

L22 DISCUSSION ON WRITTEN PROCEDURES FOR DETERMINING LICENSING APPLICATIONS

The Chairman explained that, at the Sub-Committee meeting on 19 June 2000, Councillor Powers had objected to legal advice given by the Head of Legal Services, Mrs J Postings. There had followed discussion, meetings and correspondence, including a letter of 10 August 2000 to Councillor Powers from the Chief Executive, Mrs E Forbes, from which Councillor Dean read the following:-

"We had a wide-ranging discussion and I think this did help to reveal some misunderstandings. It was clear that procedures which have to date operated by custom and practice in relation to Members' contributions to Licensing Sub-Committee may benefit from firming up so that everyone is clear as to expectations and approaches. In particular, we identified the need to make explicit how a Ward Member may contribute to a debate on a Licensing application.

I have asked Joy Postings to ensure that there is a full debate on these issues by Licensing Sub-Committee so that appropriate procedures can be confirmed by Members."

Councillor Powers then stated that he considered items 5 and 6 on the agenda to be in the wrong order, and felt that the Sub-Committee could not sensibly deal with item 5 until it had received the training as per item 6. He then said that he had no confidence in the advice given by Mrs Postings to the Council, he wanted input from another external source or another Council. He continued that he had communicated with various bodies including the central office of the Liberal Democrat Party. He said that Mrs Postings had admitted that the procedures were only guidelines, not an approved procedure. He added that the advice from the Association of Liberal Democrat Councils was that there was not any right or wrong procedure, it was strictly a matter for Members, not officers.

The Chairman asked the Sub-Committee, having all heard Councillor Powers' views, whether anyone else felt the same way. Councillor R B Tyler informed the meeting that he wished to engage in the Workshop and receive the suggested clarification on the written procedures. Councillor A R Row stated that he was 100% satisfied with the advice that the legal people had given. The Chairman and some other Councillors concurred with this view and/or made statements in support. The Chairman concluded that despite Councillor Powers' concerns the Sub-Committee wished to proceed with the agenda in the original order. Councillor Powers asked for his comments to be recorded and the Chairman informed him that this would be done.

The Head of Legal Services then explained that the Licensing Sub-Committee was different in nature to any of the other Council Committees, having a regulatory and quasi-judicial function. There was a body of case law which set out the way in which such a committee could reach a proper decision. In particular a decision could founder if bias were shown or it were possible for the public perception of the process to be coloured by an impression of bias, for example, where an interested Member had sat in. The English courts had established the concept of natural justice which embraced these ideas about procedures for quasi-judicial bodies, this would be added to shortly, as a result of the Human Rights Act, with the European concept of justice and the right to a fair trial.

At this point, Councillor Powers stated that he was not listening. He felt it was a waste of his time. He was not prepared to listen to this rubbish. He had been over this ground with Mrs Postings before. It was just repeating ground gone over with the Chief Executive.

He left the meeting at 7.48pm. Councillor Mrs S Flack and the Chairman of the Sub-Committee expressed concern and at the request of the Head of Legal Services there followed a 5 minute adjournment.

Following the adjournment, the Chairman of the Sub-Committee expressed his profound regret that Mrs Postings had been subjected to the disgraceful behaviour which had taken place. Councillor Abrahams expressed the hope that Councillor Powers would be spoken

to by the Leader of the Liberal Democrats and stated that he felt his actions were downgrading for the Sub-Committee and for the whole Council.

The Head of Legal Services continued her explanation of the law relating to quasi-judicial decisions, stressing that it was most important that the Members of the Sub-Committee appear to have a totally open mind before taking the decision. She contrasted the planning committee decisions where there was a professional recommendation. She continued that it was therefore not appropriate for Sub-Committee Members to make statements during the hearing. It was possible, however, to ask questions using information which might otherwise form a statement. She gave examples of these.

She emphasised that having standard procedures helped demonstrate that the Sub-Committee was fair-minded and created confidence in applicants and objectors, although some flexibility might be necessary.

As regards representations, it was quite clear from cases that if a Councillor wished to speak for or against an application and remain on the decision making body the whole decision could be put into question. She suggested a number of possible ways of amending current procedures to make this aspect quite clear and suggested that the Sub-Committee might wish to consider either formally adopting the procedure or allowing it to rest with officers to retain flexibility.

In answer to a question from the Chairman of the Sub-Committee, the Head of Environmental Services confirmed that he had no questions.

Councillor Mrs S Flack commented that it seemed the Council was reasonably bullet-proof. Apart from the suggested provision for Councillors who wished to give background information she felt it was necessary for the Sub-Committee to have power to agree its own procedures and to amend them as necessary with officers. The Head of Legal Services informed the meeting that the Sub-Committee had powers to agree its own procedures under current standing orders.

Councillor R B Tyler stressed that the Licensing Sub-Committee members did not express opinion or try to persuade but merely gathered information. If any Member wished to make representations he or she should sit in a public place not with the Sub-Committee.

Councillor Tyler felt that this principle should be adopted and printed, and that Members of the Council should be advised that these are the procedures.

The Chairman of the Sub-Committee stressed that only one Sub-Committee member was objecting to the procedures which had served the Sub-Committee well for many years.

Councillor Mrs C Cant commented that it was not possible to be an objective Member of a Committee having declared an interest and taken a side.

In answer to a question from Councillor Abrahams the Head of Legal Services informed the meeting that one decision only of the Sub-Committee's had been challenged, but that this had not been on the basis of the way in which the decision had been made. More complexities could be anticipated when liquor licensing was transferred to local authorities.

In answer to a question from Councillor D Morson, the Head of Legal Services explained that it was not appropriate for a Member to put forward views of protesters even if not personally sharing those views, because bias could be perceived, though not necessarily present. The Chairman of the Sub-Committee stated in conclusion that it was inherent in sound British justice that no one could be on the jury and simultaneously act as prosecution and/or defence.

RESOLVED that

- 1 that officers revise the existing written procedures to incorporate an opportunity for Councillors to make statements or provide information to the Sub-Committee and draft appropriate guidance notes for such Councillors and that these be submitted to a future meeting of the Sub-Committee,

2 the Licensing Sub-Committee agree its own procedures as necessary from time to time.