

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**LICENSING AND APPEALS COMMITTEE**

**MEETING HELD IN THE LETCHWOTH GARDEN CITY HERITAGE FOUNDATION,  
FOUNDATION HOUSE, ICKNIELD WAY, LETCHWORTH GARDEN CITY ON TUESDAY,  
28TH NOVEMBER, 2017 AT 7.30 PM**

**MINUTES**

**Present:** *Councillors Councillor Michael Muir (Chairman), Ian Albert, Elizabeth Dennis, Jean Green, Gary Grindal, Simon Harwood, Paul Marment, Jim McNally, Gerald Morris and Mike Rice.*

**In Attendance:**

*Steve Cobb (Licensing Manager), Andy Godman (Head of Housing and Public Protection), James Ellis (Legal Advisor) and Ian Gourlay (Committee and Member Services Manager).*

**Also Present:** *Councillor Bernard Lovewell (Executive Member for Housing and Environmental Health), Hannah Sweetman (Licensing Officer) and Colin Broadhurst (Licensing Officer).*

**1 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Ben Lewis.

**2 MINUTES - 6 OCTOBER 2015**

**RESOLVED:** That the Minutes of the Meeting of the Committee held on 6 October 2015 be approved as a true record of the proceedings and be signed by the Chairman.

**3 NOTIFICATION OF OTHER BUSINESS**

There was no notification of other business.

**4 CHAIRMAN'S ANNOUNCEMENTS**

The Chairman advised that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

**5 PUBLIC PARTICIPATION**

There was no public participation.

**6 UPDATE ON LICENSING MATTERS**

The Licensing Manager gave an oral update on various Licensing matters.

The Licensing Manager advised that, at the last meeting of the Committee held on 6 October 2015, and in connection with the Licensing Act 2003 Licensing Policy, the Hertfordshire County Council's Safeguarding Board's lack of engagement had been raised on a county-wide basis, including by the Hertfordshire and Bedfordshire Licensing Group. The Council's Policy did highlight the importance NHDC placed on safeguarding and require applicant's to assess safeguarding risks where appropriate. All licensed premises had received an Information Handbook and Poster in relation to safeguarding matters, examples of which were circulated at the meeting.

Also at the meeting held on 6 October 2015, and in respect of the Gambling Act 2015 Statement of Principles, the Licensing Manager reminded the Committee that Members had raised concerns regarding the high stakes available with Fixed Odds Betting Terminals (FOBTs) in betting shops (£200 per play). Through the Institute of Licensing, NHDC took part in a consultation exercise regarding a number of gambling issues, including maximum stakes, and the Government had recently launched a new consultation on proposals arising from the original consultation including: Revised FOBT maximum stakes of either £50, £30, £20 or £2. He asked for the Committee's views as to an appropriate response to the consultation.

The Licensing Manager stated that, at the meeting of the Committee held on 12 December 2013, Members had considered and supported a Fee setting Policy based on the Medium Term Financial Strategy inflationary increases each year, other than three-yearly intervals, when full costings would be undertaken to ensure that all reasonable costs were recovered where legislation allowed. Since then, this had been happening each year.

The Licensing Manager reminded the Committee that new Members needed to be trained before they were able to serve on Licensing Sub-Committees, and felt that it would be appropriate for all Members to undertake periodic re-training due to the many legislative changes in recent years. He commented that 9 Sub-Committee hearings had been held in 2017, although only 6 of the 14 Members had served on these, making it difficult to arrange hearings. Evening hearings were becoming more prevalent. He therefore encouraged Members (especially untrained ones) to contact him as soon as possible to arrange training sessions. The Chairman endorsed the need for training.

As the "full" Licensing and Appeals Committee met infrequently, the Licensing Manager advised that he proposed to introduce an Annual Report at the end of each Civic Year to outline the work of the small Licensing Team.

To give new Members a flavour of the work of the Team, the Licensing Manager reported that there was currently 2,911 active licences, 250 scheduled annual inspections took place each year, and approximately 200 applications were processed each year, in addition to the day to day work of service requests, customer advice and investigating complaints.

The Licensing Manager explained that a further meeting of the "full" Committee would be arranged for late February/early March 2018, in order to consider new revised Scrap Metal, Taxi and Animal Establishments Licensing Policies. It was likely that significant changes would be proposed to these policies, which would require adoption by the Cabinet, and where the trade and public may not be unanimous in their expectations.

Following a discussion on the issues of the FOBT maximum stakes and the concept of an Annual Report on Licensing, it was

**RESOLVED:**

- (1) That the oral update report of the Licensing Manager be noted;
- (2) That, in response to the Government consultation on FOBTs in betting offices, the response include the view of the Committee that £20 per play should be the maximum stake, and that consideration should be given to the machines being fitted with a device to ensure a fixed time limit between each play; and
- (3) That the concept of a Licensing Annual Report be supported.

**REASON FOR DECISION:** To keep the Committee updated on various Licensing matters.

**7 CONSIDERATION OF AMENDMENTS TO THE STREET TRADING POLICY**

[Note: Prior to the consideration of this item, Councillor Jim McNally made a Declarable Interest, in view of his role as Chairman of a Community interest company in Baldock responsible for community events. He chose to remain in the meeting for the duration of the Committee's debate and vote on the item.]

Generic comments on Street Trading, Street Collections, House to House Collections and Sex Establishment Policies

The Licensing Manager advised that each of the above four policies before the Committee were existing policies where the review date had passed. This did not mean that the policies had expired, it just left the Council vulnerable upon challenge through the courts for not keeping the policies under review and ensuring that they were fit for purpose. All four policies had served their intended purpose well and only needed some amending, rather than complete re-writes.

The Licensing Manager explained that the Council's Constitution provided for the Cabinet to adopt all new policies, with the exception of the statutory Licensing Act 2003 and Gambling Act 2005 policies, which were reserved by statute for Full Council. Executive Members had authority under the Constitution to make minor amendments to existing policies, however, the Constitution was silent on the definition of 'minor'. Fortunately, each of the existing policies included definitions of minor amendments which, in essence, were any amendments that were not significant, with each policy clearly defining 'significant'.

The Licensing Manager commented that, in addition to considering the content of each amended policy, the Committee would need to determine whether or not it believed the amendments fitted the criteria of 'minor' amendments. If the Committee believed that the amendments were minor then it could recommend adoption to the Executive Member; if the Committee believed the amendments to be anything other than minor then the recommendation for adoption should be forwarded to Cabinet. It was officers' opinion that all of the amendments were minor and the Executive Member, Councillor Lovewell, was in attendance at the meeting to listen to the debate in anticipation of the Committee recommending that he would be the appropriate decision-maker.

The Licensing Manager stated that, for each of the four policies, it was proposed not to have a fixed review date, not least due to constantly changing local circumstances and legislative developments. Instead, if the Committee was in support of the proposal, it was intended to give the responsibility for review of the policies to the Executive Member, who could either determine that they remained fit for purpose, make minor amendments in line with the policy definitions of 'minor', or request a full public consultation, with onward recommendation to Cabinet (via the Licensing and Appeals Committee).

Street Trading Policy

The Licensing Manager presented a report of the Head of Housing and Public Protection summarising the responses to the public consultation regarding the Council's proposed Street Trading Policy, and requesting the Committee to make a recommendation to the Executive Member for Housing and Environmental Health regarding the Policy. The following appendices were submitted with the report:

- Appendix A – Schedule of consultation responses;
- Appendix B – External consultation responses; and
- Appendix C – Street Trading Policy (incorporating the proposed amendments).

The Licensing Manager advised that, as officers had attended each Area Committee to enable each Committee to provide a consultation response, he would not re-visit the specific definitions of street trading and the history of its adoption by the Council. It was clear from

**Tuesday, 28th November, 2017**

discussions at Area Committees, particularly Letchworth and Hitchin, that the proliferation of 'A' Boards and tables/chairs was of concern to Members. It was important to note that the regulation of these matters fell ordinarily to the Highways Authority under section VIIA of the Highways Act 1980 and was therefore outside of the Street Trading Policy. Historically, officers had been in dialogue with the Highways Authority about a way forward, and it was the intention to continue with these discussions. Any progress on this matter would be subject to a separate report outside of the Street Trading Policy.

Addressing the main amendments to the Policy, the Licensing Manager stated that Hertfordshire Highways was a statutory consultee for street trading and had recently updated their guidance to specify that, for highway safety reasons, only certain lay-by configurations would be appropriate for street trading. To assist potential applicants, the lay-by configuration had been included within the Policy as a requirement for obtaining a consent.

The Licensing Manager explained that, in order to ensure maximum flexibility, it was proposed to continue with no prohibited streets, the reason being that a prohibited street was prohibited at all times, even if the street was subject to a formal road closure. By continuing with a Schedule of streets where an application would be ordinarily refused due to the unsuitability of that street, the Council retained the opportunity of granting an application where that road had been temporarily closed.

The Licensing Manager commented that, with ever decreasing resources and increasing workloads, the Council needed to find smarter ways of working to simplify the application process for applicants who were often volunteers with no previous experience of regulatory requirements. For that reason, it was proposed to remove the requirement to submit a separate street trading application when using Council land, the reason being that the application for Council land consent could incorporate the street trading permission, therefore reducing the number of applications to be submitted and processed.

The Licensing Manager advised that, similarly, the Council currently issued quarterly consents, subject to payment of the quarterly fee, for annual consents, effectively multiplying the administrative process fourfold. It was therefore proposed to issue an annual consent, with the caveat that it was automatically revoked if each quarterly payment was not met, with an encouragement for applicants to complete direct debit mandates.

The Licensing Manager stated that there was often a cross-over between Council departments within regulatory services, and street trading was no exception. Whilst the Licensing Team could give permission for street trading to take place, colleagues in Environmental Health had separate responsibilities in respect of food businesses and health and safety issues. To avoid the conflict of permission being given by one arm of the Council, only for another arm to potentially prevent trading due to other statutory requirements, it was felt appropriate and sensible to encompass Environmental Health's reasonable requirements as consent conditions, thus making the whole process more transparent for applicants.

The Licensing Manager referred to his opening remarks about the definition of 'minor', and advised that Paragraphs 8.17 – 8.20 of the report dealt with the definition of minor for the purposes of this Policy. To assist Members in their deliberations, all proposed amendments had been highlighted in red text.

The Licensing Manager and Head of Housing and Public Protection answered a number of Members' questions regarding the proposed Policy.

In response to a Members' request, the Licensing Manager undertook to design a common application form for Town Centre Organisations with annual consents to supply to community organisations to use when applying for Street Trading activities.

In relation to the 'A' Boards, tables and chairs issue, the Licensing Manager noted that Hitchin and Letchworth Garden City Members wished there to be firmer enforcement of The Highways

Act regulations. However, he further noted that, following on from the Baldock Town centre regeneration scheme a few years ago, the use of 'A' Boards, tables and chairs in the street had been encouraged, and so Baldock Members would not wish to see a blanket enforcement policy employed across the whole District.

**RESOLVED:**

- (1) That the results of the public consultation be noted, and the proposed policy amendments be supported;
- (2) That it be determined that the proposed amendments are minor, in so far as they do not amend the licensing principles or main focus of the existing policy;
- (3) That the Executive Member for Housing and Environmental Health be recommended to approve the Street Trading Policy amendments under Delegated Powers; and
- (4) That officers be requested to continue to investigate the available options, in conjunction with Hertfordshire County Council, in respect of the regulation of tables/chairs and 'A' boards.

**REASON FOR DECISION:** To ensure that the Council has in place a robust and up to date Street Trading Policy.

## **8 CONSIDERATION OF AMENDMENTS TO THE STREET COLLECTIONS POLICY**

The Licensing Manager presented a report of the Head of Housing and Public Protection in respect of proposed amendments to the Council's Street Collections Policy, and requesting the Committee to make a recommendation to the Executive Member for Housing and Environmental Health regarding the Policy. The following appendix was submitted with the report:

Appendix A – Proposed Street Collections Policy including amendments.

The Licensing Manager advised that the Police Factories etc (Miscellaneous Provisions) Act 1916 required local authorities to maintain a licensing scheme for any collection of money or sale of goods in a street for charitable or other non-commercial (or no private gain) purposes. A street was defined as any highway (carriageway or footway), including any associated public place, where the public had access, such as shopping arcades, public parks, etc. The legislation allowed a local authority to prescribe regulations to control street collections and the Council duly adopted the model national conditions prescribed in the Charitable Collections Order 1974.

The Licensing Manager stated that, in general terms, the existing Policy had worked well, other than some worthwhile local and national causes being precluded by the twenty-eight day notice period required for applications. Officers now believed that a more appropriate and reasonable notice period would be fourteen days, which still allowed sufficient time for the application to being processed and any queries in relation to the intended recipients resolved. Further, recent events such as the Grenfell Tower tragedy had highlighted that there may be exceptional unforeseen circumstances when fourteen days would be prohibitive. Therefore, a seven day period was proposed for genuinely exceptional circumstances.

The Licensing Manager commented that Paragraphs 8.11 - 8.14 of the report dealt with the definition of 'minor' for the purpose of the Policy. To assist Members in their deliberations, all proposed amendments had been highlighted in red text.

The Committee debate focussed upon Appendix B to the proposed Policy, which set out the allocated collection sites in each of the District's four towns. Members felt that sites adjacent from banks/ATMs should be removed from the list. The Licensing Manager undertook to

amend the list in this regard, in consultation with respective Town Centre Managers, and to perhaps replace the list with a series of Town centre maps showing acceptable collection locations.

**RESOLVED:**

- (1) That the results of the public consultation be noted, and the proposed policy amendments, as further amended, be supported;
- (2) That it be determined that the proposed amendments are minor, in so far as they do not amend the licensing principles or main focus of the existing policy; and
- (3) That the Executive Member for Housing and Environmental Health be recommended to approve the Street Collections Policy amendments under Delegated Powers.

**REASON FOR DECISION:** To ensure that the Council has in place a robust and up to date Street Collections Policy.

**9 CONSIDERATION OF AMENDMENTS TO THE HOUSE TO HOUSE COLLECTIONS POLICY**

The Licensing Manager presented a report of the Head of Housing and Public Protection in respect of proposed amendments to the Council's House to House Collections Policy, and requesting the Committee to make a recommendation to the Executive Member for Housing and Environmental Health regarding the Policy. The following appendix was submitted with the report:

Appendix A – Proposed House to House Collections Policy including amendments.

The Licensing Manager advised that the House to House Collections Act 1939 required local authorities to maintain a licensing scheme for any appeal to the public, made by means of visits from house to house (including visits to business premises), for either money or money's worth (direct debits, goods, etc.). The collection must only be for charitable, benevolent or philanthropic purposes (in other words, no commercial or private gain). The legislation allowed a local authority to prescribe regulations to control house to house collections, and the Council duly adopted the model national conditions prescribed in the House to House Regulations 1963.

The Licensing Manager explained that, in general terms, the existing Policy had worked well, therefore the only proposed amendments were those relating to policy duration made in his opening generic remarks.

The Licensing Manager commented that the definition of minor for the purpose of the Policy was covered in Paragraphs 8.8 - 8.11 of the report. To assist Members in their deliberations, all proposed amendments had been highlighted in red text.

The Committee expressed concerns regarding house to house collections from those who neither had a national or local permit to undertake such activities. The Licensing Manager was fully aware of this issue, but had no way of guaranteeing that all collectors would be operating under authorised permits.

**RESOLVED:**

- (1) That the results of the public consultation be noted, and the proposed policy amendments be supported;
- (2) That it be determined that the proposed amendments are minor, in so far as they do not amend the licensing principles or main focus of the existing policy; and

(3) That the Executive Member for Housing and Environmental Health be recommended to approve the House to House Collections Policy amendments under Delegated Powers.

**REASON FOR DECISION:** To ensure that the Council has in place a robust and up to date House to House Collections Policy.

## 10 CONSIDERATION OF AMENDMENTS TO THE SEX ESTABLISHMENT POLICY

The Licensing Manager presented a report of the Head of Housing and Public Protection in respect of proposed amendments to the Council's Sex Establishment Policy, and requesting the Committee to make a recommendation to the Executive Member for Housing and Environmental Health regarding the Policy. The following appendix was submitted with the report:

### Appendix A – Proposed amended Sex Establishment Policy.

The Licensing Manager advised that, whilst the Council had a duty, having adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to regulate sex shops, sex cinemas and sexual entertainment venues, the District currently only had one sex shop on an industrial estate in Hitchin.

The Licensing Manager stated that, in general terms, the Policy had worked well, particularly as the existing business was a long established business of a national operator and the Council had received no other applications or enquiries of this nature. However, the Council had a duty to ensure that its Policy remained fit for purpose, not only for the existing premises, but for any potential future applicants. Proposed amendments were highlighted in the report in red text, but could be summarised as follows:

- Data Exchange – The Policy now clarified the Council's intention to exchange data where appropriate for the purpose of detecting or preventing crime;
- Safeguarding Children and Vulnerable Adults - Given the proliferation of national safeguarding concerns, the Policy had been strengthened to state that significant weight would be placed on safeguarding matters when assessing an applicant's suitability to hold a licence;
- Fees - Historically, many Councils chose to set fees for sex establishments at levels intended to act as a deterrent rather than a level that accurately reflected reasonable costs allowed by licensing fee common law. The recent high profile case of Hemming that was concluded in the Supreme Court following a ruling of the European Court had clearly stated the licensing fee position for sex establishment licensing and the Policy now sought to encompass these principles;
- Standard Licence Conditions - The existing Policy focussed predominately on conditions that were appropriate to sex shops, with little focus on sexual entertainment venues and no focus on sex cinemas. This would leave the Council vulnerable if it received an application for a sexual entertainment venue or a sex cinema, as there would be no policy to justify the imposition of any appropriate conditions. To resolve this shortcoming, the proposed amendments sought to establish a generic set of conditions for all sex establishments, with specific conditions for sex shops, sex cinemas, and sexual entertainment venues. Little change was needed for the sex shop conditions as they were working well currently, however, a new set of conditions was proposed for sex cinemas based on apparent best practice across the country. The existing conditions for sexual entertainment venues (predominately lap dancing and pole dancing clubs) had been expanded to include increased protection for the public, both on and off the premises, particularly those that were vulnerable, and increased protection for performers within these establishments.

The Licensing Manager commented that the definition of minor amendments for the Policy were included in Paragraphs 8.15 – 8.18 of the report.

**Tuesday, 28th November, 2017**

In response to a Member's question regarding the proposed opening hours for sex shops set out in Appendix B to the Policy, the Licensing Manager confirmed that these were the hours currently in operation at the one existing sex shop in the District in Hitchin, which was part of a national chain of shops. That particular operator had been consulted on the Policy and had not suggested any change to the opening hours.

The Committee debated safeguarding issues and, in particular Paragraph 2.8.2 of the proposed Policy. The first sentence read "Licence Holders are encouraged to ensure that suitable management controls are in place to safeguard children and vulnerable adults". In order to strengthen the wording and place more of an onus on Licence Holders, the Committee agreed that the word "encouraged" should be replaced with "expected".

***RESOLVED:***

- (1) That the results of the public consultation be noted, and the proposed policy amendments, as further amended, be supported;
- (2) That it be determined that the proposed amendments are minor, in so far as they do not amend the licensing principles or main focus of the existing policy; and
- (3) That the Executive Member for Housing and Environmental Health be recommended to approve the Sex Establishment Policy amendments under Delegated Powers.

**REASON FOR DECISION:** To ensure that the Council has in place a robust and up to date House to Sex Establishment Policy.

The meeting closed at 9.20 pm

Chairman