

SOUTH HOLLAND DISTRICT COUNCIL

REPORT TO: COUNCIL – 15 NOVEMBER 2006

BY: HEAD OF LEGAL AND MEMBER SERVICES

SUBJECT: PROTOCOL ON GOOD PRACTICE IN LICENSING – SITE VISITS

PURPOSE: To consider further the protocol and the holding of site visits.

1.0 INTRODUCTION

- 1.1 At its meeting on 18 October 2006 the Council gave consideration to the draft Protocol on Good Practice in Licensing recommended by the Head of Legal and Member Services. The Protocol was approved except for the provision relating to site visits which read “10.1 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. A decision to undertake a site visit must set out the justifiable reasons and clear guidance as to how the site visit will be conducted.” This advice is taken from the LACORS’ Guidance: The Role of Elected Members in relation to Licensing Committee Hearings under the Licensing Act 2003. LACORS advise that if a Licensing Authority believes that there might be occasions where visits are required then it would be advised to have set out the reasons why this might be the case in the local guidance, so that there are clear criteria for justifying any visit, which can be documented. Licensing Authorities are also advised to have clear guidance as to how the visits are conducted.
- 1.2 To limit the risk of bias my advice remains unchanged. Members should understand the concept of bias which has been defined as “an attitude of mind which prevents the decision maker from making an objective determination of the issues that he has to resolve.” Members should also appreciate that the key concept as regards bias is that there is no need for proof of actual or potential bias for there to be procedural impropriety shown. It is sufficient that there is an appearance of bias.
- 1.3 There are other reasons against holding site visits and below I have attempted to summarise these:
- (a) There are regulations which prescribe the way in which hearings are held and they do not allow for site visits. Accordingly a site visit would not be part of the official meeting.
 - (b) The hearing regulations provide that once the hearing has commenced and it has been confirmed that the application is legal there is a requirement for the application to be dealt with and there is no allowance for deferral, not even for a site visit. A site visit could therefore not take part as part of the hearing.
 - (c) Having regard to (b) above a site visit would need to be held prior to the actual hearing. However, it could not be held prior to members receiving the hearing papers otherwise the issues would be unknown and there could be a tendency to take into account irrelevant facts.
 - (d) Having regard to (c) above the time slot for site visits would be very short. If a member is unable to attend a site visit then his or her involvement in the hearing could be questioned. Members will appreciate that the Protocol on Good Practice in Planning provides that if a member does not attend the site visit he/she can not participate in the decision through not being party to the full facts.
 - (e) Pre-determination is an important issue, particularly as licensing is a quasi-judicial function. Therefore, during and after site visits members should not discuss or debate issues concerned with the application. Discussions should be confined to the actual licensing hearing.

- (f) Licensing must be open and transparent and accordingly site visits should not provide an opportunity for Panel members to talk to applicants or interested parties. To do so would amount to lobbying which would not be acceptable.

Notwithstanding the above, if members feel that site visits are appropriate provision could be made for the holding of them. Clearly they would enable Panel members to see the property and note the proximity of neighbouring premises. If a decision is to encourage the use of site visits then, in accordance with LACORS' advice, the Council would be advised to:

- (a) Set out the reasons why they may be requested in local guidance so that there are clear criteria for justifying any visit, which can be documented;
- (b) Have clear guidance as to how the visits are conducted; and
- (c) Determine who can require that a site visit is necessary eg:
- The Chairman
 - Any member
 - All members in agreement

It is suggested that the Licensing Committee would be best suited to determine these matters if the Council so decide.

2.0 FINANCIAL AND STAFFING IMPLICATIONS

2.1 There would of course be financial and staffing implications in arranging site visits. Staff would be responsible for organising site visits and would also need to attend. Depending on the location a site visit could take anything between one hour and three hours plus the organisation arrangements. It is anticipated that the Licensing Team would organise the visits and accompany members.

2.2 Financial implications would be the payment of travel allowances.

3.0 LEGAL/RISK MANAGEMENT IMPLICATIONS

3.1 The legal implications are detailed within the report.

4.0 RECOMMENDATIONS

- (a) That in respect of site visits the Protocol on Good Practice in Licensing state that "Site visits by Licensing Panel members are generally unnecessary and can put the members and the Licensing Authority at risk of accusations of bias. A decision to undertake a site visit must set out the justifiable reasons and clear guidance as to how the site visit will be conducted."; and
- (b) That the Licensing Committee consider the provision of guidance in respect of:
- The reasons why, in exceptional circumstances, site visits might be required so that there are clear criteria for justifying any visit which can be documented;
 - Provide clear guidance as to how visits are conducted; and
 - Determine who can require that a site visit is necessary.

Background papers:- LACORS' Guidance: The role of Elected Members in Relation to Licensing Committee hearings under the Licensing Act 2003

File Ref: EL 528

Appendices: None

Local Government (Access to Information) Act 1985

Please contact Jim Scarsbrook, the Head of Legal and Member Services, if you want more information about this report or the background papers. You can contact him/her:

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