

NORTH HERTFORDSHIRE DISTRICT COUNCIL

LICENSING AND APPEALS COMMITTEE

**Minutes of a meeting held in the Council Offices, Gernon Road, Letchworth Garden City
on Tuesday, 24 October 2006 at 7.30p.m.**

MINUTES

PRESENT: *Councillors: P.C.W. Burt (Chairman), A. Bardett, D.J. Barnard, S. Bloxham, Paul Clark, J.M. Cunningham, Lorna Kercher, Marilyn Kirkland, M.R.M. Muir and M.E. Weeks.*

IN ATTENDANCE: *Licensing & Enforcement Officer (East), Senior Lawyer and Senior Committee & Member Services Officer.*

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Tom Brindley, Gary Grindal, Mrs J.I. Kirby and L. McNamara.

2. MINUTES

RESOLVED: That the Minutes of the Committee held on 12 April 2006 be approved as a true record of the proceedings and signed by the Chairman.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. CHAIRMAN'S ANNOUNCEMENTS

(1) The Chairman welcomed to the meeting Katie White, the recently appointed Senior Lawyer. As part of her duties, Katie would be acting as the Committee's Legal Advisor.

(2) The Chairman paid tribute to Heather Morris (former Licensing & Enforcement Officer for the west of the District), who had recently left the Council to take up a licensing position with the London Borough of Barnet. Members passed a vote of thanks to Heather for her work in support of the Committee over the past two years, and wished her every success for the future.

5. GREEN FARM, BENDISH

At the request of the Chairman, the Senior Lawyer advised the Committee of the outcome of the recent appeal to the Magistrates Court undertaken by local residents against the decision of the Licensing & Appeals Sub-Committee to grant a Premises Licence for Green Farm, Bendish.

The Committee was informed that the Court had heard evidence from the Council's Licensing Officer, the appellants (the residents) and from the applicant, Mr Batchelor. A noise expert submitted evidence on behalf of the applicant. On advice from the Council's Barrister, NHDC's submissions were kept to a minimum in order to avoid any risk of a costs award being made against the Council.

The Council's Barrister referred the Court to the decision in **Stepney Borough Council v Joffe** (1949) and the comments of Lord Goddard, who said that the court on appeal should pay great attention to the fact that the duly constituted and elected local authority had come to an opinion on the matter in issue and ought not lightly to reverse that opinion. The Magistrates Court referred to this case in their decision.

The Court stated that they were required to have regard to the Licensing Objectives and the Licensing Policy of NHDC.

The Court stated that the conditions regarding lighting dealt with the issues adequately. The Court referred to the following condition:

“At all times the marquee is used for the provision of regulated entertainment the sides of the marquee will be kept closed.”

The Court had heard evidence from the noise expert that a marquee was noise transparent and that it was therefore not possible that this condition would further the licensing objective. The Court held that the intermittent noise from aircraft was different to continuous background noise, and rejected the assertion that just because the village had intermittent aircraft noise it was acceptable that it be subject to increased background noise.

The Court noted that it had heard evidence regarding a few traffic surveys undertaken by various witnesses. It stated that a concentration of vehicle movement at the termination of an event was significant and could impact on safety and quality of life. The Court had heard evidence that some houses were sited very close to the road.

The Court held that there were problems with the Licensing Objectives of the prevention of public nuisance and public safety, not being met by the conditions imposed by the Sub-Committee. The Court stated that they did not lightly overrule the decision of the Council. The Court also stated that they had different information before them, and that their decision does not imply any criticism of the Council. The Court continued to consider whether any additional conditions could be imposed in order to enable compliance with the licensing objectives.

The Court held that even if the issue of noise could be satisfactorily dealt with, the traffic problem would remain and could not be adequately dealt with by condition. The Court therefore allowed the appeal. No award for costs was made.

6. GAMBLING ACT 2005 – PROPOSED STATEMENT OF LICENSING PRINCIPLES

The Licensing & Enforcement Officer (East) presented a report seeking the Committee's endorsement of the Council's proposed Statement of Licensing Principles in respect of powers its under the Gambling Act 2005, prior to consideration of the Statement by Cabinet on 14 November 2006 and Council on 14 December 2006. The following appendices were submitted with the report:

Appendix A – Final Draft Statement of Licensing Principles;
Appendix C – Comments received during consultation, including recommendations.

The Committee noted that Appendix B to the report – List of Consultees – had been withdrawn from the agenda.

The Licensing & Enforcement Officer (East) advised that the Gambling Act 2005 transferred the overall regulation of gambling to the Gambling Commission, with the local authority acting as licensing authority and having responsibility for a variety of licensing functions in respect of gambling. It was a requirement of the Gambling Act 2005 that a Statement of Principles must be adopted by Council and published by 31 January 2007. This Statement of Principles would take effect from 31 January 2007 (the first appointed day), with licensing authorities able to accept advance applications from 30th April 2007.

The Licensing & Enforcement Officer (East) commented that the Act provided grandfather rights for existing licensed premises to safeguard their transition to the new regime in a similar manner as the provisions of the Licensing Act 2003. In addition, continuation rights allowed businesses to continue trading if their applications were received in time, but not processed by the licensing authority prior to 1 September 2007 (second appointed day) when the Act took effect. It was envisaged that by encouraging responsible licensing through the Statement of Principles, the Licensing Authority would not need to interfere with well-managed premises. Whilst the Licensing

Authority would not be over regulating premises, it would have the power to protect the interests of residents by requiring licensed premises to have regard to the Statement of Principles and National Guidance from the Gambling Commission.

The Committee noted that the Statement of Principles must support the Gambling Act 2005 and always promote the three licensing objectives specified in the Act, namely:

- (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime,
- (b) ensuring that gambling is conducted in a fair and open way; and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

Members asked a number of questions in relation to the report, which were answered by the Licensing & Enforcement Officer (East) and the Senior Lawyer.

The Committee agreed that the Statement of Licensing Principles be amended as follows:

- Re-wording of Paragraph 6.2 (final bullet point), which read “the circumstances of the complainant in so much as the affect could have a different meaning for different types of premises”.
- Replacement of the word “compliance” with “enforcement” in the final sentence of Paragraph 10.7.
- Alteration of the Scheme of Delegation, such that consideration of the “cancellation of licensed premises gaming machine permits” be a matter reserved to the Licensing Sub-Committee, rather than Officers.
- Addition to the Scheme of Delegation of “Applications for new licensed premises gaming machine permits for 3 or more machines”, and that consideration of all such applications be a matter reserved to the Licensing Sub-Committee.

RESOLVED: That the proposed Statement of Licensing Principles in respect of the Gambling Act 2005, as attached at Appendix A to the report, as amended, and including the results of the public consultation exercise (attached at Appendix C to the report), be supported.

RECOMMENDED TO CABINET: That the proposed Statement of Licensing Principles in respect of the Gambling Act 2005, as attached at Appendix A to the report, as amended, and including the proposed delegation of functions to the Licensing & Appeals Committee/Sub-Committee and Officers, be recommended to Council for adoption.

REASON FOR DECISION: As required by the Secretary of State, to ensure that the Statement of Licensing Principles is adopted by the Council by no later than the deadline date of 3 January 2007.

The meeting closed at 8.50pm.

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Chairman