



**North Tyneside Council**

26 May 2021

**Thursday, 3 June 2021 commencing at 6.00 pm.**

The meeting will be held virtually and live streamed.

<b>Agenda Item</b>	<b>Page</b>
1. <b>Apologies for Absence</b>	
To receive any apologies for absence	
2. <b>Remote Licensing Hearings</b>	<b>3 - 10</b>
To give consideration to a report about the proceedings of the Licensing Committee and its Sub-Committees when discharging the Authority's licensing functions under the Licensing Act 2003 and in particular whether or not remote (virtual) licensing hearings should continue to be held when it is considered appropriate to do so.	

**Circulation overleaf ...**

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## **Members of the Licensing Committee**

Councillor Lewis Bartoli  
Councillor Naomi Craven  
Councillor Cath Davis  
Councillor Janet Hunter  
Councillor Wendy Lott  
Councillor Maureen Madden  
Councillor John O'Shea  
Councillor Paul Richardson

Councillor Sean Brockbank  
Councillor Linda Darke  
Councillor Davey Drummond  
Councillor John Hunter  
Councillor Gary Madden  
Councillor Tommy Mulvenna  
Councillor Steven Phillips

## North Tyneside Council Report to Licensing Committee Date: 3 June 2021

**ITEM**  
**Title: Remote**  
**Licensing Hearings**

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**Report from Service Area:**

**Law and Governance**

**Responsible Officer:**

**Bryn Roberts, Head of Law and Governance & Monitoring Officer**

**(Tel: (0191) 6435339)**

**Wards affected:**

**All**

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### **PART 1**

#### **1. Purpose:**

This report concerns the proceedings of the Licensing Committee and its Sub-Committees when discharging the Authority's licensing functions under the Licensing Act 2003 and in particular whether or not remote (virtual) licensing hearings should continue to be held when it is considered appropriate to do so.

#### **2. Recommendations**

It is recommended that the Committee:

- (1) Consider and determine whether licensing hearings may continue to be held remotely (virtually) when considered appropriate to do so up until April 2022, at which time the position will be reviewed by the Committee; and;
- (2) If it is agreed that there may be remote licensing hearings that the procedure set out in Appendix 1 of the report be approved.

#### **3. Background**

The Authority is obliged by virtue of section 6 of the Licensing Act 2003 ("the 2003 Act") to establish a Licensing Committee consisting of at least 10 but no more than 15 Members of the Authority. All matters, save for those matters expressly dealt with by full Council, relating to the discharge by the Authority of its licensing functions under the 2003 Act are referred to this Committee and the Committee must discharge those functions on behalf of the Authority. The proceedings of the Licensing Committee are governed by the 2003 Act and Regulations made under that Act.

On 28 April 2021 the High Court decided that as from 7 May 2021 meetings of local authorities in England held under the Local Government Act 1972 must take place in person. The emergency Regulations introduced because of the Covid-19 pandemic in the early stages of the first lockdown permitting remote (virtual) local authority meetings expired on 7 May 2021.

The High Court decision focussed on local authority meetings held under the provisions of the Local Government Act 1972 and not local authorities (acting in their capacity as licensing authorities) holding licensing hearings under the provisions of the 2003 Act and Regulations made under that Act.

As stated above, the Licensing Committee is not a Committee that is established under the Local Government Act 1972. It is established by virtue of the 2003 Act. Committees of this nature are sometimes referred to as “statutory committees” because they must be established by law rather than at the discretion of the Authority. The usual mechanism used to establish Committees and Sub-Committees is the Local Government Act 1972. However, the 1972 Act is clear that Licensing Committees exercising licensing functions under the 2003 Act cannot be established using the 1972 Act.

The 2003 Act provides for licensing hearings before Sub-Committees of Members of the Authority. This enables parties to be “heard”. The 2003 and the Regulations made under that Act do not specify how a person is to be “heard”.

Section 9 of the 2003 Act says that Regulations may be made about the proceedings of Licensing Committees and Sub-Committees i.e. licensing hearings and the public access to such hearings, agendas and record of decisions. The Regulations that deal with the proceedings of licensing hearings are The Licensing Act 2003 (Hearings) Regulations 2005 (“the 2005 Regulations”).

The 2005 Regulations use language such as “attendance”, “appearance”, “leave” and “return” and say that the hearing must ordinarily be in public. The Regulations do not prevent the use of remote hearings. The “attendance”, “appearance” etc. of parties at hearings can be achieved remotely (virtually) and the Committee can therefore determine if licensing hearings should proceed by way of virtual hearings in the future notwithstanding the fact that meetings held under the Local Government Act 1972 cannot be held in this way. Those participating in the hearings can “attend” and be “heard” remotely.

Regulation 21 of the 2005 Regulations enable the Committee, subject to the provisions of the 2005 Regulations, to determine the procedure to be followed at licensing hearings.

When deciding whether or not a licensing hearing should be held remotely, the Committee must recognise that some of the parties may be without any, or good, internet facilities or be unfamiliar with communication platforms used for such hearings which could mean that such parties cannot participate fully in a hearing. In such circumstances and other circumstances, such as the need to promote equality and inclusion under the Equality Act 2010, some hearings may need to take place with the physical attendance of the Members of the Committee and the parties in a particular location in a Covid-19 secure manner and subject and being subject to any restrictions that may apply at that time in that regard.

There have been several licence hearings held remotely since May 2020, one such hearing lasting almost 6 hours with numerous parties “attending” the hearing and being “heard”. Save for one hearing where there were some technical difficulties which were overcome, the hearings were all concluded without any great difficulty and both the Members and the parties were able to fully participate in the proceedings.

#### **4. Appendices:**

**5. Contact officers:**

John Barton, Lawyer (Governance) (0191) 643 5354

**1.1 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

The Licensing Act 2003

The Licensing Act 2003 (Hearings) Regulations 2005

The Local Government Act 1972

The judgment in R (Hertfordshire County Council) v Secretary of State [2021] EWHC 1093 (Admin)

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## LICENSING ACT 2003

### NORTH TYNESIDE COUNCIL

#### PROCEDURE FOR VIRTUAL HEARING OF AN APPLICATION BEFORE THE LICENSING SUB-COMMITTEE (“the Committee”)

The four licensing objectives, as set out in the Licensing Act 2003, are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm.

Each application that comes before this Committee will be treated on its own merits, and this Licensing Authority will take its decision based upon:

- The merits of the application
- The promotion of the four licensing objectives
- The Statement of Licensing Policy of North Tyneside Council
- The guidance issued under Section 182 of the Licensing Act 2003.

#### **The Procedure of the Committee is as follows:**

1. The Chair of the Committee will open the hearing and will ask all persons involved in the hearing to identify themselves in turn. The Chair will then explain the procedure to be followed at the hearing.
2. The Committee will then consider any request made by a party under regulation 8(2) of the Licensing Act 2003 (Hearings) Regulations 2005 for permission for a person to participate as a witness on his/her behalf.
3. The Licensing Officer will present a report to the Committee outlining the application, any relevant representations and the relevant sections of the Council’s Statement of Licensing Policy and the statutory guidance.
4. The Members of the Committee may ask any relevant questions they have of the Licensing Officer.
5. The Applicant or their representative will then be invited to address the Committee to clarify any information arising from the officer’s report, if necessary.
6. The Applicant, or their representative, will be invited to address the Committee, in relation to their application. If the Applicant has obtained prior permission to call a particular witness, then they may call that witness.

7. The Committee may ask any relevant questions they have of the Applicant, their representative or their witness(es).
8. Any of the Other Persons may ask any relevant questions they have of the Applicant, their representative or their witness(es).
9. Each of the Other Persons who have made representations will be invited to address the Committee about the application, indicating why they consider the issues they have raised to be relevant to the licensing objectives and sufficient to object to the application or notice (as applicable).

If any Other Person has obtained prior permission to call a particular witness, then they may call that witness.

Note: In order to avoid repetition and to expedite proceedings at the hearing, objectors within the same group of Other Persons are encouraged to appoint an agreed spokesperson to address the Committee.

10. The Committee may ask any relevant questions they have of the Other Persons or their witness(es).
11. The Applicant or their representative may ask any relevant questions of the Other Persons or their witness(es).
12. The Chair will invite the Applicant or their representative to make a brief closing statement, ideally taking no longer than 10 minutes.
13. The Chair will invite each of the Other Persons to make a brief closing statement. Each of the Other Persons will be entitled to a maximum of 10 minutes in which to make their closing statements.
14. The Chair will ask all parties if they are satisfied that they have said all they wish to.
15. The Committee will retire in private to consider the application and make its determination. The Legal Adviser will be present to ensure that all matters of law, evidence and procedure are adhered to appropriately but will not take part in the decision.
16. In considering any representations or a notice made by any party, the Committee may take into account documentary or other information produced by a party in support of their application, representations or notice (as the case may be) either before the hearing or, with the consent of all the other parties, at the hearing.
17. The Committee shall disregard any information given by a party or by any person to whom permission to appear at the hearing is given by the Committee, which is not relevant to:
  - (i) their application, representations or a notice (as the case may be) or, in the case of another person, the application, representations or notice of the party requesting their attendance; and

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

**NB** Parties are reminded that any documentary or other information or evidence they wish to produce in support of their application or representation must have been disclosed to all parties prior to the hearing taking place. **Late representations, documents or evidence will only be considered with the agreement of all parties present.**

- 18. A written notice of the decision will be provided to all parties in accordance with statutory requirements. The decision letter will include the reasons for the decision, and any conditions placed upon the licence (if granted) and the licensing objective(s) they relate to. The notification of decision will include information on a party's right to appeal against the Committee's decision.

## **General Matters**

### **1. Expectations on parties**

The Licensing Authority expects all parties to a hearing to endeavour to address any issues openly and to work towards an amicable resolution, if at all possible, prior to the hearing taking place.

All parties will be expected to:

- (i) demonstrate which of the four licensing objectives are addressed in relation to each of the issues they wish to raise at the hearing; and
- (ii) draw to the Committee's attention any relevant aspects of the National Guidance or local Statement of Licensing Policy which they also consider are particularly relevant to the Committee's consideration of the issues the party(ies) has/have raised.

### **2. Agreement that a hearing is unnecessary**

A Licensing Authority can dispense with holding a hearing if all persons concerned (applicants and parties raising a representation) give notice to the Licensing Authority prior to the hearing date that they consider it unnecessary.

Where all such persons have given such notice, and the Licensing Authority agrees that a hearing is unnecessary, the Licensing Authority will give notice to the parties that the hearing has been dispensed with.

### **3. Failure of parties to attend**

The hearing may proceed in the absence of any party who has informed the Licensing Authority that they do not intend to attend or be represented at the virtual hearing.

If a party fails to attend or be represented at a virtual hearing without notifying the Licensing Authority, the Committee may adjourn the hearing to a specific date if it considers it to be in the public interest to do so, or alternatively may proceed with the hearing in the party's absence. In the interests of the other parties, costs and

efficiency, hearings will generally proceed notwithstanding the absence of any party (including the Applicant).

Where it is decided to proceed in a party's absence, all notices and representations received from the absent party will be considered by the Committee.

If, in exceptional circumstances, a decision is made to adjourn a hearing all parties will be advised of the date, time and venue (if any) to which the hearing has been adjourned.

4. **Questioning of parties**

The Licensing Authority will generally allow all parties to ask questions of another party present, but this decision will be taken on a case by case basis and in some exceptional circumstances (a reason will be given) cross examination may be prohibited.

5. **Further clarification**

When addressing the Committee each party shall respond specifically to any points of which it received notice (with the Notice of Hearing) upon which the Committee was seeking clarification.

6. **Questioning by Legal Adviser**

The legal adviser to the Committee may ask questions on behalf of, or in addition to, the Committee members themselves.

7. **Hearsay evidence**

Hearsay evidence will be admissible provided that it is relevant. The weight to be attributed to hearsay evidence will be a matter for the Committee.

8. **Persons behaving in a disruptive manner**

The Committee has the right to exclude any person disrupting the hearing, at their discretion. The Committee can refuse to allow that person to return or, alternatively, may permit him/her to return on such conditions as the Committee may decide. Any person required to leave the hearing may, before the end of the hearing, submit to the Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

9. **No decision-making by Ward Members**

A member of the Licensing Committee shall not be entitled to participate in any decision-making in relation to any licensing application concerning premises in the Ward for which he/she serves as Councillor.