



## **LICENSING COMMITTEE**

Thursday 22 November 2012 at 6.30 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 20 September 2012**

(Pages 1 - 2)

**4 Minutes of the meeting of the Licensing Sub Committee held on 31 May 2012**

(Pages 3 - 6)

**5 Minutes of the meeting of the Licensing Sub Committee held on 26 September 2012**

(Pages 7 - 12)

**6 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.

**7 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 TO BE DEALT WITH UNDER DELEGATED POWERS OR MATTERS DETERMINED BY COMMITTEE**

- 8 **Early Morning Alcohol Restriction Orders and Late Night Levy Update** (Pages 13 - 24)
- 9 **Gambling Act 2005 - Setting of Fees** (Pages 25 - 32)
- 10 **Live Music Act 2012 - Update** (Pages 33 - 36)
- 11 **Any other business that the Chairman decides is urgent.**

## Licensing Committee

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Held at  
on Thursday 20 September 2012

### Present

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Councillors Andrews, Clark, Mrs Cowling, Fraser, Hope (Vice Chairman in the Chair), Richardson, Mrs Sanderson and Walker

### In Attendance

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Phil Long, Nicki Lishman and Steve Richmond

### Minutes

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26 **Apologies for absence**

Apologies for absence were received from Councillors Mrs Frank and Hicks.

27 **Minutes of the meeting of the Licensing Committee held on 7 June 2012**

**Decision**

That the minutes of the meeting of the Licensing Committee held on 7 June 2012 be approved and signed by the Chairman as a correct record.

28 **Urgent Business**

There were no items of urgent business.

29 **Declarations of Interest**

There were no declarations of interest.

30 **Gambling Act 2005 Draft Statement of Principles - Consultation Response**

Considered – Report of the Head of Environment

**Recommendation to Council**

That the Gambling Act 2005 – Statement of Principles be approved.

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

There being no other items of urgent business, the meeting closed at 7.25 pm.

## Licensing Sub Committee

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Held at Council Chamber, Ryedale House, Malton  
on Thursday 31 May 2012

### Present

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Councillors Clark, Hicks and Hope

### In Attendance

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Fiona Brown, Nicki Lishman and Ronnie Maclure

### Minutes

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#### 1 **Declarations of Interest**

Councillor Hope declared a personal but not prejudicial interest in the item as he knew one of the attendees.

#### 2 **To determine an application for a Premises Licence from Mrs S Wreglesworth for High Dalby House, Dalby, North Yorkshire, YO18 7LP**

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.

With the agreement of all parties, additional information was presented by the applicant to the Sub-Committee which included;

- Exhibit A1 – view of access junctions to High Rigg and High Dalby House
- Exhibit A2 – view of geography of High Dalby House, High Rigg and Dalby Forest Lodges
- Exhibit A3 - view as above
- Exhibit A4 – view of second access road leading to Pickering to Whitby road
- Exhibit A5 – plan of available parking spaces without parking on lawns
- Exhibit A6 – Copy of Operating Schedule and Fire Risk Assessment
- Ground floor plan of High Dalby House

- Plan showing parking places and potential additional emergency parking spaces on grassed areas at High Dalby House

The Chairman 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 purpose of the report was enable the Licensing Sub-Committee to determine an application for a new Premises License at High Dalby House, Dalby, Pickering, YO18 7LP, taking into account the relevant representations received, amendments / conditions proposed, the four licensing objectives, the Licensing Act 2003, Government Guidance issued under section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy and after hearing from both the applicant and any persons who have submitted relevant representations.

The premises were currently unlicensed and the applicant sought a license for the supply of alcohol to residents of either the guest house or cottages 24 hours each day and the supply of alcohol to non-residents of the guest house or cottages each day between the hours of 10:00 and 23:00 including a 30 minute drinking up time.

One of the interested parties representation was concerned with the prevention of crime and disorder and public safety licensing objectives. The other party was concerned that all four licensing objectives were not being promoted.

Mr Wreglesworth (representing his wife, the applicant) was first to address the Sub Committee. He spoke initially about the reason they purchased the property and gave some general information relating to tourism figures and traffic movements within Dalby Forrest and the National Park area. He then gave details of how High Dalby House would operate with direct reference to the sale of alcohol.

Mr Wreglesworth stated that for residents of the house and guest cottages alcohol would be supplied by means of an honesty fridge (similar to a mini bar operated in hotels). This fridge would be located outside the owners accommodation (they live on site) where its use could be monitored. If they found excessive useage by individual guests, action would be taken. The

fridge contents would also be strictly controlled. Guest accommodation at these premises is to be restricted to adult use only.

Non residents attending events would be served by Mrs Wreglesworth (DPS) and would be subject to a recognised proof of age check. Mr Wreglesworth stated that he did not feel that some of the issues raised in the representations actually affected the promotion of the four licensing objectives and felt that both representations were made on a commercial basis, that their new business would take trade away from both interested parties (caravan site and log cabin businesses).

Mr Wreglesworth then went on to speak about his right to use the private road which linked his property to the Pickering-Whitby road. Councillors had no questions for Mr Wreglesworth, Mrs Cowley raised several questions in relation to persons using his premises after the 18:30 hours time restriction (see representation for details).

Mr Laley was then asked by the chairman to address the Sub Committee, Mr Laley declined, implying that Mrs Cowley would include in her address what he wanted to say.

Mrs Cowley then addressed the Sub Committee. She firstly stated that she was not opposed to the premises being licensed for residents only, she was only opposed to the licence being granted for non-residents of the premises. She felt that the increase in traffic flow would cause her a nuisance as they passed her home. She was also very concerned that the quietness of the forest would be affected if a licence was granted.

Mr Wreglesworth then asked whether Mr Laley or Mrs Cowley restricted the guests who use their accommodation to a 18:30 cutoff. Mr Laley said he asked all guests to be back at the caravan park for 22:00 hours and that he locked the site a little later. Mr Wreglesworth then returned to his right to use the road (which passes through his property) and which meets the main Pickering – Whitby road. Mrs Cowley stated this was a bridle way but Mr Wreglesworth again stated his right to use it. There was some further discussion with regard to the status of the “quietness of the forest” and what this meant but Mr Wreglesworth wondered if this was relevant to any of the four licensing objectives.

The interested parties and the applicant were then asked to make a final statement which they did and the Committees legal advisor then asked through the chairman if everyone was happy and had they said everything they wanted to say. Following this the Sub Committee accompanied by the Committee’s legal advisor and clerk retired to consider the application, after which the following decision was announced:

## **DECISION**

That the application for a new Premises License for High Dalby House, Dalby, Pickering, YO18 7LP be granted and that a written copy of the decision would be sent to all parties

## **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 four licensing objectives were not being promoted by the applicant.



## Licensing Sub Committee

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Held at Meeting Room 1, Ryedale House, Malton  
on Wednesday 26 September 2012

### Present

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Councillors Clark, Richardson and Walker

### In Attendance

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Mr M O'Brien, Ms D Lee, Ms J Wintermyer, Inspector A Everitt and Police Constable D Cooper

Fiona Brown and Nicki Lishman

### Minutes

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#### 3 **Declarations of Interest**

There were no declarations of interest.

#### 4 **To determine an application from North Yorkshire Police to review a Premises License for the King's Head, 5 Market Place, Malton YO17 7LP**

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.

With the agreement of all parties, additional information was presented by the applicant to the Sub-Committee which included;

- A copy of the current plan of the Licensed Premise
- A copy of a plan of a proposed variation to the Licensed Premise
- A Joint Position Statement prepared by the Licensee and the Police
- Photographs and an index of improvements undertaken to the outside areas of the premise

The Chairman 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 purpose of the report was enable the Licensing Sub-Committee to determine an application for a review of the Premises License for the premises known as the King's Head, 5 Market Place, Malton YO17 7LP taking into account the relevant representations received, amendments / conditions proposed, the four licensing objectives, the Licensing Act 2003, Government Guidance issued under section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy and after hearing from both the applicant and any persons who have submitted relevant representations.

North Yorkshire Police's application related to the following Licensing Objectives:

- The prevention of crime and disorder
- Public safety
- The protection of children from harm

and stated the following as grounds for review;

- A significant increase in the frequency, nature and gravity of assaults, anti-social behaviour and disorder emanating from this premise
- Three serious assaults involving glassware at the premise in that last 12 months resulting in significant and permanent injuries to victims
- Report and incidents of young people using the premises, being intoxicated and being involved in assaults
- Failure by the owner, management and staff to positively promote the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives

Mr O'Brien, for the Licensed Premise, explained to the Committee that since the application for review had been submitted, a new Premises License holder and new Designated Premises Supervisor had been appointed. They had been working closely with the Police Licensing Officer and a Joint Position Statement dealing with all but two of the matters of concern to North Yorkshire Police had been agreed.

The remaining areas of concern were the use of Door Supervisors and the opening hours.

Ms Wintermeyer, solicitor for North Yorkshire Police, reported that the Police had been heartened by the co-operation received and the pro-active attitude of the premise's management. However, she stated that the Police remained concerned about the number of incidents that took place after midnight and that there appeared to be confusion over the existing conditions relating to the use of Door Supervisors.

Mr O'Brien responded that the issue of people taking drinks from the rear of the Licensed Premise had been resolved by the erection of a fence around the area and that management would exercise due diligence to ensure that drinks were not taken from the front of the premise. Other efforts to ensure that the License Conditions were met were described in the staff terms and conditions and new working practices document provided.

Following discussion of the provision of Door Supervisors, it was proposed by Mr O'Brien and accepted by the Police that the following arrangement was acceptable;

- Two Door Supervisors on duty every Saturday evening from 8.30 pm
- One Door Supervisor on duty every Friday from 9.30 pm, unless there is regulated entertainment in which case there will be two Door Supervisors on duty from 8.30 pm

Ms Wintermeyer urged that any wording of such a condition be future proof and worded to ensure that any Door Supervisor was not expected to undertake other roles while on duty.

Mr O'Brien requested clarification of what was regulated entertainment and thus when Door Supervisors were required.

Inspector Everitt, North Yorkshire Police, then described the context and type of incidents allegedly connected with the premises and the demands put on Police resources. He emphasised that, although he recognised the importance of the current licensing hours to the commercial success of the business, he had a duty to the wider community.

Inspector Everitt was questioned by Committee Members about the effects that the new working practices had had and whether the problems and issues would be moved to another premise if the licensed hours were reduced.

Inspector Everitt replied that he was positive about staff awareness at the premise but that he had to consider the wider community and the provision of a safe environment. Historically, the premise had been last on the circuit and he questioned whether this culture was appropriate for the night time economy in Malton.

Mr O'Brien responded that he believed that the new measures imposed by the managements would work and that there had already been a noticeable improvement in the clientele at the premise and that one of the effects of this would be that customers would visit the premises earlier in the evening rather than it being the last establishment visited.

Although he had issues with some of the incidents reported in the Police Incident Record, he viewed positively the recent meetings with all partners. He saw the steps taken by the premises management as a prescription to stop any trouble and that the Police were having a positive effect on the culture of the town.

The Chairman then proposed a 15 minute adjournment for both sides to consider whether any compromise could be reached regarding the licensing hours of the premises, including consideration of the use of a trial period.

Following resumption of the meeting, Mr O'Brien responded that he considered that the last six weeks, since the new measures had put in place at the premise, should be considered as a trial period and that reducing the opening hours to 12 midnight would have dramatic effect on the business.

Ms Wintermeyer responded that the improvements at the premise had been accompanied by a stronger Police presence in the town and it was therefore not possible to conclude that improvements in behaviour were solely as a result of the improved management at the premise. She suggested that the Police would not oppose a reduction in opening hours to 12.30 am.

The interested parties and the applicant were then asked to make a final statement which they did and the Committees legal advisor then asked through the chairman if everyone was happy and had they said everything they wanted to say.

The Chairman requested that, while the Sub Committee was retired to consider the application, both parties compiled an agreed wording for the revised condition on the use of Door Supervisors and a definition of regulated entertainment. An agreed condition was then presented to the Sub Committee for consideration.

Following this the Sub Committee retired to consider the application accompanied by the Committee's legal advisor, to advise on points of law and clerk, after which the following decision was announced:

## **DECISION**

After reading all the papers, including evidence statements and having heard and taken into account all statements and evidence, the Sub Committee feels that all conditions put forward and agreed by both parties were appropriate for the promotion of the licensing objectives.

It was agreed to accept the conditions as laid out in the Joint Position Statement, with the exception of Point 10. This would be the subject of a separate application for variation.

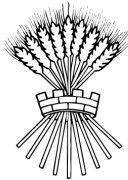
The Sub Committee welcomed the Joint Statement on door supervisors and it was confirmed that the existing conditions would be modified accordingly.

On balance, the Sub Committee did not consider it appropriate or proportionate to reduce the hours and decide to leave the opening hours as stated on the current license.

The Sub Committee reminded the parties that the Licensing Authority had the ability to apply for a review. If the solutions amicably agreed were not adequate and that problems continued to be reported, then such a review could follow.

A written copy of the decision would be sent to all parties.

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**PART A:**

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 22 NOVEMBER 2012

**REPORT OF THE:** HEAD OF ENVIRONMENT, STREETSCENE, FACILITIES, ICT  
PHIL LONG

**TITLE OF REPORT:** EARLY MORNING ALCOHOL RESTRICTION ORDERS AND  
LATE NIGHT LEVY UPDATE

**WARDS AFFECTED:** ALL

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**EXECUTIVE SUMMARY**

**1.0 PURPOSE OF REPORT**

1.1 This report is to update Members on the progress of The Police Reform and Social Responsibility Act in relation to changes to the Licensing Act 2003 specifically relating to Early Morning Alcohol Restriction Orders (EMRO's) and the Late Night Levy (LNL).

**2.0 RECOMMENDATION**

2.1 That the report is noted but no action or decisions be taken.

2.2 Although no decisions are sought from Members on whether to introduce either an EMRO or a LNL at this stage, Members are asked to consider based on the information available to date, whether or not Members would look favourably at introducing either an EMRO or a LNL in Ryedale District.

**3.0 REASON FOR RECOMMENDATION**

3.1 To keep Members informed regarding the implications of adopting either EMRO's or a LNL in Ryedale and the potential implications such a decision may have on the local night time economy.

**4.0 SIGNIFICANT RISKS**

4.1 Not applicable

## **REPORT**

### **5.0 BACKGROUND AND INTRODUCTION**

5.1 The Police Reform and Social Responsibility Act 2011 introduced amendments to the Licensing Act 2003. Members attention was drawn to the implementation of the Act in a report to this Committee on the 7<sup>th</sup> June 2012. Whilst the vast majority of these changes were implemented on the 26<sup>th</sup> April 2012, further amendments were introduced at the end of October and these changes include the introduction of EMRO`s and a LNL, both of which are intended to tackle alcohol related crime and disorder and to help pay for additional enforcement costs associated with late night opening premises. No decision has yet been made on the introduction of locally set fees.

### **6.0 POLICY CONTEXT**

6.1 The following Policies have informed this report:

- Ryedale District Council's Licensing Policy

### **7.0 CONSULTATION**

7.1 Not applicable.

### **8.0 REPORT DETAILS**

#### **EARLY MORNING ALCOHOL RESTRICTION ORDERS (EMRO`s)**

8.1 An EMRO is a power which has been extended by the 2011 Act to enable licensing authorities to restrict the sale of alcohol where they deem that there are alcohol related crime and disorder issues in the whole or part of their area between 12 midnight and 06:00am on all or some days. This restriction applies at any time between 12 midnight and 06:00 am to premises licences, club premises certificates and temporary event notices. There are no exceptions to the type of premises that are affected by an EMRO except for hotels who provide alcohol to residents through mini-bars and room service for residents to consume alcohol in their rooms. However, hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.

8.2 A licensing authority can decide to make an EMRO if they have sufficient evidence that the order is appropriate for the promotion of the four licensing objectives. The Police and Police Crime Commissioner (PCC) or the public may request the introduction of an EMRO. It falls to the licensing authority to decide the area, days and times in relation to which the EMRO would apply. However, in recognition on New Years Eve`s status as a night of national celebration, EMRO`s will not apply on this date.

8.3 Licensing authorities will be required to advertise their proposals on their website and in their local newspaper as well as notifying those licence holders within the proposed EMRO area (but not all licence holders within the district). Any person wishing to make a representation for, or against, the proposal will have 42 days in which to lodge their comments.



- 8.4 If representations are received then a hearing must be held to determine the outcome of the EMRO. If it is deemed appropriate that an EMRO be made, the licensing authority must be able to fully justify its decision or risk a possible judicial review. After making an Order, the licensing authority must publish it or otherwise make it available in a prescribed form and manner and within the prescribed period.
- 8.5 The Government has recently provided further information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003.

#### **LATE NIGHT LEVY (LNL)**

- 8.6 The LNL is a power for licensing authorities to introduce a charge for premises that have an alcohol licence with a terminal hour after 12 midnight. It allows licensing authorities to charge those businesses for extra enforcement costs that the night-time economy generates for police and local authorities.
- 8.7 Prior to making a decision to implement the levy, the licensing authority should have discussions with the relevant chief officer of police, the PCC and local police to decide whether it is appropriate to introduce the levy in its area. If the licensing authority considers it appropriate, then it must formally consult the police, the PCC, licence holders and any other persons about its decision. This consultation should also ask whether the licensing authority needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and the licensing authority.
- 8.8 Nevertheless whether or not to implement the levy will be left entirely at the discretion of the licensing authority. If the levy is introduced it will apply to all premises within the district that qualify (both in the on-trade and off-trade) with the only exceptions being those categories set by Government, and the levy will be collected annually at the same time as the annual licence fee. It will be up to the licensing authority to decide the time at which the levy applies in their area, although it will be restricted to applying it sometime between the hours of 12 midnight and 06:00am.
- 8.9 Members should note that a significant number (possibly in excess of 50%) of the licensed premises who would currently be affected by the imposition of such a levy are premises like hotels, restaurants, village pubs, premises that only open for additional hours at bank holidays and clubs and would be likely to vary their current licence to a terminal hour of 12 midnight thus avoiding the cost of the levy. It is worth noting that this licensing authority would not be allowed to charge for any variation to reduce hours for the sale of alcohol as a result of the implementation of the LNL. This would have an impact on the licensing service as it is likely that a significant number of such variations would need to be processed. Further, premises licence holders who choose to reduce the hours on their licence would still have the ability to apply for Temporary Events Notices for 21 days a year. This would lead to a large amount of extra work for the licensing team with very little income as these Notices only cost £21.
- 8.10 The LNL is said not to be targeted at individual premises because the cost caused by the night time economy are often not directly linked to particular businesses, but instead occur as a result of the night time economy as a whole. However, in practice it tends to be a very small minority of premises in specific locations operating after 12 midnight that are linked directly with any trouble, the majority of premises who

operate after 12 midnight do so without issue. It seems that those premises operating responsibly may be financially penalised because of the actions of a minority.

- 8.11 If introduced, once the levy has been collected, the licensing authority would firstly deduct costs incurred in the collection and administration of the scheme. Following this deduction, at least 70% of the net amount must be passed to the police. Whilst the licensing authority will have restrictions imposed on it regarding the types of services that they can fund with their 30% portion of the levy (monies can only be spent on tackling alcohol-related crime and disorder and services connected to the management of the night time economy) there is no such restriction placed upon the police. In fact, the use of the police proportion of the levy is at the direction of the police and PCC rather than at local level and therefore the police do not have to spend their proportion of the levy in the local area where it has been collected or on policing associated with alcohol related crime and disorder.
- 8.12 Premises will be split into bands based upon their rateable value to determine how much they would pay under the levy. This system applies to the existing licensing fees and the annual retainer fee and means that depending on the type of licensed premise, the area that its in and the services it offers will affect the rateable value and hence the level of contribution to the levy. The levy is set as follows:-

Rateable Bands	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,001 And above	Dx2 Multiplier applies to premises in Category D that primarily or exclusively sell alcohol	Ex2 Multiplier applies to premises in Category E that primarily or exclusively sell alcohol
Annual Levy Charge	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440
Annual Retainer Fee ( fee currently paid to the Council)	£70	£180	£295	£320	£350	£640	£1,050
New annual fee( annual fee plus late night levy)	£369	£948	£1554	£1685	£1843	£3370	£5490
% increase if levy adopted	427	427	427	427	427	427	427

8.13 Licensing authorities would have discretion to exempt the following from any levy introduced.

- Premises with overnight accommodation(currently 12 in Ryedale)
- Theatres
- Cinemas
- Bingo Halls
- Community amateur sports clubs(CASCs)
- Community Premises
- Country Village pubs( those entitled to rural rate relief-currently 15 in Ryedale))
- Business improvement districts(BIDs)

There will be no exemptions available to:

- Restaurants
- Casinos
- Private members clubs

Licensing Authorities will have the discretion to offer a 30% reduction from the levy fee if businesses are able to demonstrate that best practice schemes (these must fulfil specific criteria) have been adopted and implemented e.g. Pubwatch. This level of discretionary reduction can also be offered to public houses that are receipt of small business rate relief and have a rateable value below £12,000 (22 currently in Ryedale).

### **INCOME AND EXPENDITURE**

8.14 The Council will be able to deduct permitted administration, enforcement and collection costs from the gross levy revenue. This is not factored into the figures below as at this stage it is not possible to predict.

If the Council does not offer any exemptions or discounts and chooses to implement the levy from midnight it would affect 145 (40%) of the licensed premises in Ryedale. The income generated from these premises would be:-

No of Premises	Rateable Band	Levy	Total Possible Income
15	A	£299	£4485
103	B	£768	£79104
17	C	£1259	£21403
3	D	£1365	£4095
7	E	£1493	£10451
		TOTAL	£119538
		<b>70% POLICE</b>	<b>£83677</b>
		<b>30% RYEDALE</b>	<b>£35861</b>

As stated in 8.9 above, it is envisaged that a considerable number of premises eligible to pay the late night levy will choose to vary their licence to terminate sales at midnight. We have estimated possibly as many as 90 premises may choose to reduce their hours because of the cost implications of paying the levy for the limited gain from selling alcohol after midnight. The types and number of premises are as follows:- restaurants(10), Guest houses/B&B/Hotels(16), those premises with extensions for Christmas/Bank holidays only(25), Clubs(7), Public houses in Market towns(15), Village public houses(14) and theme parks(3). If these premises were to opt out of paying the levy the income would be as follows:-

No of Premises	Rateable Band	Levy	Total Possible Income
9	A	£299	£2691
64	B	£768	£49152
10	C	£1259	£12590
1	D	£1365	£1365
6	E	£1493	£8958
		TOTAL	£74756
		<b>70% POLICE</b>	<b>£52329</b>
		<b>30% RYEDALE</b>	<b>£22427</b>

### OPTIONS

- 8.15 Initial informal discussions with North Yorkshire Police indicate that there is no desire to ask for the introduction of either EMRO's or the LNL at this stage, particularly with the impending PCC election due to take place shortly. The police would continue to look to review the licence or prosecute those premises that are responsible for causing problems and not penalise those premises operating responsibly.
- 8.16 There are obviously "pros" and "cons" when deliberating whether EMRO's or the LNL would be appropriate to adopt in Ryedale District. Some of the arguments in this respect are shown in the table below and reflect the views of council officers.

<b>EARLY MORNING RESTRICTION ORDERS</b>		
PROS	CONS	COMMENT
Will ensure that any alcohol related crime that can be proven as coming from a certain area can be controlled	<p>Could increase the fear of crime by the public which could result in certain areas of the towns wrongly becoming "no go" areas and affecting licensees within the area who do run their premises properly.</p> <p>Introduction of an EMRO in one area could simply cause the shifting of late night alcohol problems to another area within the district.</p> <p>Introduction of an EMRO</p>	<p>This type of legislation is probably more appropriate to cities and large towns with large crowds of customers going from premises to premises behaving in an anti-social manner rather than Ryedale where the majority of public houses are in villages or those limited to market towns where an errant licensee could more properly be made accountable for their actions by the bringing of a Review against that premise.</p>

	without sufficient and robust evidence would leave Ryedale District Council at risk of judicial review.	
Will stop the sale of alcohol from a time decided by the Licensing Authority between midnight and 06:00 hours thereby controlling when the night time economy finishes in certain areas, with the subsequent effect, if any on police resources	<p>An EMRO stops the sale or supply of alcohol, it does not close the premises.</p> <p>EMRO's will have the effect of zoning ie the sale of alcohol will stop in a particular specific zone or area of the district/town, possibly pushing any issues into another area of the district/town. Premises that are not included or who are outside of the EMRO may try and take advantage and open later.</p> <p>Politically this could be seen as inequitable, causing unfair competition or even anti-business.</p> <p>If neighbouring Councils do not impose EMRO's, people will travel to premises that open later in neighbouring towns, rather than use local businesses.</p>	<p>The premises may still stay open offering regulated entertainment till a later time.</p> <p>Careful thought will have to be given as to where an EMRO is brought into effect as it could simply move problems to other areas.</p> <p>The imposition of an EMRO may well have the effect of closing businesses with associated job losses. Many licensed premises are running on tight margins and this could be perceived as anti-business.</p> <p>As with the last comment may lead to a possible loss of businesses and jobs.</p>
<b>LATE NIGHT LEVY</b>		
<b>PROS</b>	<b>CONS</b>	<b>COMMENT</b>
Premises reduce their hours for the sale/supply of alcohol	Licensees could reduce bar staff numbers and doorstaff if they close earlier	If premises decide to vary their licences to close before the midnight "cut off" imposed by the levy, the authority cannot charge for this. As stated above this could generate a substantial amount of work for the licensing section without income generation.
Licensees could apply for Temporary Events Notices if they reduce their standard operating hours in order to circumvent the Late Night	An increase in TENs will result in an increase in administration for the police, environmental health and licensing. Conditions that are	This will inevitably lead to more work for the licensing section as more Licensing Sub Committee hearings will be required if the police or

Levy	on a premises licence can only be put onto a TEN if either the police or Environmental Health put in a representation to the Council, this would result in the need for a licensing sub committee hearing to make a decision.	environmental health put in representations against the TEN applications  TEN income would not cover the cost of the potential number of hearings. TENS only cost £21.
	Those licensees who pay the levy may well decide that to make it worthwhile they will apply to vary their licence to open even later.	If these premises are allowed to open later it could lead to more anti-social behaviour and nuisance particularly as customers make their way home.  Again as above, premises applying to vary their licences would increase the workload for licensing. Further, such applications because of their nature would inevitably lead to Licensing Sub Committee hearings. The cost of these is not covered by the application fee.
	There will be an expectation by licensees and the public alike that more police officers would be readily available	Any levy will be Council wide, not just in a town centre. While there is an exemption for some rural pubs (15) this will not exclude many village pubs, restaurants, clubs and overnight accommodation who will still have to pay. There will be an expectation from premises that believe they have paid for extra policing (which is how the levy is being promoted) and for that policing to be present and available within Ryedale. The same expectation will be held by market towns. It is likely that North Yorkshire Police will not be able to fulfil these expectations as the number of police appears to be reducing and the money is not ring fenced to either the area the levy is collected in or policing relating to the

		night time economy and associated crime and disorder. How would the Council manage these expectations?
	There could be bad publicity for the Council from businesses who could accuse the Council of not helping them to create a viable night time economy and of causing them financial hardship.	As with EMROs above, this could be seen as anti-business or even as a "trade tax".
	There could be increased problems in obtaining payments for both the annual retainer fee as well as the levy itself	The Licensing Authority now have the ability to suspend licences for non-payment but this could impact severely on the work of the licensing section in having to deal with a lot more suspensions and re-instatement notices. This is also likely to cause an increase in work for the legal department.
	It is still unclear how much money will actually be raised by this measure.	While this measure will be enforced council wide it is still unclear how much money will actually be collected. Not only are there exemptions, but there are discounts available and premises will also be allowed to remove themselves free of charge (this is a very important point as it has cost implications for the council) from any levy that is imposed by reducing their hours.
	Councils may not feel it is financially worth their while collecting a levy that does not benefit them to any great extent in that monies raised can only be spent on the night time economy alcohol related issues.	Councils will be able to take from the levy only the costs incurred in calculating, collecting and enforcing the collection. In addition they can then take only 30% of what is left, leaving the remaining 70% for the police. It is prescribed in regulations what this can be spent on, giving councils very little options on how to spend the money, unlike the police who can spend the money where and how it sees fit. How

		much of an incentive is there to impose the levy in order to collect monies for another organisation i.e. the police?.
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## 9.0 IMPLICATIONS

9.1 The following implications have been identified:

- a) Financial  
If licensed premises choose to reduce their licensed hours to avoid paying the LNL then any anticipated income could be severely reduced and most importantly many licensed premises may close.
- b) Legal  
If the Licensing Authority decides to implement the levy it must formally consult the PCC, the police, and all licence holders and others about its decision. Failure to do so and being able to fully justify its decision in imposing either an EMRO or LNL could result in legal challenge/judicial review.
- c) Others  
A drawback of EMRO`s and the LNL is the impact that it could have on the vibrancy of Ryedale`s night time economy as it will put extra financial strain on licensed premises. A balance needs to be struck between protecting residents from nuisance and late night alcohol related disorder and protecting local economy.

The Council would not be able to charge for any variation to reduce hours for the sale of alcohol as a result of the implementation of the LNL. Premises could however submit Temporary Event Notices, which, while generating income, could severely impact on the licensing service in terms of the numbers of licence applications it would be required to process. Paragraph 8.16 above details the “pros” and “cons” of adopting these enforcement measures

If Ryedale introduced EMRO`s or the LNL and other authorities did not, then this could have a negative effect on our night time economy. Locals may well utilise neighbouring authorities later licensing hours resulting in loss of trade for local retailers.

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**Background Papers:**

Licensing Act 2003

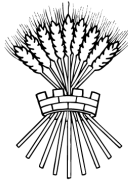
Guidance issued under Section 182 of the Licensing Act 2003

Police and Social Responsibility Act 2011

The Licensing Act 2003(Early Morning Alcohol Restriction Orders) Regulations 2012

The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012

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**PART A:**

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 22 NOVEMBER 2012

**REPORT OF THE:** HEAD OF ENVIRONMENT,STREETSCENE,FACILITIES,ICT  
PHIL LONG

**TITLE OF REPORT:** GAMBLING ACT 2005 - SETTING OF FEES

**WARDS AFFECTED:** ALL

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**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 2013/14

## **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.

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 2013/14 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 2013/14	Revised fees would be unable to be charged	<b>2</b>	<b>B</b>	Committee Report recommends fee level for 2013/14	<b>1</b>	<b>A</b>

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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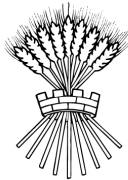
## SCHEDULE

Table of proposed fees for 2013/14

<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	<b>£1,280</b> <b>(£1,230)</b>	<b>£385</b> <b>(£370)</b>	£1,000	£950	£950	<b>£1,280</b> <b>(£1,230)</b>
Betting premises (other) licence	<b>£1,280</b> <b>(£1,230)</b>	£1,200	<b>£1,280</b> <b>(£1,230)</b>	<b>£385</b> <b>(£370)</b>	<b>£1,280</b> <b>(£1,230)</b>	£1,200	£1,200	<b>£1,280</b> <b>(£1,230)</b>

**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 £26, change of circumstances – Fee £52.**



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**PART A:**

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 22 NOVEMBER 2012

**REPORT OF THE:** HEAD OF ENVIRONMENT,STREETSCENE,FACILITIES,ICT  
PHIL LONG

**TITLE OF REPORT:** LIVE MUSIC ACT 2012-UPDATE

**WARDS AFFECTED:** ALL

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**EXECUTIVE SUMMARY**

**1.0 PURPOSE OF REPORT**

1.1 This report is to advise and update Members of the changes to the Licensing Act 2003 brought about by the introduction of the Live Music Act 2012.

**2.0 RECOMMENDATION**

2.1 That Members note the content of the report and the implications in relation to licensed premises.

**3.0 REASON FOR RECOMMENDATION**

3.1 It is essential that Members of the Licensing Committee and Sub-Committees are fully aware of the changes to the Licensing Act 2003 via the Live Music Act 2012 and expected Guidance so that any decisions will withstand legal scrutiny in the event of a subsequent appeal.

**4.0 SIGNIFICANT RISKS**

4.1 Not applicable

**REPORT**

**5.0 BACKGROUND AND INTRODUCTION**

5.1 The Police Reform and Social Responsibility Act 2011 introduced amendments to the Licensing Act 2003. Members attention was drawn to the implementation of the Act in a report to this Committee on the 7<sup>th</sup> June 2012.

5.2 Under the Licensing Act 2003, a performance of live music is required to be

authorised by a Premises Licence, Club Premises Certificate or a Temporary Event Notice.

- 5.3 The provision of entertainment facilities is also a licensable activity under the Licensing Act 2003. Entertainment facilities are defined as a facility for enabling persons to take part in entertainment consisting of: making music; dancing; entertainment of a similar description; for example a piano for customers to play or a dance floor provided for use by the public in a night club.

## **6.0 POLICY CONTEXT**

6.1 The following Policies have informed this report:

- Ryedale District Council's Licensing Policy

## **7.0 CONSULTATION**

7.1 Not applicable, this is a legislative change.

## **8.0 REPORT DETAILS**

8.1 The Live Music Act received Royal Assent on the 8<sup>th</sup> of March 2012 and came into effect on the 1<sup>st</sup> of October 2012.

8.2 The Act provides that live amplified music ceases to be classed as regulated entertainment if all of the following criteria are satisfied:

- There is a premises licence or club premises certificate in place authorising "on sales" of alcohol.
- The premises are open for the sale or supply of alcohol for consumption on the premises.
- Live music is taking place between 08:00am and 11:00pm.
- If the live music is amplified, the audience consists of no more than 200 people.

8.3 The Act also disappplies any live music related conditions attached to the premises licence or club premises certificate if all of the above criteria are satisfied.

8.4 Live un-amplified music provided anywhere (indoors or outside in any place) is not classed as regulated entertainment between 08:00am and 11:00pm regardless of the number of people in the audience.

8.5 The Act wholly removes the requirement to licence entertainment facilities.

8.6 To protect local residents the Act has additional provisions. At a review of the premises licence or club premises certificate the licensing authority can determine that:-

- Conditions relating to live music will apply during the hours of 08:00am and 11:00pm.

- If there is no authorisation for live music on the premises licence, the licensing authority can attach conditions to the premises licence/club premises certificate which can also apply between 08:00am and 11:00pm
- Can decide that live music is a licensable activity at the premises and that live music cannot be provided without authorisation on the premises licence/club premises certificate or Temporary Event Notice.

8.7 It is important to state that all other legislative requirements still apply. The Live Music Act 2012 does not permit premises to cause noise nuisance.

8.8 Formal Government Guidance is expected on the 31<sup>st</sup> of October 2012.

## 9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The Live Music Act 2012 may reduce the number of Temporary Event Notices (TEN) submitted which as a result may have a impact on the income received by Ryedale Council.

b) Legal

This report provides a legislative update and the legal implications are found in the body of the report.

c) Others

The amendments introduced by the Live Music Act 2012 may increase the workload of the Environmental Protection section which may have to deal with an increased number of noise nuisance complaints.

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**Background Papers:**

Licensing Act 2003  
The Live Music Act 2012.

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