



East  
Northamptonshire  
Council

## Licensing Committee– 9 March 2011

### Title: Proposed Changes to Part 5.7 of the Constitution – Code of Practice for Licensing Procedures

#### Purpose of report

To seek endorsement of the proposed amendment of part of the Constitution to allow ward members serving on the Licensing Committee to sit on a panel determining liquor, public entertainment or gambling licences for premises affecting their ward or which will have a significant impact on that ward

#### Attachment(s)

Appendix: Proposed Changes to Part 5.7 of the Constitution

#### 1.0 Background

- 1.1 Members will be aware, from item 8 on the agenda, that one of the issues discussed at the Licensing Seminars which are attended by representatives of other licensing authorities, is the practice of other Councils in allowing ward members to serve on panels determining applications for liquor, public entertainment or gambling licences – provided they are members of the Licensing Committee.
- 1.2 A legal view was sought on the issue to enable this Council to consider whether there should be changes made to Part 5.7 of the Constitution.

#### 2.0 Current position

- 2.1 Paragraph 6 of the Code of Practice for Licensing Procedures (Part 5.7) currently precludes the use of a ward member on a licensing panel. This was worded to avoid conflicts of interest. However, there is a valid argument on democratic grounds for involving a ward member (who serves on the Licensing Committee).
- 2.2 The legal view is that, provided certain conditions are met, a Licensing Committee ward member could form part of a panel. These conditions relate to the absence of a prejudicial interest and observance of the rules of natural justice to ensure that ward members have an open mind before the hearing and do not prejudge the issue (avoidance of predetermination).

#### 3.0 Proposed Changes to Part 5.7 of the Constitution

- 3.1 The attached Appendix sets out the proposed changes to paragraph 6 and it is also felt appropriate to amend paragraph 19. The changes would entitle Licensing Committee ward members to sit on a panel (unless they chose not to serve and represent the views of the constituents instead). This would be consistent with the situation which applies to Development Control Committee ward members.

#### 4.0 Equality and Diversity Implications

- 4.1 There are no equality and diversity implications arising from the proposals.

#### 5.0 Legal Implications

- 5.1 The legal view, outlined in 2.2, would provide the steer for the changes to be made.

## 6.0 Risk Management

6.1 Provided the conditions set out in (a) and (b) of the new paragraph 6 are met, it is not thought that the inclusion of ward members on licensing panels would constitute a risk, as long as they serve on the Licensing Committee. Panels are, after all, sub-committees of the main Committee. If the conditions governing the service of ward members on panels are not enforced, then there is a possibility that applicants may use this as an argument in any subsequent appeal or legal challenge.

## 7.0 Financial Implications

7.1 There are no financial implications arising from the proposals.

## 8.0 Corporate Outcomes

8.1 The following outcomes are applicable:-

- Good reputation
- Strong Community Leadership
- Knowledge of Customers and Communities
- Employees and Members with the Right Knowledge, Skills and Behaviours.

## 9.0 Consultation

9.1 The views of the Licensing Committee are being sought to enable the Policy & Resources Committee on 9 March to make a recommendation to Council.

## 10.0 Recommendation

10.1 The Committee is requested to endorse the proposed changes to Part 5.7 of the Constitution as set out in the Appendix to this report.

*(Reason – to introduce the opportunity for ward members serving on the Licensing Committee to be involved in decision making on applications affecting their ward)*

<b>Legal</b>	Power: Licensing Act 2003 and Local Government Act 1972				
	Other considerations: Council's Constitution				
<b>Background Papers:</b> Seminar minutes					
<b>Person Originating Report:</b> Keith Osborne, Democratic Services Manager, 01832 742113					
<b>Date:</b> 11 February 2011					
<b>CFO</b>		<b>MO</b>		<b>CX</b>	

(Committee Report Normal Rev. 22)

**Proposed Changes to Part 5.7 of the Constitution – Code of Practice for Licensing Procedures**

**(in bold italics and scored text)**

6. ***Licensing Committee*** Members ***shall be entitled to*** not sit on a Panel which is to determine a licence which is within ***their*** his/her ward or which will have a significant impact on that ward, ***provided that both of the following conditions are met:-***
- (a) ***they must not have a prejudicial interest. For example, if they live near the premises, then their well-being or financial position may be affected***
  - (b) ***they must adopt an open mind about the application in advance of the hearing and, in accordance with the rules of natural justice, be fully prepared to listen to both sides of the argument at the hearing before coming to a judgement. This is to avoid any complaints about pre-determination or bias.***

However, ***if a Licensing Committee ward*** members ***choose not to serve on a panel, they*** shall be entitled to make representations within the prescribed period (normally 28 days) on behalf of supporters or objectors and, provided requisite notice is given, appear on their behalf at any hearing that is called. (This right is explained in more detail in paragraph 19).

19. Arrangements exist for parties (an applicant, the holder of a premises licence, a club representative, a person making representations, a chief officer of police or his representative) to speak for or against a licensing application at panel hearings provided they have given requisite notice under the Hearings Regulations. A ward member ***servng on the Licensing Committee who chooses not to*** hearing the application is permitted to speak on behalf of licensing application supporters or objectors during the hearing provided the premises the subject of the application are situated in their ward (or in close proximity to their ward) and provided they have made representations on behalf of those supporters or objectors during the objection period and have indicated by notice that they will appear. If they have not made representations/given notice, they will be entitled, unless they have declared a prejudicial interest, to attend the hearing as an observer, ***or, provided they meet both of the conditions in paragraph 6, and serve on the Licensing Committee, appear as a panel member to determine the application.***