



LICENSING COMMITTEE

Thursday 24 January 2013 at 6.30 pm

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 22 November 2012

(Pages 1 - 4)

4 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.

5 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

6 The Licensing Act 2003 - Councillor Consultation

(Pages 5 - 10)

- 7 **Entertainment Deregulation - DCMS Consultation Response** (Pages 11 - 14)
- 8 **Any other business that the Chairman decides is urgent.**

Licensing Committee

Held at Council Chamber, Ryedale House, Malton
on Thursday 22 November 2012

Present

Councillors Mrs Cowling (in the Chair), Mrs Sanderson, Walker, Richardson and Andrews

In Attendance

Phil Long, Julian Rudd, Nicki Lishman and Steve Richmond

Minutes

32 **Apologies for absence**

Apologies for absence were received from Councillors Clark, Mrs Frank, Fraser, Hicks and Hope.

33 **Minutes of the meeting held on 20 September 2012**

Decision

That the minutes of the meeting of the Licensing Committee held on 20 September 2012 be approved and signed by the Chairman as a correct record.

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

Decision

That the minutes of the meeting of the Licensing Sub Committee held on 31 May 2012 be received subject to the Chairman of the meeting being identified in the minutes.

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

Decision

That the minutes of the Licensing Sub Committee held on 26 September 2012 be received subject to the Chairman of the meeting being identified in the minutes.

36 **Urgent Business**

There was one item of urgent business discussed following completion of the agenda items.

37 **Declarations of Interest**

There were no declarations of interest.

38 **Early Morning Alcohol Restriction Orders and Late Night Levy Update**

Decision

That the report be noted.

39 **Gambling Act 2005 - Setting of Fees**

Decision

That the levels of fees recommended in Annex B of the report be approved.

40 **Live Music Act 2012 - Update**

Decision

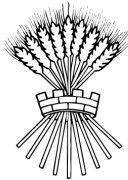
That the contents of the report and the implications in relation to licensed premises be noted.

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

Members questioned whether they should be advised of any meetings of the Licensing Sub Committee as a matter of course, whether attending the Sub Committee or not. Members felt that at least, the appropriate Ward Members should be advised of any meetings.

It was agreed that the Environmental Health Manager would prepare a report on any implications of advising all Members of any meetings of the Licensing Sub Committee, to be brought to a future meeting of the Licensing Committee.

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PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	LICENSING COMMITTEE
DATE:	24 JANUARY 2013
REPORT OF THE:	HEAD OF ENVIRONMENT PHIL LONG
TITLE OF REPORT:	THE LICENSING ACT 2003 – COUNCILLOR CONSULTATION
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to decide what level of consultation with Members is required in relation to matters covered by the Licensing Act 2003.

2.0 RECOMMENDATION

- 2.1 It is recommended that the licensing authority continues with its present policy with regards notifications to “responsible authorities” and advertising any applications, variations and reviews in accordance with the statutory provisions only.

3.0 REASON FOR RECOMMENDATION

- 3.1 There is no requirement for local authorities to comply with requests from councillors (or indeed any member of the public) to provide updates as to applications and reviews, as this practice is no longer referred to in the Guidance. Use of discretionary powers would require a change to the Licensing Policy and may leave the Council open to legal challenge.

4.0 SIGNIFICANT RISKS

- 4.1 As stated above departure from the Guidance could give rise to legal challenge. The reason for such a departure will then be a key consideration for the courts when considering the merits of any decision taken by the Council.

5.0 POLICY CONTEXT AND CONSULTATION

- 5.1 The Council is obliged to follow its own Licensing Policy and have regard to the Secretary of States Guidance issued under section 182 of the Licensing Act 2003. Consultation is undertaken in accordance with the statutory provisions and statutory

guidance.

REPORT

6.0 REPORT DETAILS

- 6.1 Following a recent review of a licensed premise, a Member was not satisfied that they had received direct consultation on the review. The matter was discussed at the meeting of the Licensing Committee on 22 November 2012, and it was requested that a report be submitted to a future meeting of the Committee.
- 6.2 The Secretary of State issued Amended Guidance under section 182 of the Licensing Act 2003 in April 2012 and again in October 2012. Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must “have regard to “guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. Licensing authorities may depart from the guidance if they have reasons to do so as long as they are able to provide full reasons. Departure from the guidance could give rise to legal challenge, and the reason for departure will be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 6.3 The only specific advice in the most recent Guidance regarding the role of local councillors is contained in Paragraph 8.14
Local councillors as noted above, can make representations. Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007. The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence or certificate of the premises in question which would then require them to withdraw from the meeting when that matter is considered (for example, where a councillor has made representations in their capacity as an elected member of the licensing authority). In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence or certificate in any other way
It is for the above reasons the Council seeks to protect councillors from accusations of bias by not having Members on the Licensing Sub-Committee in whose ward a review or application for a premise licence is taking place. With regard to the notifying of Members prior to any review/application hearing the Guidance provides no advice. The role of the Licensing Committee however is to be kept advised of licensing matters and keep the policy under review.
- 6.4 Under the Licensing Act 2003, councillors are not defined as “responsible authorities”, therefore there is no legal requirement for councillors to be notified of any application/review which the authority receives. Following amendments introduced by the Police Reform and Social Responsibility Act 2011, the term “interested parties” was removed and such parties, including councillors are now termed “other persons”. This still allows councillors to make representations in their own right and also represent members of the public if specifically asked by them to appear on their behalf at any hearing.
- 6.5 A review of other local authorities in North Yorkshire has identified that the authorities that do notify Members of representations are the York, Harrogate and Hambleton/Richmondshire. Those that do not include Ryedale, Selby, Craven and

Scarborough. As stated earlier new Guidance was issued twice in 2012, therefore this situation may change at the next review of their Licensing Policy.

- 6.6 Case law states that in *Corporation of the Hall of Arts and Sciences v The Albert Courts Residents' Association (20011)* the Court of Appeal judge said that neither the 2003 Act nor the the Licensing Act (Hearings) Regulations 2005 impose any duty on a licensing authority to advertise such an application or to notify anyone affected by it that it has been made.
- 6.7 In relation to grants, variations and reviews of premises licences, so far this year there have been 7 applications and 7 variations and one review. There has been one objection to an application resulting in a hearing and one hearing following a review application by the police.
- 6.8 Previous Guidance in 2010/2011 advised that Councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews. This advice is reflected in the Councils current Licensing Policy. This Guidance stated that *"the Act does not prevent licensing authorities from providing the information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as "soliciting " representations. It should be remembered that the "licensing authority" in most cases is the full Council, including all ward councillors, and each is therefore entitled to information required to inform that role"*. The above paragraph has been removed from the statutory Guidance under both the April and October 2012 amendments. Its removal is indicative of the lack of intention for advertisement beyond what is required by statute in relation to applications and reviews.
- 6.9 Due to a number of changes in the legislation, It is proposed to undertake a review of the Licensing Policy in early 2013.

7.0 IMPLICATIONS

- 7.1 The following implications have been identified:
- a) Financial – If Members were specifically notified of all applications/representations, the Council must have reasons for doing so. Departure from the guidance could give rise to an appeal or judicial review, and the reason will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. The Council would be liable for costs if any such appeal or judicial review were successful.
- b) Legal – see reasons above

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Background Papers:

Ryedale District Council's Licensing Policy. January 2011

Amended Guidance issued under section 182 of the Licensing Act 2003. Home Office. October 2012

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RISK MATRIX – THE LICENSING ACT 2003 - COUNCILLOR CONSULTATION

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
If Members are notified of all applications/ representations/ variations, this would be a departure from the statutory Guidance and could give rise to legal challenge. The Council would have to have a good reason for doing so.	Risk of liability for costs if successfully challenged	3	D	Council continues to advertise any application, variations and reviews in accordance with the statutory provisions only.	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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PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	LICENSING COMMITTEE
DATE:	24 JANUARY 2013
REPORT OF THE:	HEAD OF ENVIRONMENT PHIL LONG
TITLE OF REPORT:	ENTERTAINMENT DEREGULATION – DCMS CONSULTATION RESPONSE
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 The purpose of this report is to advise Members of the Government's response to the consultation on the deregulation of most of the entertainment activities that require a licence under the Licensing Act 2003.

2.0 RECOMMENDATION

2.1 That the Government Response is noted and that any amendments to the legislation and guidance are taken account during the next review of the Councils Licensing Policy.

3.0 REASON FOR RECOMMENDATION

3.1 To ensure the Council's Licensing Policy is in line with changes to legislation and guidance.

4.0 SIGNIFICANT RISKS

4.1 There are no significant risks if the Council as the licensing authority apply the proposed changes of legislation and guidance. The deregulation may result in more noise complaints with additional costs incurred in their investigation and enforcement, however in the case of licensed premises the Live Music Act 2012, provides that licence reviews can be held if there were any problems.

5.0 POLICY CONTEXT AND CONSULTATION

5.1 The Council is obliged to follow its own Licensing Policy and have regard to the Secretary of States Guidance issued under section 182 of the Licensing Act 2003. Consultation is undertaken in accordance with the statutory provisions and statutory

guidance.

REPORT

6.0 REPORT DETAILS

- 6.1 A report was submitted to the Licensing Committee on 24 November 2011 regarding the Government's consultation proposals on the deregulation of most of the entertainment activities that require a licence under the Licensing Act 2003. The consultation put forward the case for the removal of licensing from performances of plays, dance, live and recorded music, as well as indoor sporting events and film exhibition. A response from this Committee was sent in relation to the consultation.
- 6.2 The consultation received 1,350 responses and was dominated by the issue of live and recorded music. Many responses showed strong opinions on whether live and /or recorded music should be deregulated:
- to audiences of up to 4999
 - in any location
 - at all times of the day or night.
- 6.3 The key findings were that there was considerable support for deregulation, but that certain protections need to be retained, including an 11pm end time for deregulated performance, and in most circumstances, a lower audience cap than was originally proposed.
- The new policy for entertainment is outlined below:
- *Performance of plays and dance*: no longer requires a licence between 08:00 -23:00 for audiences of up to 500 people
 - *Indoor sport*: no longer requires a licence between 08:00 -23:00 for audiences of up to 1000 people.
 - *Live music*: live music has already been deregulated under the Live Music Act 2012, which came into force on 1 October 2012, with the following effect: Unamplified live music deregulated between 08:00-23:00 with no restrictions on audiences size and amplified live music deregulated between 08:00-23:00 in premises licensed for sale and supply of alcohol, and in certain workplaces. It is proposed to raise the permitted audience ceiling from 200 to 500, in on-licensed premises and workplaces in line with most other deregulated activities.
 - *Recorded music*: in line with live music deregulation, regulation for recorded music (mainly discos and DJs) will be suspended between 08:00-23:00 in premises licensed for the sale and supply of alcohol. This measure, like live music deregulation, is subject to controls from the local licence review process.
 - *Film exhibition*: film exhibition will remain regulated, but consultation will take place in 2013 on community film deregulation proposals to examine the possibilities for safe community-focused screenings that maintain important child protections.
 - Plays, films, indoor sporting events, live and recorded music and performances of dance held on their own premises by local authorities, hospitals, nurseries and schools (except Higher Education) will be exempt between 08:00 -23:00, with no audience limit
 - Similarly, live and recorded music held on premises owned by premises owned by the above organisations will be exempt from licensing requirements for audiences up to 500 people.

- Community premises such as church halls, village halls and community centres will be exempt from licensing requirements for live and recorded music for audiences of up to 500 people.
- Circuses will be exempt from regulation for live and recorded music, plays, dance and indoor sport between 08:00-23:00 with no audience restrictions
- Regulations will remain in place for all activities that exceed the audience limits and timings above. Boxing and wrestling will remain regulated, with the exception of the Olympic sport of Greco-Roman and Freestyle wrestling. As proposed in the consultation, cage fighting/mixed martial arts will become regulated activities. The Government are to ensure there are no loopholes that deregulate adult entertainment.

7.0 IMPLICATIONS

7.1 The following implications have been identified:

- a) Financial – There is likely to be little impact on the financial impact for the Council as Temporary Event Notices will remain and the vast majority include for the sale of alcohol. Where community premises are authorised only for regulated entertainment and not sale by retail of alcohol, no fees are chargeable. The greater impact on resources may arise from increased noise complaints from exempt entertainment, which is at present regulated through conditions on premises licences.

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Background Papers:

DCMS. *Entertainment Deregulation. DCMS consultation response.* January 2013

<http://www.culture.gov.uk/consultations/9650.aspx>

Ryedale District Council, Licensing Committee. *Consultation on proposals to examine the deregulation of Schedule One of the Licensing Act 2003 – Regulated Entertainment.* 24 November 2012

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