



Please Contact:
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1 December 2010

LICENSING COMMITTEE

Wednesday 8 December 2010 immediately following the meeting of the Commissioning Board which commences at 2.00 pm

Council Chamber, Ryedale House, Malton

Agenda

1 Emergency Evacuation Procedure

The Chairman to inform Members of the Public of the emergency evacuation procedure.

2 Apologies for absence

3 Minutes of the meeting held on 23 September 2010 (Pages 1 - 4)

4 Minutes of the Licensing Sub-Committee on 12 November 2010 (Pages 5 - 8)

5 Urgent Business

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

6 Declarations of Interest

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

PART 'A' ITEMS - Matters dealt with under delegated powers or matters determined by Committee

- 7 **Gambling Act 2005 - Setting of Fees** (Pages 9 - 16)
- 8 **Any other business that the Chairman decides is urgent.**

Licensing Committee

Held at Council Chamber, Ryedale House, Malton
on Thursday 23 September 2010

Present

Councillors Mrs Arnold, Mrs Cowan, Mrs Cowling, Mrs Frank, Hawkins,
Hemesley OBE, Hope and Ms Warriner MBE

In Attendance

Fiona Brown, Marie-Ann Jackson, Phil Long and Fiona Farnell

Minutes

8 Election of Chairman

It was proposed by Councillor Mrs Cowling and seconded by Councillor Hawkins that Councillor Mrs Arnold be elected Chairman of the Licensing Committee.

Resolved

That Councillor Mrs Arnold be elected Chairman of the Licensing Committee.

9 Election of Vice Chair

It was proposed by Councillor Mrs Cowling and seconded by Councillor Hope that Councillor Hemesley be elected Vice Chair of the Licensing Committee.

Resolved

That Councillor Hemesley be elected Vice Chairman of the Licensing Committee.

10 Apologies for absence

Apologies for absence were received from Councillor Mrs De Wend Fenton, Mrs Keal and Spencer.

11 Minutes of the Meeting held on 3 June 2010

The minutes of the meeting held on the 3 June 2010 were presented.

Resolved

That the minutes of the meeting held on the 3 June 2010 be approved and signed by the Chairman as a correct record.

12 **Urgent Business**

The Chairman reported that there were no items of urgent business to be considered.

13 **Declarations of Interest**

No declarations of interest were received.

PART 'B' ITEMS - MATTERS REFERRED TO COUNCIL

14 **Licensing Act 2003 - Results of Consultation on Review of Licensing Policy**

The Health and Environment Manager submitted a report, which sought Members approval to amend the Licensing Policy as outlined in Annex C of the report and to refer the amendment to Council in November for final adoption.

A Member requested that a word in the response in Annex C Reference Part 4 para 4.21 be changed from 'authorisation' to 'notification'.

Resolved

That Members approved that:

- (i) the Licensing Policy is amended as outlined in Annex C with the suggested change at Reference Part 4 para 4.21 of the word 'authorisation' to 'notification'.
- (ii) the Licensing Policy, as amended, is referred to Council in November for final adoption.

15 **Regulation of Lap Dancing and Other Sexual Entertainment Venues**

The Health and Environment Manager submitted a report, which sought Members to approve a resolution.

Resolved

That Council is recommended to pass a resolution as authorised under Section 2 of The Local Government (Miscellaneous Provisions) Act 1982, to adopt Schedule 3 (as amended by Section 27 of the Police and Crime Act 2009) of the Local Government (Miscellaneous Provisions) Act 1982.

16 **Any other business that the Chairman decides is urgent.**

There were no items of urgent business.

The meeting closed at 9.30pm.

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Licensing Sub Committee

Held at Members' Lounge, Ryedale House, Malton
on Friday 12 November 2010

Present

Councillors Mrs Arnold (Chair), Mrs Frank and Hope

Mr S Atkinson – Applicant
Ms L Horrigan – Manager of the Sun Inn
Mr Barnes – Interested Party

In Attendance

Fiona Brown, Ronnie Maclure and Susan Shuttleworth

Minutes

1 **Declarations of Interest**

No declarations of interest were made.

2 **To determine an application to vary a premises Licence from Mr Simon Atkinson for the Sun Inn, 136 Westgate. Pickering**

The Chairman welcomed representatives to the meeting and appropriate introductions were made.

The Chairman reported that the hearing was subject to the prescribed procedure, a copy of which had been circulated with the agenda. Representatives were reminded that opening statements were to be brief as all parties had been afforded the opportunity to make detailed written submissions and to consider the submissions from other parties. The Chairman also advised those present that additional information produced at the hearing without prior disclosure might not be heard if, following objections to its submissions, the Sub Committee so determined.

The Chairman also reminded those present that their representations should be relevant to the licensing objectives under the Licensing Act 2003, namely:

- The Prevention of crime & disorder
- Public Safety
- The Prevention of public nuisance
- The protection of children from harm

The Council's Licensing Officer then presented the report, which had been circulated with the agenda and referred to the relevant points contained in the guidance.

The premises were currently licensed for the supply of alcohol as detailed in the report and also for the Provision of Regulated Entertainment by way of Live Music (limited to two entertainers) and Recorded Music indoors at the premises as follows:

- Sunday to Thursday 11.00 to 23.00 hours
- Friday and Saturday 11.00 – 23.30 hours
- 11.00 – 00.00 hours on the Friday and Saturday of each May, Spring/Whitsun, August and Easter Bank Holiday weekends and for Christmas Even, Boxing Day and New Year's Eve.

The application for the variation to the licence sought to provide the following licensable activities:

- Provision of live music limited to two guitar players/singers in the beer garden to the Premises between 16.00 and 19.30 hours on Friday, Saturday and Sunday during the summer months 1st May to 30th September each year along with all recognised Bank Holidays, Halloween, the Pickering 60s weekend, the Pickering War Weekend and Bonfire Night.

All Responsible Authorities had been consulted and the Licensing Authority had received relevant representations from:

- 20 interested parties (18 in support and 2 opposed to the application)
- a petition signed by 71 people in support of the application.

The two interested parties opposed to the application appeared to be mainly concerned about the potential for noise nuisance caused by regulated entertainment. Copies of all relevant representations received by this Authority were included with the agenda.

Representatives put their respective cases to the Sub Committee Members. Following questions from Members, the representatives summed up their cases prior to the Committee retiring to consider the application, after which the following decision was announced:

Decision

That the application for the variation to the licence to provide the following licensable activities:

- Provision of live music limited to two guitar players/singers in the beer garden to the Premises between 16.00 and 19.30 hours on Friday, Saturday and Sunday during the summer months 1st May to 30th September each year along with all recognised Bank Holidays,

Halloween, the Pickering 60s weekend, the Pickering War Weekend and Bonfire Night

be granted as submitted and that the licence be subject to a review under the Licensing legislation should any complaint or problems arise in the future.

Reasons

The evidence presented to the Sub Committee both written and verbal did not persuade members of the Sub Committee that there was sufficient evidence that the public nuisance licensing objective was not being promoted by the current premises holder. That the application to vary the licence should be granted and that the licence could be subject to a review under the Licensing legislation should any complaints or problems arise in the future. In coming to this decision the members of the Sub Committee noted in particular:-

1. That there has been no substantiated noise complaints since the present premises licence holder took over these premises in March 2010.
2. That the applicant was aware that there had been complaints in the past and has put in place measures to prevent future problems of that nature.
3. The Sub Committee felt that a 19:30 finish was not unreasonable in the circumstances.
4. The Sub Committee is aware that Government Guidance states that the Licensing Authority may not impose any condition unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the Licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute. It is perfectly possible in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are needed to promote the licensing objectives, In this particular case the Sub Committee is aware of the provisions of the Environmental Protection Act 1990 and that this legislation may adequately deal with this type of complaints mentioned by the interested party and thus a specific condition with regard to potential noise nuisance is not required at this stage. The Sub Committee is aware that Ryedale`s Licensing Policy states that "The Policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employees and operators, for example the

Gambling Act 2005, the Disability Discrimination Act 2004, Health and Safety at Work etc Act 1974, Environmental Protection Act 1990 and the Regulatory Reform (Fire Safety) Order 2005. The Licensing authority will ensure, therefore, that no representations from Responsible Authorities shall overlap and duplicate current legislation and shall avoid attaching conditions that duplicate other regulatory regimes as far as possible”.

5. The Sub Committee recognises that the additional conditions offered by the applicant with regard to the Prevention of Public Nuisance licence objective may help to reduce the potential for noise related incidents.
6. The Sub Committee has also taken into account Government Guidance which states that “any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportional measures that could deter events that are valuable to the community, such as live music”. Further, it also states” where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping”.

The meeting started at 10.00 am and finished at 11.00am.



PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	LICENSING COMMITTEE
DATE:	25 NOVEMBER 2010
REPORT OF THE:	HEAD OF ENVIRONMENT PHIL LONG
TITLE OF REPORT:	GAMBLING ACT 2005 - SETTING OF FEES
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To seek Member approval for the setting of fees under the provisions of the Gambling Act 2005.

2.0 RECOMMENDATION

- 2.1 It is recommended that:

(i) Members confirm the level of fees recommended in Annex B.

3.0 REASON FOR RECOMMENDATION

- 3.1 The setting of fees must relate to the costs incurred by the local authority and be defensible.

4.0 SIGNIFICANT RISKS

- 4.1 The fees have been calculated in accordance with LACORS/Local government Regulation guidance and have been benchmarked against other North Yorkshire authorities and are defensible if challenged.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 Under the provisions of section 154(2)(b) of the Gambling Act 2005, the Licensing Authority has the discretion to delegate the decision on the setting of fees to the Licensing Committee. This delegation was approved by Council on 8 March 2007.

6.0 POLICY CONTEXT

6.1 The following Policies have informed this report:

- Council Plan 2009-13
- Health and Environment Service Delivery Plan
- Budget Policy 2011/12

7.0 CONSULTATION

7.1 No consultation has taken place in revising these fees.

8.0 REPORT DETAILS

8.1 Section 154 of the Gambling Act 2005 provides that all decisions relating to premises licences are delegated to the Licensing Committee of the authority that has been established under section 6 of the Licensing Act 2003, except:

- A resolution not to issue casino licences, which must be taken by the whole authority;
- Functions in relation to the three-year licensing policy, which must be taken by the whole authority; and
- Setting fees (to the extent that a licensing authority has delegated power in relation to fees). The Licensing Authority can delegate decisions to the Licensing Committee, but there is no automatic delegation, so each authority must decide its approach to setting fees.

The power of setting of fees was delegated to the Licensing Committee by Council on 8 March 2007.

8.2 The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 provide that the following types of fees are to be determined by licensing authorities:

- Licence application fee
- First annual fee
- Annual fee
- Notification of a change of circumstance fee
- Application to vary a licence fee
- Application to transfer a licence fee
- Fee for a copy of a licence
- Application for reinstatement of a licence fee
- Provisional statement application fee

8.3 Part 9 of the Gambling Act 2005 allows the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Applications for Temporary Use Notices under the Gambling Act 2005 may be made to the Licensing Authority. In accordance with The Gambling Act (Temporary Use Notices) Regulations 2007, the Licensing Authority must determine the fee payable under Section 219(b) of the Act and this amount must not exceed £500 for the fee and £25 for an endorsed copy of the Temporary Use Notice.

8.4 In each case, the fee determined by a Licensing Authority must not exceed a maximum fee specified in the relevant regulation. Section 212 of the Act requires that the income from fees as near as possible equates to the costs of providing the service to which the fee relates. For the Licensing Authority this means that the

service should be cost neutral. In determining application and other fees licensing must ensure that these are limited to recovery of the costs of carrying out their functions under the Act. Licensing Authorities are required to review their fees on an annual basis. The suggested discretionary fees have been increased in line with the 2011/12 Revenue Budget and are available in Annex B.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The Gambling (Premises Licences Fees)(England and Wales) Regulations 2007 and The Gambling Act (Temporary Use Notices) Regulations 2007, require the Licensing Authority to set fees for the granting of premises licences. The regulations set the maximum fee payable for each category of gambling premises licence and allow Licensing Authorities to determine their own fees, on a cost recovery basis. This means the service should be cost neutral. Licensing Authorities have to review their fees annually to ensure that the income from the premises licence fees in any one accounting period (i.e. in any full year) does not exceed the full costs incurred by the authority in carrying out the relevant functions.

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Background Papers:
Nil

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GAMBLING ACT 2005 – SETTING OF FEES - RISK MATRIX

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Failure to review and set fees for 2011/12	Revised fees would be unable to be charged	2	B	Committee Report recommends fee level for 2011/12	1	A

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

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SCHEDULE

Table of proposed fees for 2011/12

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>	<i>Column (5)</i>	<i>Column (6)</i>	<i>Column (7)</i>	<i>Column (8)</i>	<i>Column (9)</i>
<i>Classes of premises licence</i>	<i>Maximum conversion application fee for non-fast track application</i>	<i>Maximum non-conversion application fee in respect of provisional statement premises</i>	<i>Maximum non-conversion application fee in respect of other premises</i>	<i>Maximum annual fee</i>	<i>Maximum fee for application to vary licence</i>	<i>Maximum fee for application to transfer a licence</i>	<i>Maximum fee for application for reinstatement of a licence</i>	<i>Maximum fee for application for provisional statement</i>
Regional casino premises licence		£8,000	£15,000	£15,000	£7,500	£6,500	£6,500	£15,000
Large casino premises licence		£5,000	£10,000	£10,000	£5,000	£2,150	£2,150	£10,000
Small casino premises licence		£3,000	£8,000	£5,000	£4,000	£1,800	£1,800	£8,000

Converted casino premises licence	£2,000			£3,000	£2,000	£1,350	£1,350	
Bingo premises licence	£1,750	£1,200	£3,500	£1,000	£1,750	£1,200	£1,200	£3,500
Adult gaming centre premises licence	£1,000	£1,200	£2,000	£1,000	£1,000	£1,200	£1,200	£2,000
Betting premises (track) licence	£1,250	£950	£2,500	£1,000	£1,250	£950	£950	£2,500
Family entertainment centre premises licence	£1,000	£950	£1,180 (£1,136)	£355 (£341)	£1,000	£950	£950	£1,180 (£1,136)
Betting premises (other) licence	£1,180 (£1,136)	£1,180 (£1,136)	£1,180 (£1,136)	£355 (£341)	£1,180 (£1,136)	£1,180 (£1,136)	£1,180 (£1,136)	£1,180 (£1,136)

N.B. Proposed discretionary fees emboldened. This years fees in brackets. All other fees set at maximum levels. Temporary Use Notice fee £500. Copy of licence/other document, change of address or endorsed copy of Temporary Use Notice – Fee £12.50