

**BROMSGROVE DISTRICT COUNCIL**

**LICENSING COMMITTEE**

**23RD FEBRUARY 2009**

**LICENSING SUB-COMMITTEE SITE VISITS**

Responsible Portfolio Holder	Roger Smith
Responsible Head of Service	Claire Felton
Non-Key Decision	

**1. SUMMARY**

- 1.1 Members are requested to note the current process relating to site visits and to decide whether to recommend that this be clarified.

**2. RECOMMENDATION**

That members decide whether to recommend to full Council that the Licensing Code of Practice be revised.

**3. BACKGROUND**

- 3.1 Members have queried whether it is possible for members of Licensing Sub-Committees to have site visits in cases where this would be helpful in the determination of applications and officers agreed to report to the Licensing Committee on this issue.
- 3.2 The situation is that the current Licensing Code of Practice (Part 21 of the Constitution) does make provision for site visits. A full copy of the Code is attached, but for ease of reference, the relevant section states as follows:

**“9. Site visits**

*Site visits by Licensing Sub-Committee members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias. However, if it is considered necessary to conduct a site visit, the reasons for doing so will be clearly documented and the visit will be carried out either as an unannounced visit to the interior of the premises at a time when it is normally open, or as an unannounced visit to the exterior of the premises only. In either case, members who are involved in the site visit will approach the site visit in the context of “seeing what there is to be seen” and will not, during the site visit, enter into any discussions with either the applicant, his/her agent, or any other person having an interest in the application, e.g. an objector.”*

3.3 The ability to hold site visits does therefore currently exist. However, the wording of the Licensing Code of Practice presents some difficulties, and other issues would also need to be considered, including:

3.3.1 it is not clear who takes the decision to have a site visit or at what stage this is taken; authority could perhaps be delegated to the Head of Planning & Environment Services to decide a site visit is necessary following consultation with members of the Sub-Committee;

3.3.2 it is not clear how the decision is recorded or where it is recorded and consideration should be given to this issue;

3.3.3 practical issues relating to the travel arrangements should be considered; should members and officers travel in their own vehicles to site, or should they travel together, and if so, should transport be hired?;

3.3.4 financial implications arise - no budget is available for the hiring of vehicles, if members wished to travel in a hired vehicle; additionally, an officer in the Licensing Team would have to accompany the site visit and this will incur expenses for which no budget currently exists; officers may need to be reimbursed if they are required to pay additional car insurance premiums for business use;

3.3.5 there may from time to time be difficulties in arranging access if site visits are to be unannounced, as suggested in the existing Code, as not all licensed premises are open to the public

3.3.6 site visits need to be carefully managed to ensure that neither the applicant nor objectors seek to make representations during the visit, and to ensure that members of the Sub-Committee do not discuss the application during the visit or whilst travelling to or from the site

3.3.7 site visits also need to be managed so as not to compromise the impartiality of the Licensing Officer.

3.4 Members are referred to the Planning Code of Practice (Part 20 of the Constitution) which also deals with site visits. It includes useful guidance for members including:

*“The site visit does not constitute a meeting of the Planning Committee. Accordingly, Members should not form a collective view on the issue.*

*Since Members are attending a site merely to “see what is to be seen”; it is inappropriate to hear either the applicant or his representative. Similarly, it is inappropriate to hear anybody else who wishes to make representations. The occasion is not a local hearing.*

*Members should leave each site with no collective view - the occasion is simply to assist them individually to form a view. Consequently, when the application is next considered by the Planning Committee, the Chairman of the Committee should remind Members that the application was the subject of a site visit, and then let the debate proceed normally.”*

This wording has been included into the Planning Code of Practice to minimise the risk of challenge to Council decisions on the ground of bias, predetermination or failure to adhere to procedural requirements.

- 3.5 If members wish there to be more clarity or additional detail and guidance (perhaps along the lines of that in the Planning Code of Practice) in the Licensing Code of Practice, the appropriate course of action would be for the Licensing Committee to recommend to full Council that the Code of Practice should be revised as it is Council which has the authority to amend the Constitution. If members wish to consider this route, officers, in consultation with members of the Licensing Committee, could produce a draft for consideration by Council.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 These are set out in paragraph 3.3.4 above. Members should give consideration to the fact that no budget currently exists, and none has been included for the next financial year, to facilitate site visits.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The Licensing Act 2003 and the regulations made under it, particularly the Licensing Act 2003 (Hearing) Regulations 2005 set out the framework for licensing sub-committee hearings.

#### **6. COUNCIL OBJECTIVES**

- 6.1 N/a

#### **7. RISK MANAGEMENT**

- 7.1 The main risk associated with the details included in this report is:

- *Risk of challenge to Council decisions; and*
- *Risk of complaints about elected members.*

- 7.2 These risks are being managed as follows:

- Risk Register: *Legal, Equalities and Democratic Services*  
Key Objective Ref No: 3  
Key Objective: *Effective ethical governance*

#### **8. CUSTOMER IMPLICATIONS**

8.1 The Licensing Code of Practice forms part of the Council Constitution and as such is publicly available and is displayed on the Council's website.

**9. EQUALITIES AND DIVERSITY IMPLICATIONS**

9.1 None

**10. VALUE FOR MONEY IMPLICATIONS**

10.1 N/a

**11. OTHER IMPLICATIONS**

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

**12. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	No
Executive Director - Partnerships and Projects	No
Executive Director - Services	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes

Head of Organisational Development & HR	No
Corporate Procurement Team	No

**13. WARDS AFFECTED**

All wards

**14. APPENDICES**

Appendix 1 Licensing Code of Practice

**15. BACKGROUND PAPERS**

None

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