

Agenda Item

Licensing & Enforcement Committee

9 June 2009

JT/IC/NM/DJ/JL

Committee Update -

Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing

Summary

The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi Legislation together with other general licensing matters.

Recommendation

That the report be noted

a) Reasons for Recommendation

To keep the Council's statutory committee up to date with current arrangements and statistics relating to the Licensing Team.

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None

e) Date for Review of Decision

Not Applicable

1 Licensing Act 2003

1.1 Licences Issued and Notices Given

1.1.1 Within the Licensing Authority's district there are currently 646 Licensed Premises. 584 of those hold Premises Licences while the remaining 62 benefit from Club Premises Certificates. In addition a total of 1,317 Personal Licences have been issued by the Authority.

1.1.2 Since the commencement of the Act in November 2005 a total of 2,365 Temporary Event Notices have been given. 2,174 of these were given for events where alcohol was to be sold while the remaining 191 were for regulated entertainment or late night refreshment only.

1.2 Premises Risk Ratings

- 1.2.1 In accordance with the established risk rating system each licensed premises has been rated as Low, Medium or High Risk. As of 31 March 2009 within East Devon there are 313 Low risk premises, 228 Medium Risk premises and 105 High risk. The High risk premises will form the main body of the visit schedule for the coming year. It is anticipated that the number of high risk premises will be reduced as a percentage have been elevated to high risk pending the result of follow up inspections to confirm compliance with verbal warnings issued during the initial round of inspections. The majority of these verbal warnings were given in respect of the failure to display the Premises Licence Summary.

1.3 Enforcement

- 1.3.1 The pro-active educational partnership approach to enforcement with the aim of compliance through consent continues to be successful. And again it is pleasing to report that although there has been an increase in complaints being received against licensed premises all have been resolved without the need for formal enforcement action.
- 1.3.2 Recently a protocol has been drawn up between Environmental Health and Licensing to ensure that the burden to the business is reduced and the Council resources are used to optimum efficiency through sharing of information and the use of joint visits or visits by one officer representing both Authorities. This supports the Regulators Compliance Code issued by the government in 2007.

1.4 Hearings

- 1.4.1 The following hearings have been held since the last report to committee on 2 March 2009:

Number of hearings where no agreed position has been reached.		
	March 2009	0
	April 2009	0
	May 2009	1
Number of hearings held to approve an agreed position.		
	March 2009	1
	April 2009	1
	May 2009	2
Total number of days sub-committees have sat.		
	March 2009	1
	April 2009	1
	May 2009	2

- 1.4.2 Following the refusal of the Licensing Authority to grant a licence for Tandoori Nights, Exmouth at its meeting on 2 February 2009 no appeal was received by the magistrate's court.
- 1.4.3 To date, the Council has received no applications to review existing licences. In addition there are no outstanding appeals to the Magistrates' Court against the decisions of this Council's licensing sub committees. Council Officers continue to co-ordinate mediation meetings where Responsible Authorities have expressed their intention to seek a review. Since the last report to committee three further "Pre Review Mediation" meeting have been held. This approach continues to be well received by all parties to the meetings and remains as standard practice in cases where responsible authorities are considering making an application for review of a premises licence.

- 1.4.4 Following consideration of the legal implications of speeding up the process of dealing with applications where an agreed position has been reached the current practice of calling a hearing within a period as close to five working days after the agreed position has been reached will continue. This has been found to be the safest option because the agreed position does not mean that representations have been withdrawn and therefore the position needs to be approved by either the Committee or a Sub Committee. These are required to be public meetings.

1.5 Temporary Event notices

- 1.5.1 These are a key part of the Act's operation, and enable individuals to carry on licensable activities without a premises licence provided they serve notice in the correct way on the licensing authority and the police. The police have only 48 hours in which to object, otherwise the event goes ahead.

Temporary Event Notices given to the Licensing Authority.	
February 2009	24
March 2009	57
April 2009	71

1.6 Variations, new licence applications, and changes of Designated Premises Supervisor

- 1.6.1 Applications for variation, transfer, new licences or change of designated premises supervisor continue to be received at a fairly constant rate.

Applications for the grant of a Premises Licence.	
February 2009	3
March 2009	4
April 2009	8
Applications for the variation of a Premises Licence.	
February 2009	1
March 2009	1
April 2009	0
Applications for the transfer a Premises Licence.	
February 2009	3
March 2009	4
April 2009	6
Applications for a change of Designated Premises Supervisor.	
February 2009	6
March 2009	9
April 2009	6

- 1.6.2 Licensing Officers continue to offer advice and guidance to applicants and liaise regularly with partner agencies to ensure the best possible service is provided by the Licensing Authority.

1.7 Personal licences

1.7.1 Applications relating to Personal licences are still being received at a steady rate.

Personal Licences issued.	February 2009	9
	March 2009	13
	April 2009	13
Applications for change of name or address.	February 2009	0
	March 2009	0
	April 2009	0

2 Gambling Act 2005

2.1 Licences Issued and Notices Given

2.1.1 Within the Licensing Authority's area there are now 16 (17)* Premises licensed under the Gambling Act. The reduction of one licence relates to the closure of the Lyme Bay holiday camp which meant that the bingo licence for the camp was surrendered. We also have 169 (167) Small Society Lotteries registered.

* Note the numbers in brackets are the figures from the previous update report.

2.2 Premises Inspections & Risk Ratings

2.2.1 The Licensing Authority is required to inspect premises licensed under the Gambling Act in accordance with the advice given by the Gambling Commission. To meet the Authority's obligations in this matter the scheme of inspection, report and risk assessment is still under development in consultation with the Gambling Commission and Partner Agencies.

2.3 Enforcement

2.3.1 Currently the Authority's role remains one of education and assistance. To date no formal enforcement action has been required and it is anticipated that as with the Licensing Act close working with partner agencies will prove most beneficial.

2.4 Hearings

2.4.1 Since the last update report there has been no requirement for any hearing relating to applications made under the Gambling Act. As is the case with the Licensing Act 2003 if there are no representations made against an application and in all other respects the application is properly made then there is no requirement for a hearing.

2.5 Applications & Notifications received

Applications for a Permit.	February 2009	0
	March 2009	1
	April 2009	3
Applications for a Licence.	February 2009	0
	March 2009	1
	April 2009	1
Notifications of Intent to have Gaming Machines.	February 2009	5
	March 2009	3
	April 2009	1

2.6 Gambling Commission Guidance to Licensing Authorities – 3rd Edition Published 1 May 2009

The Gambling Act 2005 requires the Gambling Commission to issue guidance to licensing authorities on the manner in which they are to exercise their functions under the Act. The District Council was notified on 8 May of the release of the **Gambling Commission Guidance to Licensing Authorities – 3rd Edition**. The vast majority of the guidance is unchanged. There are however some changes the members should be aware of and these are listed next:

2.6.1 Primary Gambling Activity

The Act makes it clear that the primary activity of the premises should be that described by the name of the licence, thus with a bingo premises licence the primary activity should be bingo, with gaming machines as an ancillary offer on the premises. Under the old legislation formerly controlled by the courts some applications were made for one type of licence merely so the operator could have access to an ancillary type of gambling/betting permitted by the licence. For example under the old regime licences were granted around the country for betting shop licences where the operator had no intention of running a betting shop but merely made the application to enable the offer of gambling machines with large payouts. Whilst betting shop licences permitted betting to take place the licence also permitted the premises to offer up to four large payout gambling machines. When the responsibility for licensing betting and gambling was transferred to Councils there was a requirement for all licences issued by the old regime to be converted to the new one. In East Devon we inherited one of these licences. In 2007 the operator converted his betting shop licence to a Premises licence although he did not offer a betting facility and merely held the licence to enable him to provide additional large payout machines. At the time the Council's licensing officers were uncomfortable with this arrangement and sort advice from the Gambling Commission. As the application was merely for the conversion not a new grant there were no grounds to refuse and the conversion went ahead. Fortunately during 2008 the operator voluntarily surrendered the Betting Premises licence. The up dated guidance from the Gambling Commission confirms the stance we took – that where a Premises licence has been issued the primary use must be for the purpose for which it was issued.

2.6.2 Split Premises

Many operators under the new legislation have attempted to maximise the number of large payout machines they can operate within a building. For instance an Adult Gaming Centre Premises licence only permits four large payout machines however some operators around the country have increased the number of

machines they offer by making multiple licensing applications for AGC Premises licences within the same building. In effect creating a booth effect. In East Devon we have resisted this approach and have been supported by the Gambling Commission. Section 152 of the Gambling Act 2005 defines 'premises' as 'any place'. The GC Guidance has now provided us with further assistance and states that "the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence".

The 3rd edition of the guidance provides further detail about the interpretation of premises and suggests some questions that a licensing authority may wish to ask itself when determining whether two or more premises are truly separate depending on the circumstances of the case, such questions may include:

- Is a separate registration for business rates in place for the premises?
- Is the premises' neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or public passageway?
- Can the premises be accessed only from any other gambling premises?

The guidance is particularly useful to assist licensing authorities when there are multiple applications for a combination of licences and permits in a single building when access between specific licensed areas is not permitted, e.g. there can be no direct access between adult gaming centres or between an adult gaming centre and an unlicensed family entertainment centre.

2.6.3 Machine Categories

With effect from 1 June 2009 the maximum stake on category C machines is increased from 50p to £1, and the maximum payout is increased from £35 to £70.

There is new guidance on the definitions of category D machines.

2.6.4 Change of Format of Gambling Commission Guidance to Local Authorities

The Gambling Commission Guidance to Licensing Authorities – 3rd Edition is now published in loose-leaf format. It is planned that when changes are made only the relevant individual pages will be updated thus reducing our printing costs.

3 Taxis

3.1 Licences Issued and Notices Given

3.1.1 Within the Licensing Authority's district there is currently a fleet of 220 (218)* licensed Vehicles, 177 (176) of which are Hackney Carriages and 43 (42) are Private Hire Vehicles. There are 242 (241) licensed Hackney Carriage Drivers and 73 (72) Licensed Private Hire Drivers. There are also 24 (23) licensed Private Hire Operators.

* Note the numbers in brackets are the figures from the previous update report.

3.2 Enforcement

3.2.1 The Licensing Team has continued the education based enforcement and monitoring approach to the Hackney Carriage and Private Hire drivers and vehicles as we have used with the Licensing Act. Again close liaison is maintained with partner agencies and the taxi trade to ensure that the principles of consistency, transparency and proportionality are maintained.

3.2.2 Following the Licensing Service's taxi enforcement operation earlier this year in Exmouth planning is continuing with the police and other partner agencies to run further enforcement/inspection operations within the District.

3.2.3 During 2008 members was informed that following an investigation by Council Licensing Officers with police assistance on 3 July 2008 a Honiton Hackney Carriage operator appeared at Exeter Magistrates Court and pleaded guilty to three offences relating using a taxi without insurance cover.

- 3.2.4 Following these convictions the operator appeared before a Sub Committee of this Committee on the 28 July 2008 when the operator's hackney carriage driving licence and vehicle licence were revoked. The operator subsequently appealed to the Magistrates Court against these revocations, but subsequently abandoned the appeal.
- 3.2.5 At the time the operator was still under investigation for 3 further no insurance offences which occurred before the Sub Committee revoked the operator's licences on the 28 July 2008. On the 8 May 2009 the former taxi operator was found guilty at Exeter Magistrates Court of these three further no insurance offences. The operator had already been disqualified from driving for 6 months but on conviction on this occasion was disqualified for a further 12 months.

3.3 Hearings

- 3.3.1 There have been no hearings relating to Hackney Carriage and Private Hire licensing since the last report to committee on 1 December 2008.

Number of hearings held.	February 2009	0
	March 2009	0
	April 2009	0

3.4 Applications received

Applications for a Hackney Carriage Licence. (including transfers & vehicle changes)	February 2009	7
	March 2009	5
	April 2009	1
Applications for a Hackney Carriage Drivers Licence.	February 2009	2
	March 2009	1
	April 2009	3
Applications for a Private Hire Vehicle Licence.	February 2009	0
	March 2009	1
	April 2009	2
Applications for a Private Hire Vehicle Drivers Licence.	February 2009	0
	March 2009	0
	April 2009	6
Applications for a Private Hire Operators Licence.	February 2009	0
	March 2009	0
	April 2009	1

- 3.4.1 The month of May has proved no different from other years in being a very busy time for the Licensing Service. All Private Hire licences issued by the Council expire on the 31 May and the applications for renewal of these licences need to be processed before they expire.

3.5 Taxi Rank Update

- 3.5.1 Seaton Taxi Ranks – In February 2005 following a very detailed consultation involving staff from the County Council the District Council's General Licensing Sub Committee agreed to the siting of 6 taxi spaces in Seaton in the following locations:
- (a) Fore Street 2 spaces.
 - (b) Eyrecourt Road 2 spaces.
 - (c) Queen Street 1 space just outside the existing loading bay.
 - (d) Queen Street 1 space just above the HSBC bank to operate from 2100 hours to 0300 hours, Monday to Saturday only
- 3.5.2 As has been previously reported to Members there has been considerable delay in implementing these ranks in Seaton as the Council is in the hands of the Highways Authority (Devon County Council) to prepare the necessary traffic order and to mark out the ranks. Numerous attempts have been made by this Council to expedite the situation with little success. However we have now been informed by Paul Wilson for the County Council that the papers have been passed to their legal team to prepare the traffic order and they hope to have the ranks marked out within three months.
- 3.5.3 Honiton Taxi Rank – As reported in the last update report over the past ten years there have been a number of attempts by the District Council to identify a location for additional taxi spaces in Honiton. Unfortunately local resistance, much from some local businesses, has thwarted previous attempts. The town currently has only one rank accommodating only two vehicles at a time. This is far fewer spaces than other comparable sized towns would normally host. As a result, the distribution of ranks in the town is non-existent and because there are insufficient spaces on the rank to accommodate all the taxis needed to service Honiton many taxis are forced to either double park in the High Street or to park in ordinary parking spaces.
- 3.5.4 It was reported at your last meeting that the Licensing Service had carried out informal consultation in the Honiton area on a proposal put forward by the Highway Authority to locate an additional rank accommodating two taxis on the north side of the High Street approximately three-car lengths west of the High Street/Silver Street junction. This met with very strong local opposition.
- 3.5.5 At the time of the last report there had been reports in the Honiton press that a local solution has been suggested and officers from the Licensing Service were in the process of following that up. I can now report that it seems a solution has been brokered to this long standing difficulty. It is understood that the Town Council, market traders and Devon County Highways have agreed a proposal. It is intended that the Licensing Service will carry out a consultation exercise on this proposal over the next six to eight weeks with the intention of bringing a report to the next meeting of the Licensing and Enforcement Committee to seek approval of the plan.

4. Street Trading Consents

- 4.1 On 18 May 2009 the Chairman and Senior Licensing Officer attended a meeting chaired by Seaton Town Council to discuss the issue of Street Trading within Seaton. Also at the meeting were representatives of local charities. A report on this matter is included within the agenda for this meeting.
- 4.2 Applications are being received for Street Trading during the Sidmouth Folk Festival. The area for trading has been resurveyed to ensure that best use is made of the areas for the siting of pitches.

5. Consultations and Partnership Working

5.1 Meeting between Members, Taxi Proprietors and Officers

- 5.1.1 The last liaison meeting took place on the 16 April 2009 and minutes of that meeting have been circulated with these papers.
- 5.1.2 The next liaison meeting has been arranged for Wednesday 28 October 2009 at 1400 hours in the Council Chamber. The Committee's Chairman and Vice Chairman normally attend these meetings.

6 Member Training & Development

- 6.1 The Licensing Manager is currently in the process of arranging refresher training and an opportunity of training for those members of the Committee who have been unable to attend the initial Licensing and Enforcement member training previously provided. It is anticipated that the Licensing Manager will have some dates for consideration by members at the meeting on the 9 June 2009.

7 Committee Time Table

- 7.1 The Council's programme of meetings for 2009/10 was agreed by the Annual meeting of the Council on Wednesday 20 May 2009. Members are reminded that all the Licensing and Enforcement Committee and Sub Committee meetings have now been moved to Tuesdays rather than Mondays. However during this first year there may be the occasional need for these meetings to be on a Monday due to difficulties booking the required rooms. These occasions are very few in number and have already been catered for in the published programme of meetings.

8. EU Services Directive

- 8.1 The Directive was adopted by EU countries in December 2006. The Department for Business Enterprise & Regulatory Reform is required to transpose its requirements into UK law and practices before 28 December 2009.
- 8.2 The Directive aims at opening up the European internal market to cross border trade in services by making it easier for service providers to set up businesses or offer services in other EU countries. It imposes a number of requirements on all EU countries.
- 8.3 Whilst not been exhaustive the following are examples of services covered by the Directive:
- the activities of most of the regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors)
 - crafts people
 - business-related services (such as office maintenance, management consultancy, the organisation of events, recovery of debts, advertising and recruitment services)
 - services in the field of tourism (such as the services of travel agencies)
 - leisure services (such as services provided by sports centres and amusement parks)
 - building construction and maintenance services
 - services comprising the installation and maintenance of industrial or commercial equipment
 - information services (such as web portals, news agency activities, publishing, computer programming activities)
 - accommodation and food services (such as hotels, restaurants, catering services)
- 8.4 The Directive applies to Local Authorities and includes Local Authority Licensing. The Directive does however exempt certain services including transport, and gambling activities. This means

that taxi and gambling licensing is exempted. Alcohol licensing is also exempt although entertainment licensing is not. At this time Local Authorities are awaiting further advice from the BERR on how this anomaly will be managed.

- 8.5 With the exception of the types of licensing that are exempt from the directive the main effect on the Council's Licensing Service is that by the 28 December 2009 we will need to be able to provide the ability for all applicants of non exempted licence types to make their applications online and for the Council to be able to issue licences online.
- 8.6 The District Council is fortunate that for some years we have worked very closely with our licensing software providers – LalPac. LalPac which are regarded within the licensing world as one of the leading suppliers of licensing software are currently developing their web module to comply with the EU Services Directive. LalPac are satisfied that they can provide the online facilities required by the EU Directive. The difficulty everyone in this field face at the moment is that further guidance and legislation changes are required from/by central government to fully enable online licensing applications. Provided central government tackle these issues quickly we are likely to be one of the first Council's in the country to provide a complete solution to online applications.
- 8.7 Through our licensing software the Council already has the ability to accept one type of licence online and during June we expect to upgrade our software further to enable a further 12 applications to be made online. During the summer the Council's ITC department will be working with our software provider to enable online payment of licensing fees during the online application procedure.

9. Customer Service Excellence (Chartermark)

- 9.1 The Licensing Service has applied to be assessed for the Customer Service Excellence Standard formerly Chartermark. This is a government standard "which tests in great depth those areas that research has indicated are a priority for customers, with particular focus on delivery, timeliness, information, professionalism and staff attitude. There is also emphasis placed on developing customer insight, understanding the user's experience and robust measurement of service satisfaction. The Government wants public services for all that are efficient, effective, excellent, equitable and empowering – with the citizen always and everywhere at the heart of public service provision".
- 9.2 We are currently preparing our portfolio of evidence with our final assessment planned for the autumn.

Legal Implications

There are no legal implications contained within the report.

Financial Implications

The Licensing Section generated an annual income of £186k in 2008/09, with budgeted income of £170k for 2009/10, the majority of this from Licensing Act 2003 fees.

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9 June 2009

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