

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE - 2 AUGUST 2006

Title of report	PHASE 2 REVIEW OF THE CONSTITUTION
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Purpose of report	To recommend changes to the Constitution and seek the comments of the Group for onward consideration by Council.
Strategic aims	A clear, comprehensive and up to date Constitution is vital to deliver its strategic aims.
Implications:	
Financial/Staff	None at this time.
Health/Anti-Poverty	None at this time.
Crime and Disorder	None at this time.
Risk Management	A clear, comprehensive and up to date Constitution will minimise the risk of the Council not delivering its priorities and objectives.
Human Rights	
E-Government	
Comments of Monitoring Officer	As author of the report - report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.
Comments of Head of Paid Service	The report is satisfactory.
Consultees	Head of Environmental Health Services and Commercial Services Manager. The Commercial Services Manager has stated that he is satisfied with the report.

Background papers	Only published material including the current Constitution and relevant legislation. The Constitution is available electronically on the Council's website at www.nwleics.gov.uk . Members may also view the document by logging into the AKS system.
Recommendations	THE LICENSING COMMITTEE ARE ASKED TO CONSIDER THE DRAFT LICENSING CODE OF CONDUCT AND OTHER SUGGESTED AMENDMENTS TO THE CONSTITUTION AND MAKE RECOMMENDATIONS TO COUNCIL ON 5 SEPTEMBER 2006.

1. INTRODUCTION

- 1.1 The Local Government Act 2000 requires each local authority to prepare, keep up-to-date and publicise a document known as the constitution. Before the Act took effect, standing orders, financial regulations, schemes of delegation, rules of procedure and codes of conduct frequently appeared as separate documents, in different formats and layouts and with no overall explanation or guide.
- 1.2 The 2000 Act set out to remedy this by requiring local authorities to produce a constitution which was logical, integrated and accessible to members, officers, local people and anyone else interested in the way a local authority makes its decisions.
- 1.3 At the same time the government required each local authority to adopt a particular method of executive working. North West Leicestershire District Council adopted the Leader and Executive model. This resulted in an end to the traditional committee system and its replacement with a system whereby the Council and the Executive performed different but defined roles built around the budget and policy framework. Overview and Scrutiny was introduced to provide checks and balances. Consequently the new constitution involved more than just pulling together existing standing orders and financial regulations into a single document. It necessitated the preparation of new procedure rules to reflect the fundamental changes that were taking place at the time.
- 1.4 Members will recall that a significant review of the Constitution took place during the summer of 2005. The Constitution was approved by Council on 19 September 2005. Members will further recall that it was agreed that any outstanding issues would be dealt with as part of the Phase 2 review.

2. PROCESS OF REVIEW

- 2.1 The author has identified issues which required work following the Phase 1 review and since the approval of the Constitution in September 2005. The consultant, Mr Taylor, who worked with the author on the Phase 1 review has been re-engaged to undertake some of the Phase 2 work. Members will recall that Mr Taylor is an experienced solicitor and former Head of Legal Services in local government.

- 2.2 The Head of Environment and Commercial Services Manager have been consulted on the issues remaining from Phase 1 and the suggested amendments.

3. MATTERS RELEVANT TO THE LICENSING COMMITTEE

- 3.1 During the Phase 1 review a request was received from a member, who is also a member of the Licensing Committee, that a Licensing Code of Conduct/protocol be produced. The author supports this suggestion and believes it would assist members of the Sub-committee in determining the matters before them. The draft is attached to this report at Appendix 1. The author considers that it is on a par with other similar documents in the Constitution such as the Code of Conduct for members and the protocol on member/officer relations. Members' comments are sought on the draft Licensing Code of Conduct. It is recommended for adoption and inclusion in the Constitution.
- 3.2 During the Phase 1 review, a member of Licensing Committee also requested that officers look into the issue of ward members sitting on Licensing Sub-committee when it determined applications and matters referred to it under the Licensing Act 2003, which are related to their ward. It is understood that the member would like to see ward members sitting on the 3 member sub-committee wherever possible.
- 3.3 Members will be aware that, historically, the Licensing Committee procedure, which members adopted, prohibited ward members from sitting on the Licensing Committee and determining applications involving their ward (eg. public entertainment licences and variation of conditions). The author understands this was based on guidance from LACORS. This was pre Licensing Act 2003 hearings and the advice applied when the Committee was considering public entertainment licence applications. Since the Licensing Act 2003 came into force the Council has been required to establish a Licensing Sub-committee to hear liquor and entertainment licence applications. The Sub-committee comprises 3 members drawn from the main Licensing Committee depending on members' availability. The Licensing Committee still exists but does not consider licensing applications. It principally considers matters of licensing policy. With the change in role of the Licensing Committee, the author considers that it is appropriate that the restriction on ward members sitting on the Committee be lifted.
- 3.4 In terms of the suggestion that ward members sit on the Licensing Sub-committee meetings, there are a number of issues to consider.
- (i) The Licensing Act 2003 (section 6) provides that the Council must establish a Licensing Committee of between 10 and 15 members. This Council's Licensing Committee comprises 12 members. Section 9 of the Act further provides that the Council may establish a Sub-committee of 3 (drawn from the principal Committee). There are 20 wards of the District, 9 of which are covered by the current Licensing Committee. It would not be possible to ensure coverage for each ward if the Council stipulated that a ward member should sit on the Sub-committee which considers applications for their ward. It may also create a sense of some disparity between those wards not so represented.

- (ii) The Council is part of the Leicestershire Licensing Forum. The Forum includes representatives from all the Leicestershire authorities and undertook a great deal of preparatory work in the run up to the implementation of the Licensing Act 2003. The Forum worked on and produced a hearings procedure which this Committee and Full Council have approved and have been using since the Act came into force. It is understood that the other Leicestershire authorities have also adopted this procedure. The procedure provides that:

“Members of the Licensing Committee whose ward is likely to be affected by the application may not sit on the Panel to hear that matter. Those members, however, will be free to represent an interested party to the hearing (unless they have a personal or prejudicial interest) should they so wish.”

The Forum adopted this approach following legal advice and advice from LACORS (Local Authorities Co-ordinators of Regulatory Services). Reference to this approach can also be found in the House of Commons’ debate from 10 April 2003. Any change to the procedure to permit ward members to sit on Licensing Sub-committees would therefore be out of step with other Leicestershire authorities.

- (iii) It is understood that some ward members may wish to sit on the Sub-committee as they feel it is important that their local knowledge is utilised in the decision making process. However, this may place members in a difficult position. As, a member on the Sub-committee, they cannot act as an advocate for objectors or the applicant or any other persons making representations. They have an obligation to consider the application in a broader, district wide sense and not just from the ward viewpoint. It is the author’s view that sitting on the Sub-committee may limit members’ role in this regard.
- (iv) The author’s view is that if a ward member took part in the determination of an application to their ward, there is also a risk of legal challenge to the decision in terms of bias, predetermination and procedural unfairness. This challenge could be via the Magistrates’ Court on appeal or judicial review of the decision of the Sub-committee. Members are reminded that although the ward member himself may consider that he/she can clearly define his/her role, the test is not what the member thinks, but what a member of the public or the applicant may think. This risk is greater as the Sub-committee comprises only 3 members and also because of the perception of the influence of a ward member in that situation.

3.5 Officers have given consideration to the suggestion made by a member of the Committee that ward members should sit on the Sub-committee meetings. However, given the above factors, the Monitoring Officer would strongly advise against changing the existing procedure and allowing ward members to sit on Licensing Sub-committee on applications affecting their ward.

3.6 As expressed earlier, ward members who do not have a personal and prejudicial interest can have a role in applications in their ward. If approached, they can act as advocate for constituents who have made relevant representations.

3.7 The Phase 2 work has also revealed other changes to the Constitution which are required. These are set out in tabular form at Appendix 2 of the report. The recommendations are set out in the table.

- 3.8 A further report on the necessary changes to the Constitution required as a result of the Gambling Act 2005 will be brought to the Committee for consultation in the autumn prior to the changes being considered by Full Council. The Council's Draft Statement of Licensing Policy under the Gambling Act 2005 is currently in the process of consultation and it is not appropriate to consider detailed provisions relating to the scheme of delegation at this stage.

Elizabeth Warhurst
Head of Legal and Democratic Services

06 December 2013