

## Creation of two separate licensing committees

Summary: The Council presently has one licensing committee which deals with Licensing Act 2003 matters and non-Licensing Act matters. It is proposed that this Council creates two separate committees to ensure the lawfulness of decisions made

Options considered: (1) The creation of two committees  
(2) Retain the status quo

Conclusions: That two separate committees :  
- A Licensing Committee (Premises and Gambling); and  
- A Licensing Regulatory Committee (dealing with all other licensing matters)  
be set up for the next municipal year, to deal with the Council's licensing functions. Further that both committees comprise the same membership.

Recommendations: **That there be two distinct committees relating to licensing matters: a statutory Licensing Committee ["The Licensing Committee (Premises and Gambling)"] and a regulatory licensing committee which deals with all other licensing functions ["The Licensing Regulatory Committee"]:**

- (i) That the current single licensing committee ceases and that two licensing committees be formed for the next Annual Meeting of Council
- (ii) The first of these committees will deal with Licensing Act 2003 and Gambling Act 2005 matters and will be known as the Licensing Committee (Premises and Gambling).
- (iii) The second committee will deal with all the other licensing matters not detailed in (ii) above and will be known as the Licensing Regulatory Committee
- (iv) Both committees will contain the same members but will be distinct committees and may set up their own Sub-Committees
- (v) That the Monitoring Officer be authorised to update the Constitution to reflect this change.

Reasons for Recommendations: To protect the Council from risk of challenge of its decisions made by a licensing committee of this Council

### LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

*(Papers relied on to write the report, which do not contain exempt information and which are not published elsewhere)*

|                   |                        |
|-------------------|------------------------|
|                   |                        |
| Cabinet Member(s) | Ward(s) affected - All |
|                   |                        |

Contact Officer, telephone number and email: Cara Jordan, Assistant Director Finance, Assets, Legal Tel - 01263 516373; email - [cara.jordan@north-norfolk.gov.uk](mailto:cara.jordan@north-norfolk.gov.uk)

## 1. Introduction

## 1.1 **The Licensing Committee at North Norfolk District Council**

The Licensing Committee is responsible for discharging the Council's functions relating to all licensing and registration functions under the Licensing Act 2003, as well as other functions under the Gambling Act. The Council currently has one Licensing Committee to carry out its functions and which also deals with additional licensing functions, outside of the Licensing and Gambling Acts. It deals with matters relating to:

- a) The Licensing Act 2003  
(This includes functions such as consideration of applications for premises licences to sell alcohol and carry out licensable activities); and  
The Gambling Act 2005  
(Considering matters relating to the regulation of gambling);
  - b) Other licensing matters not under the above two Acts  
(This includes a wide range of regulatory licensing matters connected to public protection, such as considering applications by persons wishing to drive taxis; those involved in horse riding establishments; zoos; sex establishments and tattoo parlours etc.)
- 1.2 The Licensing Act 2003 and the Gambling Act 2005 (as detailed at 1.1(a) above) will be considered together in this report, as the latter details that the Licensing Act 2003 rules will apply.
- 1.3 Those non Licensing Act matters detailed at 1.1(b) above are subject to different legislation and are governed by rules and procedures detailed in the Local Government Act 1972.

## 2. **The licensing functions performed by the Committee**

- 2.1 Whilst the Licensing Committee currently considers all matters relating to the regulation of licensing, the legislation governing matters such as applications for a hackney carriage and private hire licences, zoo licences, sex establishments etc., is different.

### **The Licensing Act 2003**

- 2.2 Section 7 Licensing Act 2003 provides that each licensing authority must establish a licensing committee consisting of at least ten, but no more than fifteen, members of the authority. The legislation is such that the committee is only able to deal with licensing and licensing related matters detailed in that Act (section 7(3) Licensing Act 2003). Its powers and functions are limited. Therefore a stand-alone statutory Licensing Committee (which can also deal with Gambling Act matters) is required to be established under the Licensing Act 2003. Such a committee can have sub-committees and need not be politically balanced (though can be).

### **Non-Licensing Act matters**

- 2.3 A committee to consider other regulatory licensing matters relating to the public protection function of the Council (i.e. those matters which do not fall under the Licensing Act 2003 or the Gambling Act 2005) falls to be established under the Local Government Act 1972 (sections 101 and 102). Such a committee must be politically balanced.
- 2.4 There is a different legal basis covering the establishment and functions of the Licensing Committee (dealing with pubs and clubs etc). Its powers are limited. The other public protection licensing functions (dealing with taxi licences, sex establishments etc) do not fall within the functions detailed within the Licensing Act 2003. Accordingly, the council may be

placing itself at risk of challenge by retaining just one committee to deal with both aspects of the licensing regime.

### **3. Two separate committees**

- 3.1 Currently members of the Licensing Committee receive training on both Licensing Act matters and other public protection licensing matters. An approach may be to create two separate committees, with the same membership. These committees must be separately constituted, though could comprise of the same individual members. Only one of the committees needs to be politically balanced, but by having the same members on both committees (and each having sub-committees), it would allow for both to be politically balanced. It would also allow for members to receive the same training, and to be able to sit on the same day, albeit it would need to be made clear, using separate agendas and minutes etc., that Members are sitting as “the Licensing Committee (Premises and Gambling)”, being subject to the rules of the Licensing Act 2003, and then sitting as “the Licensing Regulatory Committee”, the other regulatory committee, dealing with public protection licensing matters, following the rules and procedures of the Council’s Constitution.
- 3.2 Having two distinct committees is likely to reflect the requirements of the legislation, ensuring that our customers are dealt with fairly and transparently. Further, it would protect the Council from risk of challenge that it has acted *ultra vires*.
- 3.3 An alternative is that the Council could retain the status quo. There have been no challenges as to the constitution of the committees thus far, and so it may be viewed as low risk to date. However, should there be a contentious matter considered by the committee in the future, a party aggrieved by a decision may look to pursue the constitution of the committees.

### **4. Corporate Plan Objectives**

#### **4.1 Customer Focus & Financial Sustainability**

Ensuring that the Council’s democratic process runs as transparently and as effectively as possible, building on the corporate plan objective of focussing on the customer and putting them at the heart of what we do. Further the setting up of two committees protects the Council from the risk of unnecessary spending from procedural challenge.

### **5. Financial and Resource Implications**

There is no significant resource implication from setting up two separate committees. Creating two committees protects against risk of procedural challenge.

### **6. Legal Implications**

The statutory Licensing Committee (Premises and Gambling) should be established pursuant to section 7 Licensing Act 2003 and the Licensing Regulatory Committee under sections 101 &102 Local Government Act 1972. Failing to ensure that there are two separate committees for these separate functions may leave the Council open to risk of challenge against its licensing related decisions.

### **7. Equality and Diversity**

The considerations and recommendations have a remote or low relevance to the substance of the Equality Act.

### **8. Section 17 Crime and Disorder considerations**

Both the Licensing Act 2003 functions and other non-Licensing Act functions are relevant to public protection and consideration of the prevention of crime and disorder in the District. Having two committees will address the risk of challenge against the committee/s decisions.

## **9. Conclusion and Recommendations**

That there be two distinct committees relating to licensing matters: a statutory Licensing Committee ["The Licensing Committee (Premises and Gambling)"] and a regulatory licensing committee which deals with all other licensing functions ["The Licensing Regulatory Committee]:

- (i) That the current single licensing committee ceases and that two licensing committees be formed for the next Annual Meeting of Council**
- (ii) The first of these committees will deal with Licensing Act 2003 and Gambling Act 2005 matters and will be known as the Licensing Committee (Premises and Gambling).**
- (iii) The second committee will deal with all the other licensing matters not detailed in (ii) above and will be known as the Licensing Regulatory Committee**
- (iv) Both committees will contain the same members but will be distinct committees and may set up their own sub-committees**
- (v) That the Monitoring Officer be authorised to update the Constitution to reflect this change.**