no one shall be subjected to degrading treatment. To be subjected to questioning by a large panel is oppressive and may be intimidating thereby preventing the applicant from putting his case as well as he might.
- 15 The Committee cannot meet with less than 3 Members in order to be quorate. It is considered that the maximum number of Members which it would be appropriate to sit to consider individual applications is 5.

- 16 The Licensing Act empowers licensing committees to appoint sub-committees. Unfortunately under the terms of the Act the sub-committees must consist of 3 Members and no more. If a Member of an appointed sub-committee fails to attend a meeting the meeting is automatically inquorate which means the business listed on the agenda needs to be deferred.
- 17 One authority has overcome this difficulty by appointing sub-committees of every possible permutation of Members of the full committee. However this process is cumbersome. Further it requires the attendance of at least one or two other Members in addition to the sub-committee designated to sit so that there can be an alternative sub-committee in the event of non-attendance by one designated Member. The disadvantage for that/those Members is that having set the evening aside and attended the Council Offices, if the designated sub-committee all arrive they can take no part in the decision making process.
- 18 The Development Control and Licensing Committee, when it had the licensing function, overcame this problem by convening all its meetings as meetings of the full Committee but highlighting on the agenda Members who were expected to attend in rotation. Those not highlighted usually refrained from attending or, if there were policy issues to be discussed in which they had an interest, would leave for the consideration of individual cases. It was incumbent on Member's highlighted to seek their replacement by a colleague if for any reason they were unable to attend.
- 19 In the absence of experience it is not possible to estimate the number of hearings the Committee will need to hold regarding applications under the Licensing Act 2003. However the view of licensing and legal officers across the country is that in the initial stages the workload is likely to be substantial. There is a requirement that applications for premises licences must be determined within 2 months. Even if there are police objections if the hearing does not take place within 2 months the licence is deemed to be granted although the police will have a right of appeal. Applications for variations of premises licences must also be dealt with within 2 months and if the hearing has not taken place within that time are deemed to be refused although the applicant has a right of appeal. Applications for personal licences must be dealt with within 3 months or are deemed granted although if the police have objected they have a right of appeal.
- 20 In the event of an appeal based on non-determination (whether by the police or the applicant) there is a high probability that a successful appellant would secure a costs order against the Council. It is therefore imperative that applications are dealt with promptly. It is the view of officers that it may be necessary for the Committee (or a sub-committee if appointed) to meet at least once a week in the initial stages to deal with applications, although the workload is likely to reduce significantly after the transitional period.
- 21 The timing of the meetings also needs to be considered. It is the view of officers that the licensed trade would prefer daytime hearings. Licensees are used to their applications being dealt with during the day by licensing justices. Licensing matters are generally the first items dealt with on court days when such items fall to be considered. The trade is therefore used to daytime

hearings. In addition the busiest hours for public houses and restaurants are lunchtimes and evenings. It is at these hours licensees most need to be at their premises. It is considered therefore that applicants for licences (both premises and personal) would find daytime hearings far more convenient than evening meetings.

RECOMMENDED that Members determine:

- 1 Whether applications for premises licences under the Licensing Act 2003 should be dealt with in public or in the absence of the press and public
- 2 Whether applications for personal licences under the Licensing Act 2003 should be dealt with in public or in the absence of the press and public
- 3 Whether applications for hackney carriage and private hire vehicle drivers licences should be dealt with in public or continue to be dealt with in the absence of the press and public
- 4 Whether the Committee wishes to formally appoint sub-committees, continue the arrangement adopted by the Development Control and Licensing Committee or continue to sit as a full committee
- 5 How frequently the Committee (or its sub-committees) should meet and the timing(s) of such meetings

Background Papers: None

Committee: LICENSING COMMITTEE
Date: 14 January 2004
Agenda Item No: 7
Title: SCRUTINY REVIEW
Author: Richard Secker (01799) 510580

Summary

- 1 This report advises Members of the comments from Scrutiny 2 Committee of the procedure used in applying the recent taxi licensing fees and charges increases from September 2003.

Background

- 2 Following a petition received from a number of hackney carriage and private hire drivers, their complaint about the procedure used in deciding and applying licence fee increases was referred to Scrutiny 2 Committee for review.
- 3 That Committee received a written report of the normal process employed and the Head of Environmental Services explained the dates and stages relevant to the last increases applied in September 2003. It was further explained that the unexpected changes introduced by the Criminal Records Bureau had on this occasion prompted the application of the increases from the earliest practical date.
- 4 The Members noted that there was no statutory consultation process to be observed and therefore in many ways was similar to any price increases applied to other council services and facilities. However, there was a need to ensure that appropriate and effective liaison was in place with the trade in general and any specific groups or associations.
- 5 In respect of the review process as currently used it was suggested that any comments from the trade on specific increases being proposed should be included in the reports to the Licensing Committee when increases are to be considered. Subsequently, adequate notice and publicity should be given to any decisions.

RECOMMENDED that the suggestions from Scrutiny 2 Committee be accepted.

Background Papers: Report to Scrutiny 2 on 3 December 2003.