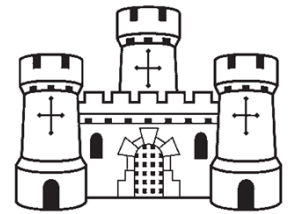


Public Document Pack

Date of meeting Tuesday, 22nd November, 2016
Time 7.00 pm
Venue Committee Room 1
Contact Geoff Durham



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Civic Offices
Merrial Street
Newcastle-under-Lyme
Staffordshire
ST5 2AG

Licensing Committee

AGENDA

PART 1 – OPEN AGENDA

1 DECLARATIONS OF INTEREST

To receive declarations of interest from Members on items contained within the agenda.

2 MINUTES OF PREVIOUS MEETING

(Pages 3 - 4)

Resolved: That the minutes of the meeting held on 21 July, 2016 be agreed as a correct record.

3 MINUTES OF SUB COMMITTEE MEETINGS

(Pages 5 - 8)

To consider the minutes of the Licensing Sub-Committees which have met since the previous Licensing Committee.

4 Fees and Charges

(Pages 9 - 14)

5 Safeguarding and CSE Training

(Pages 15 - 18)

6 To consider the Work Programme for this Committee

7 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors Bailey, Frankish, T Hambleton (Chair), Harper, Johnson, Jones, Mancey, Parker, Reddish, Simpson, Spence, S Tagg, White (Vice-Chair), J Williams and Winfield

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



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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.

FIELD_TITLE

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

LICENSING COMMITTEE

Thursday, 21st July, 2016

Present:- Councillor Trevor Hambleton – in the Chair

Councillors Bailey, Frankish, Harper, Johnson, Jones, Reddish, Simpson, Spence, S Tagg, White, J Williams and Winfield

1. **APOLOGIES.**

There were no apologies.

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

3. **MINUTES OF PREVIOUS MEETING**

Resolved That the minutes of the previous meeting held on 23 February 2016 be approved as a correct record of the proceedings.

4. **PRESENTATION BY INSPECTOR BARLOW AND SPECIAL SATURATION POLICY JULY 2016**

(Consideration of the Special Saturation Policy July 2016 followed the presentation by Inspector Barlow).

In accordance with a decision of this Committee (3/7/2013) that the Special Saturation Policy be reviewed on an annual basis, Inspector Barlow from the Newcastle Local Policing Team gave a presentation to members which reviewed the Cumulative Impact Zone. The Cumulative Impact Zone supported the Special Saturation Zone Policy within this Authority's Licensing Policy. The effect of the Saturation Zone Policy was to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations thereto will be refused whenever relevant representations about cumulative impact on the licensing objectives which can be substantiated by evidence have been received unless -

The applicant provided evidence to show that the application included measures to show that the operation of the premises would not add to the cumulative impact already being experienced or:-

There are no representations from Responsible Authorities.

The presentation provided evidence and supported members to make a decision. Inspector Barlow left the room following his presentation and during consideration of this item by members.

Continuing, the Head of Environmental Health Services explained that there were a number of licensed premises concentrated together in one area that combined had a detrimental impact on levels of crime and disorder and public nuisance and in particular violent crime in the town centre. Given this, the Council had been satisfied

that is was appropriate and necessary to include in its Licensing Policy a Special Saturation Policy. In accordance with Guidance such special policies should be reviewed regularly to assess whether they were still needed or should be amended.

Resolved That the current Saturation Policy was still required and remained adequate and should continue in force for a further 12 months.

5. TO CONSIDER THE WORK PROGRAMME FOR THIS COMMITTEE

This item was not considered

6. URGENT BUSINESS

There was no urgent business.

COUNCILLOR TREVOR HAMBLETON
Chair

LICENSING SUB-COMMITTEE

Tuesday, 2nd August, 2016
Time of Commencement:10am

Present:- Councillor Trevor Hambleton – in the Chair

Councillors Reddish and J Williams

Officers

Apologies Councillor(s)

1. **APPLICATION FOR THE VARIATION OF A PREMISE LICENCE - BETLEY COURT FARM**

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Councils statement of Licensing Policy and also the fact that objections to the application had been received from both Environmental Health and other persons on the basis that to grant the application would undermine the licensing objective relating to the prevention of public nuisance.

The Licensing Sub-Committee considered those licensing objectives in the light of what had been said and had listened to the arguments and were persuaded that it would not offend the licensing objectives to grant the applications.

The first application was a variation to the existing premises licence to enable the temporary stage to be utilised on Friday, Saturday and Sunday, (as permitted by Virtue of Part 1 of the premises licence) to be re-sited (but remaining within the address of the premises demised by that licence) to the area shown on a plan submitted. The stage and site being designed to minimise possible nuisance to nearby residents, in accordance with the licence conditions. The Licensing Sub-Committee being satisfied that the re-siting of the temporary stage would facilitate noise attenuation it was disposed to grant the application.

The second application was for an additional one day to those stipulated under the current premises licence to permit all licensable and other activities authorised under the premises licence. The additional day being Thursday 11 August 2016 and it was noted that the applicant did not seek permission for an additional day for any subsequent years.

Environmental Health had been in contact with the applicant and had agreed to withdraw their representation for so long as the conditions agreed between themselves and the applicant in relation to permitted music noise levels set out on page 76 of the agenda were included in the licence to ensure that the licensing objectives were met. The noise levels in relation to 4 day events stipulated that music noise levels should not exceed the background noise level by more than 20dB(A) over a 15 minute period and a maximum of 70dB in both the 63Hz and 125 Hz octave frequency band.

The applicant had agreed this condition which was reflective of national guidance which prevents public nuisance associated with music noise.

In their submissions other parties have made reference to the application being flawed in terms of the notice of application. The Licensing Sub-Committee took the view that the relevant legal notices had been given and displayed and therefore, the application was in order.

The Committee noted that Staffordshire Police had not objected to the application in relation to crime and disorder or any other licensing objective.

Representations were also submitted in relation to possible traffic related issues. Evidence was given that these had been discussed by all relevant parties at the Safety Advisory Group where a traffic management plan had been agreed taking into account expected traffic flow during the relevant days including peak periods. Car parking provision had been identified in two fields and additional stewards and Police had been employed. There would be track way and temporary roadways and tow away facilities with informative highway signage and on street parking restrictions. There would also be marshall arrangements and taxi drop off/availability areas.

The Committee had regard to paragraph 2.8 of its Licensing Policy relating to the protection of residential amenity and paragraph 8.33 to 8.41 relating to the steps to be taken to promote the licensing objectives contained in the guidance.

Counsel for the applicant also drew the committee's attention specifically to paragraph 2.6 of the Licensing Policy in relation to the promotion of live music and cultural activities.

In reaching its decision the committee also had regard to the existing licence conditions which provided that the licensable event shall not proceed where the required management plans required by the licence had not been approved by the relevant responsible authority in advance of the event. The required management plans and procedures being identified in Annex 4 of the licence.

In relation to representations relating to noise nuisance the committee were of the opinion that the re-siting of the stage coupled with the agreement relating to the reduction in permitted noise levels over the whole concert period should alleviate the majority of concerns in that connection.

There having been no concerns expressed in relation to public safety or the protection of children from harm the committee on balance were of the opinion that the licence should be granted.

Therefore, subject to the conditions that are referred to, the committee were prepared to grant a variation of the licence on the following basis:-

Firstly the licence to be amended to include THURSDAY 11 AUGUST 2016 (for this year only) with licensable activities as follows:-

Live music (outdoors):-	14:00 – 22:30
Recorded music (outdoors):-	14:00 – 22:30
Alcohol (on the premises):-	14:00 – 22:15

Opening hours of the premises:- 14:00 – 22:30

(all in accordance with the application)

Secondly, the licence shall be subject to the agreed conditions referred to above in relation to the agreed permitted music noise levels.

Thirdly, Condition 24 (ii) of Annex 4 would be amended to provide for propagation and speaker tests on Thursday 11 August 2016 from 10:00am – 3:00pm in addition to the other days and times.

Any party aggrieved by this decision has the right to appeal within 21 days from the date of this decision of the Magistrates' Court.

COUNCILLOR TREVOR HAMBLETON
Chair

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FEE TO BE CHARGED FOR THE LICENSING OF GAMBLING AND SEXUAL ENTERTAINMENT VENUES 20017-18

Submitted by: Head of Environmental Health

Portfolio: Finance, IT & Customer

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fees to be charged in relation to the licensing of Gambling and Sexual Entertainment Venues.

Recommendations

That the Committee agree the fees to be charged for the licensing of Gambling and Sexual entertainment venues.

1. **Background**

- 1.1 The 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 gambling and sex establishment within its area through the use of a policy for the licensing of such 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 sex entertainment venues are:

Sex establishments - Application fee	£3,000.00
Sex establishments - Renewal fee	£2,000.00
Sex establishments - Variation	£1,000.00
Sex establishments - Transfer	£1,000.00

A licence is only valid for one year.

- 1.2 There are a number of additional statutory charges in relation to gambling establishments, these are detailed as follows:

Bingo – application for transfer	1200.00
Copy of any of the above licences (lost, stolen, damaged)	25.00
Licensed Premises Gaming Machine Permits – more than 2 machines – Copy (lost, stolen, damaged)	15.00
Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged)	15.00
Prize Gaming Permit – Copy (lost, stolen, damaged)	15.00
Temporary Use Notice (TUN)	125.00
Casino Small – New application	6000.00
Casino Small – Annual Fee	3000.00
Casino Small – Variation	2000.00
Casino Small – Application for Transfer	1300.00

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	1,000.00	1,000
Sex establishments - Transfer	1,000.00	1,000
Bingo – application for transfer	200.00	200.00
Copy of any of the above licences (lost, stolen, damaged)	25.00	25.00
Licensed Premises Gaming Machine Permits – more than machines – Copy (lost, stolen, damaged)	15.00	15.00
Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged)	15.00	15.00
Prize Gaming Permit – Copy (lost, stolen, damaged)	15.00	15.00
Temporary Use Notice (TUN)	125.00	125.00
Casino Small – New application	6,000.00	6,000.00
Casino Small – Annual Fee	3,000.00	3,000.00
Casino Small – Variation	2,000.00	2,000.00
Casino Small – Application for Transfer	1,300.00	1,300.00

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) 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**

The 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 gambling and sexual entertainment venues.

14. **List of Appendices**

None

15. **Background Papers**

LGA Guidance on Local Fee Setting

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Safeguarding and Child Sexual Exploitation (CSE) Training for members and staff of licensed premises in the Borough.

Submitted by: Sarah Moore - Partnerships Manager
& Catherine Fox – Partnerships Vulnerability Officer

Portfolio: Finance, IT and Customer
& Communities and Social Cohesion

Ward(s) affected: All

Purpose of the Report

To update Members on the proposed co-ordination of CSE awareness training to members and partners.

To reaffirm to Members the role of the Borough Council in safeguarding children and adults at risk of abuse and neglect.

Recommendations

That the Partnerships Team liaise with the Democratic Services to co-ordinate additional CSE awareness training for members of the Licensing Committee by the end of the current financial year.

That Members participate in awareness training and assist Officers to encourage staff of licenced premises to participate in similar training as appropriate.

Reasons

The Children Acts (1989) and (2004), the Care Act (2014) and the Safeguarding Vulnerable Groups Act (2006) place statutory duties on District Councils to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children and adults at risk of abuse and neglect.

The statutory guidance 'Working together to safeguard children: a guide to inter agency working to safeguard and promote the welfare of children (2015)' provides core legislative requirements regarding the expectations of the role of District Councils working alone or in partnership with other organisations.

1. **Background**

1.1 Safeguarding children can be defined as “The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully”.

1.2 Safeguarding duties also apply to an adult who: has needs for care and support (whether or not the local authority is meeting any of those needs) and; is experiencing, or at risk of, abuse or neglect; and as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect. The adult experiencing, or at risk of abuse or neglect will hereafter be referred to as the adult throughout this report.

- 1.3 The Children Act (2004) requires each local authority to establish a Local Safeguarding Children Board (LSCB) made up of representatives from the agencies and bodies which have regular contact with children or have responsibility for services to them (or their families) in the local area and builds upon the provisions of the Children Act (1989).
- 1.4 As a statutory authority providing services in the community to children and their families the Borough Council is required to co-operate in the establishment, operation, and participation of the LCSB and is a member of the Staffordshire Safeguarding Children's Board (SSCB), which became operational in April 2006. The Borough Council also has a legal responsibility to safeguard, promote wellbeing and protect children when discharging our functions.
- 1.5 The Care Act (2014) introduced a statutory requirement for each local authority to establish a Safeguarding Adults Board (SAB) made up of representatives from the agencies and bodies which have regular contact with adults at risk of abuse and neglect or have responsibility for services to them (or their families) in the local area. The Borough Council is a member of the Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership (SSASP).
- 1.6 The Borough Council participates in the District Safeguarding Sub Group (for Children and Adults at risk of abuse and neglect) and has assisted in the creation of the recently reviewed Safeguarding Children and Adults at Risk of Abuse and Neglect Policy template, which was adopted in Newcastle in October 2015.
- 1.7 The Policy seeks to help protect all children and adults at risk of abuse and neglect living in our communities and to support the Borough Council, its staff, elected members and volunteers.
- 1.8 In line with the legal responsibilities set out in Section 11 of the Children Act 2004, the Council has undertaken an audit to ensure that in discharging its functions the Council has regard to the need to safeguard and promote the welfare of children. The audit assessment gave the Council the opportunity to highlight areas of strength and to identify areas for further development, which have now been incorporated into the revised Policy.
- 1.9 The audit highlighted opportunities to train elected members on the Public Protection and Licensing Committees to assist them in delivering their duties with regard to the Council's safeguarding obligations and preventing and disrupting CSE. It also highlighted the need to equip key partners such as staff in licensed premises with knowledge of safeguarding, CSE and pathways for referral.

2. **Proposal and Reasons for Preferred Solution**

- 2.1 It is proposed that the Partnerships Team liaise with the Democratic Services to co-ordinate CSE awareness training for members of the Licensing Committee by the end of the financial year, to provide members with the confidence and competence to meet the challenges of decision making in this area of the law.
- 2.2 It is also proposed that safeguarding and CSE training is made available for staff of licensed premises (similar to that recently being delivered to taxi drivers) to raise awareness and explain how to raise the alarm with any concerns around suspicious activity.
- 2.3 The training to be delivered will cover the following;
 - What is abuse
 - Child sexual exploitation
 - How young people are targeted
 - Indicators of risk
 - Human trafficking

- Licensing duty of care in relation to safeguarding
- How should a member of staff deal with a disclosure
- How to pass information on.

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

- 3.1 The training proposal contributes to delivery of the Council's Sustainable Communities Strategy 2014-2020 by delivering assisting in preventing the exploitation of vulnerable residents. It also meets the Council's Corporate Priorities for Creating Healthy and Active Communities and Creating a Cleaner, Safer and Sustainable Borough.

4. **Legal and Statutory Implications**

- 4.1 The Council has statutory duties under the Children Act (1989) and (2004), the Care Act (2014) and the Safeguarding Vulnerable Groups Act (2006) to make arrangements to ensure that in discharging functions it has regard to the need to safeguard and promote the welfare of children and adults at risk of abuse and neglect.

- 4.2 The statutory guidance 'Working together to safeguard children: a guide to inter agency working to safeguard and promote the welfare of children (2015)' provides core legislative requirements regarding the expectations of the role of district councils working alone or in partnership with other organisations.

5. **Equality Impact Assessment**

- 5.1 An Equality Impact Assessment is being developed for this area of work.

6. **Financial and Resource Implications**

- 6.1 The training will be delivered using existing resources in the Partnerships Team at the Council for Elected Members and staff from local licensed premises unless additional external funding can be achieved.

- 6.2 There are resource implications for Council officers who are involved in and will co-ordinate delivery of the training and safeguarding activity thereafter but these are met through existing arrangements.

7. **Major Risks**

- 7.1 Failure to take appropriate action regarding safeguarding may result in the Council being unable to perform its statutory duties, leaving the Council open to legal challenge.

- 7.2 Failure to take appropriate action regarding safeguarding may lead to a child or adult at risk suffering unnecessary harm.

- 7.3 There is also a risk of reputational damage to the Council if it does not deliver its statutory duties lawfully and effectively.

8. **Key Decision Information**

- 8.1 The Council has statutory duties to safeguard, promote wellbeing and protect children and adults at risk of abuse and neglect.

- 8.2 This report can be considered key in the following ways: -

- It results in the Borough Council committing existing resources for the function to which the decision relates and;
- To be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in the Borough.

9. **Earlier Cabinet/Committee Resolutions**

9.1 Safeguarding Children and Vulnerable Adults Protection Policy – October 2015.

10. **List of Appendices**

10.1 None.

11. **Background Papers**

11.1 None.