

North Tyneside Council
Report to Licensing Committee
Date: 31 March 2022

ITEM
Title: Remote
Licensing Hearings

Report from Service Area:

Law and Governance

Responsible Officer:

Jacqueline Laughton Assistant Chief Executive and Monitoring Officer

(Tel: 0191 6435724)

Wards affected:

All

PART 1

1. Purpose:

This report concerns the review of the decision taken by the Committee on 3 June 2021 that: -

1. Where considered appropriate future meetings of the Licensing Committee and its Sub-Committees be held remotely until April 2022;
2. The procedure that was adopted for remote hearings over the past year would continue to be used for future remote meetings; and
3. A report would be presented to a future meeting of the Committee on the continuation, or otherwise, of remote meetings.

1. Recommendations

It is recommended that the Committee:

- (1) Consider and determine whether licensing hearings should continue to be held remotely (virtually), or whether such hearings should now require the physical attendance of parties before the Committee or its Sub-Committees.

2. Background

The Law

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 Committee can establish one or more Sub-Committees to discharge its functions.

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 one 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(2) 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.

It must be said that there has been a minority view expressed by some lawyers that the holding of remote licensing hearings is unlawful. However, the majority view is that there are strong arguments that remote hearings can continue. Ultimately, it will be a matter for the Courts to determine if it is ever presented with that opportunity.

Equality Issues

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.

Licensing Hearings since June 2021

There have been seven licensing hearings held remotely since June 2021 including review hearings, with numerous parties participating the hearing and being “heard”. The remote hearings have been concluded without any great difficulty and both the Members and the parties were able to fully participate in the proceedings.

Since June 2021 there has been one hearing at which the parties were in physical attendance before a Sub-Committee.

The Committee indicated in June 2021 that it would review its decision to proceed with remote hearings at this time and that this further report would be produced for Committee. It is a matter for Committee to determine if licensing hearings should continue to be conducted remotely, or whether such hearings ought to now be conducted with the parties being physically required to attend before the Committee and its Sub-Committees.

3. Appendices:

Appendix 1 – Procedure to be followed for remote (virtual hearings)

4. Contact officers:

Jacqueline Laughton, Assistant Chief Executive and Monitoring Officer (0191) 643 5724

John Barton, Principal Lawyer (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)