

Membership of Committees

Briefing Note

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Context

The current rule was created to avoid a conflict where a councillor may be considering an application via planning and licensing and maintain the independence of the functions. Some Councils have created a single committee to deal with Planning and Licensing matters and there is no legal barrier to this or to councillors serving on both committees. It is for each local authority to determine the committee organisation for delivering statutory functions. As with any appointment to committee a councillor must consider carefully any potential conflicts of interest that may arise by serving on more than one committee.

The House of Lords Select Committee post legislative review of the Licensing Act 2003, undertaken in 2017¹ reached the conclusion that responsibility for licensing should be transferred to planning committees:

“To be clear, we are not recommending a merger of licensing law and planning law; we are suggesting that the councillors who sit on planning committees, using the same procedure and practice and with the same support as they already have, should deal with proceedings under the Licensing Act in the same way that they already deal with planning legislation.”

The government response to the recommendation on transferring the functions of licensing committees and sub-committees to Planning Committees states that it is up to each local authority to determine what will work best for them and how those committees should be organised:

“In some English local authority areas there are planning committees and licensing committees made up of the same committee members, or subsets of the same members. It is a matter for local authorities to determine the best arrangements for their area, taking into account the needs of their communities and to provide value for money to the taxpayer. It is up to local authorities to determine how they organise committees to deliver their statutory functions and we do not intend to take the approach recommended by the Committee at this time. Section 7 (5) of the 2003 Act already allows that where a matter relates to a licensing function and to another function of the local authority (for example, planning), the matter may be referred to either committee. This allows for the licensing committee to discharge functions other than licensing matters, and vice-versa, for a planning committee to discharge a licensing function.”

Additional information

The Local Government Association’s handbook² offers the following description of planning and licensing systems highlighting the differences between the two systems:

“The licensing and planning systems operate independently with the planning and licensing regimes involving consideration of different, albeit related, matters. Planning is the regime that is directed at development of land and the use of premises upon it. Licensing is the regime that is directed at

¹ <https://publications.parliament.uk/pa/ld201617/ldselect/ldlicact/146/146.pdf>

² https://www.local.gov.uk/sites/default/files/documents/10%2036_Licensing_Act_2003_V04%203_1.pdf

licensable activities and responsible management of said premises upon that land. Licensing committees are not bound by decisions made by a planning committee, and vice versa. For example, a premises licence or club premises certificate cannot be refused on the grounds that they do not have planning permission. Licensing authorities are also able to specify different opening hours on the licence from those specified under planning permission. This is somewhat incongruous, but the two schemes take different matters into account when determining hours, and the more restrictive set of hours always applies.”

The handbook goes on to state that:

“Planning is an important consideration when thinking about what you want your licensing policy to achieve. Your licensing policy should reflect your Local Plan policies core planning documents, and likewise the Local Plan policies planning documents should reflect 14 Licensing Act 2003 what you want to achieve with your licensed premises. Whilst there is a clear distinction and separation between licensing and planning in terms of their remit, councillors have a key role in ensuring that these two different services are fully joined-up and aligned.

Where this doesn't happen councils can struggle to shape their areas as they would like them to be. It can be helpful to include your expectation that any premises for which a licence is required should normally have the appropriate authorised use under town planning legislation, in the SLP.”