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Date of meeting Thursday, 23rd October, 2014
Time 7.00 pm
Venue Committee Room 1, Civic Offices, Merrial Street,
Newcastle-under-Lyme, Staffordshire, ST5 2AG
Contact Geoff Durham

Licensing Committee

AGENDA

PART 1 – OPEN AGENDA

- 1 **Declarations of Interest**
- 2 **MINUTES OF PREVIOUS MEETING** (Pages 3 - 4)
To agree as a correct record, the minutes of the meeting held on 27 August, 2014
- 3 **MINUTES OF SUB COMMITTEE MEETINGS** (Pages 5 - 8)
To consider the minutes of the Sub-Committee meeting held on 9 September, 2014.
- 4 **PURPLE FLAG AND REDUCING THE STRENGTH**
To receive a verbal update from the Council's Community Safety Officer, Trevor Smith.
- 5 **Licensing Sub-Committee Quorum** (Pages 9 - 12)
- 6 **Gambling Act Fees** (Pages 13 - 18)
- 7 **Sexual Entertainment Venue Fees** (Pages 19 - 22)
- 8 **To consider the Work Programme for this Committee**
- 9 **Urgent Business**

Members: Councillors Mrs Bates (Vice-Chair), Miss Cooper, Eastwood, Hambleton, Mrs Heames, Miss Mancey, Mrs Simpson, Tagg, Welsh, Wemyss, Wilkes, Williams, Mrs Williams, Mrs Winfield (Chair) and Woolley

PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

LICENSING COMMITTEE

Wednesday, 27th August, 2014

Present:- Councillor Mrs Joan Winfield – in the Chair

Councillors Miss Cooper, Eastwood, Hambleton, Mrs Heames,
Miss Mancey, Mrs Simpson, Wilkes, Williams and Mrs Williams

1. **APOLOGIES**

Apologies were received from Councillors' Wemyss and Woolley

2. **DECLARATIONS OF INTEREST**

There were no Declarations of Interest stated.

3. **REVIEW OF THE COUNCIL'S POLICY FOR THE LICENSING OF SEX ESTABLISHMENTS**

Members considered a report informing them of the outcome of the consultation exercise regarding the licensing of Sex Establishments within the Borough and were asked to recommend the Policy to the next meeting of the Council to be held on 17 September, 2014.

A response from Staffordshire County Council had made a couple of observations:

- That the age limit be increased from the age of 21 to 25
- That a time limit be specified for making CCTV images available.

Members discussed the above points and agreed that as there had been no issues regarding the premises the age limit should remain at 21.

The Policy made no reference to any time limit regarding CCTV images and it was therefore agreed that it should be included. From the options available, Members agreed that the time limit should be 'immediately or within 24 hours'.

Resolved:- That it be recommended to Full Council that the Policy be adopted with the inclusion of the CCTV images being available 'within 24 hours of request'.

COUNCILLOR MRS JOAN WINFIELD
Chair

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LICENSING SUB-COMMITTEE

Thursday, 4th September, 2014

Present:- – in the Chair

Councillors Hambleton, Mrs Williams and Mrs Winfield

1. **APPLICATION FOR A REVIEW OF A PREMISE LICENCE - LYMESTONE VAULTS, PEPPER STREET, NEWCASTLE UNDER LYME, STAFFS, ST5 1PR**

Having taken into account the licensing Act 2003 and the Guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that Staffordshire Police have requested a review of the premises licence to promote the licensing objectives relating to the Prevention of Crime and Disorder and the Protection of Children from Harm, but that Staffordshire Police were prepared to withdraw their representation on the basis of the following agreement between themselves and the licence holder.

1. A letter signed on behalf of the premise licence holder to be supplied to the effect that door supervisors will be in attendance at the premises on a Friday and Saturday from 22.00 hours until the terminal hour when customers have left and the premises are closed, with effect from Friday 12th September 2014.
2. Records of staff training for Challenge 25 at the premises to be fully updated and remain immediately accessible on demand by Staffordshire Police or other authorised officer.
3. That the action plan put in place by the premise licence holder be approved as acceptable.
4. That a formal warning be issued by the Licensing Authority to the premise licence holder and designated premise supervisor that any other breaches of licence conditions could result in a further review of the premise licence and possible revocation thereof.

The licence holder having confirmed his agreement to the proposals put forward by Staffordshire Police, the Committee were disposed to confirm that the proposals were appropriate to ensure that the Licensing objectives were promoted and a notice would be issued to that effect.

CLLR MRS J WINFIELD
Chair

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Licensing Sub-Committee - 30/09/14

LICENSING SUB-COMMITTEE

Tuesday, 30th September, 2014

Present:- Councillor Mrs Joan Winfield – in the Chair

Councillors Mrs Bates and Eastwood

1. REVIEW APPLICATION ROBIN HOOD

Following a telephone conversation between the Police and Ford & Warren Solicitors it was agreed to add the following conditions to the premises licence for The Robin Hood, subject to ratification by the Licensing Committee.

Both Ford and Warren Solicitors and the Police agreed that the addition of the following conditions was appropriate and gave a proportionate outcome in all the circumstances.

1. CCTV to be installed to cover all areas where licensable activity takes place including any designated smoking areas. The CCTV unit shall be positioned in a secure part of the licensed premise and not within any private area of the location.
2. Access to the system should be allowed immediately to Police, Trading Standards and Local Authority licensing officers during licensable hours where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
3. All images should be kept for 31 days and produced to Police, Trading Standards and Local Authority licensing officers within 48 hours of request, when sought pursuant to The Data Protection Act 1998 and it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
4. The CCTV system clock should be set correctly and maintained (taking account of GMT and BST)
5. The CCTV system must be maintained so as to be fully operational and recording during licensable hours and 2 hours thereafter.
6. There should be a member of staff available at all times during licensable hours capable of operating the CCTV system and also downloading any footage required by police, local authority licensing officers or Trading Standards.
7. All tills in the venue must record the time, date and details of each transaction. The time and date on the till should be correctly set at all times.

COUNCILLOR MRS JOAN WINFIELD
Chair

REPORT TITLE **Licensing Sub Committee Quorum**

Submitted by: **Democratic Services Manager**

Portfolio: **Culture and Leisure**

Ward(s) affected: **All Wards**

Purpose of the Report

To request that the Committee update the remit of the Licensing Sub Committee to include reference to a quorum for the Committee. The recommendation is that this quorum be 3 Members.

The Committee is also requested to consider whether it would be desirable to, where possible request a fourth member of the Licensing Committee to be on standby for all Licensing Sub Committee meetings in case the quorum is not met.

It must however be noted that given the limited availability of members during the day, it may not always be possible to have a member on standby and this must not delay any organisation or holding of a subcommittee meeting.

Recommendations

- a) **That the Committee ratify a licensing Sub-Committee quorum of no less than three members in attendance for each hearing.**
- b) **That whenever possible a fourth member will be asked to be on stand by for a meeting of the Licensing Sub Committee but the non-availability of a fourth member should not prohibit the meeting from proceeding.**

Reasons

To provide clarity in relation to member attendance at meetings of the Licensing Sub Committee.

1. **Background**

In December 200 Full Council resolved to establish a new Licensing Committee comprising 15 elected members responsible for the administration and enforcement of the provisions of the Licensing Act 2003.

Section 9 of the Licensing Act 2003 states:

Proceedings of licensing committee

- (1) A licensing committee may establish one or more sub-committees consisting of three members of the committee.

- (2) Regulations may make provision about—
- (a) the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings),
 - (b) public access to the meetings of those committees and sub-committees,
 - (c) the publicity to be given to those meetings,
 - (d) the agendas and records to be produced in respect of those meetings, and
 - (e) public access to such agendas and records and other information about those meetings.
- (3) Subject to any such regulations, each licensing committee may regulate its own procedure and that of its sub-committees.

2. **Issues**

At a recent meeting of the Licensing Sub Committee only two members were able to attend on the day. At this point the Committee was asked to hear the review with just two members. Following consultation, agreement was reached with all parties that as Newcastle under Lyme Borough Council did not have a quorum policy, the hearing should be adjourned to a future date to ensure that three members could be in attendance.

Whilst section 9(1) of the Licensing Act 2003 states that Sub-Committees are to consist of three members, it does not make requirements as to the quorum. Section 9(2) allows there to be regulations as to the proceedings of Sub-Committees but Section 9(3) states that subject to such regulations the Licensing Committee may regulate its own procedure and that of its Sub-Committees. It is apparent there is no such quorum fixed for the Licensing Sub-Committee

3. **Options Considered**

To agree a quorum of three members for each Licensing sub-committee with a fourth member on standby where possible.

Reasons for Preferred Solution

Meetings of the Licensing Sub Committee can often require attendance from multiple partner organisations such as Staffordshire Police, Staffordshire fire, Environmental Health and Trading Standards. Members of the public who have submitted representations are also invited to attend along with elected members and officers of the Council. Therefore every possible step must be taken to ensure that meetings of the Licensing Sub Committee are able to proceed without delay and where possible on the original published date and time.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- Creating a clean, safe and sustainable Borough
- Creating a Borough of opportunity
- Creating a healthy and active community

- Becoming a co-operative council which delivers high quality, community-driven services.

7. **Legal and Statutory Implications**

As detailed in the Licensing Act 2003 Section 9.

8. **Equality Impact Assessment**

There will be no adverse impact from the implementation of the recommendation.

9. **Financial and Resource Implications**

None.

10. **Major Risks**

By not specifying a quorum the Council may be at risk of a legal challenge should a meeting of the Sub Committee have to be re convened do to less than three members being in attendance.

11. **Key Decision Information**

This is not a key decision.

12. **Earlier Cabinet/Committee Resolutions**

Minutes of the meeting of Full Council held on 5th December 2013.

13. **List of Appendices**

None

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE LICENSING COMMITTEE

23rd October 2014

FEES TO BE CHARGED IN RELATION TO THE GAMBLING ACT 2005

Submitted by: Democratic Services Manager

Portfolio: Finance and Resources

Ward(s) affected: ALL

Purpose of the Report

For Members to consider and agree the fees to be charged in relation to the Gambling Act 2005.

Recommendations

That the Committee agree the fees to be charged in relation to the Gambling Act 2005.

1. **Background**

Licensing authorities are responsible for setting the fees for gambling premises licences. These must be calculated on a cost recovery basis. Fees must not exceed the maximums set out in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007. At the moment all of the fees current charges by Newcastle under Lyme Borough Council are at the maximum level and the recommendation is that this continues to be the case.

Licensing authorities have a duty to set these fees on a cost recovery basis. The Act states S212 (2) (d)) that licensing authorities "shall aim to ensure that income from fees as nearly as possible equates to the cost of providing the service to which the fee relates including a reasonable share of expenditure which is referable only partly or only indirectly linked to the provision of the service". Licensing authorities must be transparent about the assumptions they have made in setting their fees. The annual fee will cover the costs of compliance and enforcement work, including the cost of dealing with illegal gambling in a licensing authority's area.

Fees for premises licences should include an element for overheads and for dealing with illegal gambling in the area. This Council has delegated responsibility for setting Gambling fees to the licensing committee.

Fees cannot be set on the basis of size, rateable value or any other basis. Licensing authorities must be transparent about the assumptions they have made in setting their fees. Fees should be published and reviewed on an annual basis initially.

Detail

Gambling Act 2005	Current	Proposed	Increase/Decrease	Upper Limit
Lotteries - application fee	40	40	Statutory	N/A
Lotteries - annual fee	20	20	Statutory	N/A
Bingo - application fee	3,500.00	3,500.00	No Change	3,500
Bingo - annual fee	1,000.00	1,000.00	No Change	1,000
Bingo - application to vary	1,750.00	1,750.00	No Change	1,750
Track betting - application fee	2,500.00	2,500.00	No Change	2,500
Track betting - annual fee	1,000.00	1,000.00	No Change	1,000
Track betting - application to vary	1,250.00	1,250.00	No Change	1,250
Track betting - application to transfer	950	950	No Change	950
Club machine permit - application fee	200	200	Statutory	N/A
Club machine permit - renewal fee	200	200	Statutory	N/A
Club machine permit - annual fee	50	50	Statutory	N/A
Betting premises - application fee	3,000.00	3,000.00	No Change	3,000
Betting premises - annual fee	600	600	No Change	600
Betting premises - application to vary	1,500.00	1,500.00	No Change	1,500
Betting premises - application to transfer	1,200.00	1,200.00	No Change	1,200
Family entertainment centre - application fee	2,000.00	2,000.00	No Change	2,000
Family entertainment centre - annual fee	750	750	No Change	750
Family entertainment centre - application to vary	1,000.00	1,000.00	No Change	1,000
Family entertainment centre - application to transfer	950	950	No Change	950
Adult gaming centre - application fee	2,000.00	2,000.00	No Change	2,000
Adult gaming centre - annual fee	1,000.00	1,000.00	No Change	1,000
Adult gaming centre - application to vary	1,000.00	1,000.00	No Change	1,000
Adult gaming centre - application to transfer	1,200.00	1,200.00	No Change	1,200

2. **Issues**

None identified

3. **Options Considered**

That the fees listed in the table above be agreed by the Licensing Committee for the financial year 2015/2016.

4. **Reasons for Preferred Solution**

No change is recommended in relation to the fees relating to the Gambling Act 2005.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- crime and disorder
- regeneration
- quality of life
- environment
- health improvement implications

7. **Legal and Statutory Implications**

Licensing authorities have a duty to set these fees on a cost recovery basis. The Act states S212 (2) (d)) that licensing authorities “shall aim to ensure that income from fees as nearly as possible equates to the cost of providing the service to which the fee relates including a reasonable share of expenditure which is referable only partly or only indirectly linked to the provision of the service”. Licensing authorities must be transparent about the assumptions they have made in setting their fees.

8. **Equality Impact Assessment**

No adverse impact has been identified.

9. **Financial and Resource Implications**

As no reduction in the fees is recommendation there should be no detrimental financial implications for the Council. No increase in fee is possible as all fees currently charged are at the maximum permitted.

10. **Major Risks**

11. **Key Decision Information**

Not applicable

13. **Recommendations**

That the Committee agree the fees to be charged in relation to the Gambling Act 2005.

14. **List of Appendices**

Overview of the Types of Licence

15. **Background Papers**

The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007

Application Type	Description
Application Fee	This is a one-off, non-refundable fee payable to the licensing authority upon application for a new gambling premises licence or one under the transitional arrangements for existing operators. The fee will cover the cost to the licensing authority of receiving, considering and determining the application, including staff costs, overheads, IT, legal and other central support costs, initial inspections, Licensing Committee costs and hearing costs and appeals.
First Annual Fee	This will cover the regulatory costs for the first year (e.g. processing costs, plus review, inspection and enforcement activity). Licensing authorities have discretion to offer a discount on the first annual fee in recognition of the fact that checks will have been done at time of application, and the costs will be on average lower than in subsequent years. This is consistent with the Gambling Commission's approach to non-remote operating licensing fees.
Annual Fee	<p>Payable annually by all premises licence holders for the maintenance of their licence. This will cover the regulatory costs for the next year (i.e. inspection, holding reviews and enforcement activity), the costs associated with processing the annual fee (i.e. updating computer systems, register of gambling premises licences and processing fee) and annualised periodic costs incurred by the licensing authority in respect of its 3 year licensing policy statements;</p> <p>Under the Act, subsequent annual fees are payable before each anniversary of the date on which the licence is issued.</p> <p>Under the Act, a licensing authority must revoke a premises licence if a licensee fails to pay the annual fee, except where the authority thinks the failure to pay is due to an administrative error.</p>
MISCELLANEOUS FEES	
Change of circumstance fees	Payable by holders of premises licences when they submit a notification of a change of circumstance.
Variation of licence fees	Payable by holders of premises licences when they apply to vary a licence.
Transfer of licence	Payable by holders of premises licences when they apply to transfer a licence from one operator to another.
Re-instatement	Payable by anyone applying for a licence to be re-instated
Provisional statement fees	Payable by anyone applying for a provisional statement (a statement from the licensing authority in advance of a full premises licence).
Copy of licence fees	Payable for the provision of a replacement copy of a premises licence.

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE LICENSING COMMITTEE

23rd October 2014

1. FEE TO BE CHARGED FOR THE LICENSING OF SEXUAL ENTERTAINMENT VENUES

Submitted by: Democratic Services Manager

Portfolio: Finance and Resources

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fee to be charged in relation to the licensing of Sexual Entertainment Venues.

Recommendations

That the Committee agree a fee to be charged for the licensing of sexual entertainment venues.

1. **Background**

Newcastle Borough Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2011 which came into effect on 3rd August 2011.

The adoption of the schedule means that the Council can control and regulate the operation of certain kinds of sex establishment within its area through the use of a policy for the licensing of sex establishments. The revised policy was agreed at the meeting of the Full Council held on 17th September 2014.

The fees that are currently charged for the licensing of Sexual entertainment venues are:

Sex establishments - Application fee	3,000.00	
Sex establishments - Renewal fee	2,000.00	
Sex establishments - Variation	0.00	No Fee Set
Sex establishments - Transfer	0.00	No Fee Set

A licence is only valid for one year.

2. **Issues**

The European Services Directive states (Art 12.2):

Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.

3. Options Considered

That the below fees be considered:

	Current	Proposed
Sex establishments - Application fee	3,000.00	3,000
Sex establishments - Renewal fee	2,000.00	2,000
Sex establishments - Variation	0.00	1,000
Sex establishments - Transfer	0.00	1,000

4. Proposal

That the Committee discuss the options and agree upon a reasonable fee.

4. Reasons for Preferred Solution

The fee can be used to cover the cost of the following:

Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

Third party costs – Some licensing processes will require third party input from experts,

Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.

Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.

Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- crime and disorder
- regeneration
- quality of life
- environment
- health improvement implications

7. Legal and Statutory Implications

Hemming v Westminster

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In Hemming v Westminster, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, Hemming v Westminster stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of R v Tower Hamlets LBC (1994)7 may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

8. **Equality Impact Assessment**

An equality impact assessment will be completed before the end of March in relation to the policy.

9. **Financial and Resource Implications**

Should a challenge be made in relation to the fee level as detailed in the Hemming v Westminster there could be detrimental financial implications for the Council

10. **Major Risks**

As detailed under Legal and Statutory Implications

11. **Key Decision Information**

Not applicable

12. **Earlier Cabinet/Committee Resolutions**

Newcastle Borough Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2010 which came into effect on 3rd August 2011.

13. **Recommendations**

That the Committee agree the fees to be charged for the licensing of sexual entertainment venues.

14. **List of Appendices**

None

15. **Background Papers**

LGA Guidance on Local Fee Setting