

## Bath & North East Somerset Council

MEETING:	Licensing Committee	
MEETING DATE:	13 <sup>th</sup> December 2011	AGENDA ITEM NUMBER
TITLE:	Review of functions carried out by the Council's Licensing Sub-Committees	
WARD:	ALL	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>  Appendix A; Terms of Reference for the Licensing Committee taken from the Council's Constitution.		

### 1 THE ISSUE

- 1.1 A request has been made by the Chair of the Licensing (Gambling and Licensing) Sub-Committee that applications received for Amenities on the Highway (Tables and Chairs) are determined by the Gambling and Licensing Sub-Committee instead of the Taxis, Street Trading and Miscellaneous Sub-Committee.

### 2 RECOMMENDATION

The Licensing Committee is asked to:

- 2.1 Determine whether or not they want to change the Council's Terms of Reference for the Licensing Committee and, if so, make a recommendation to Full Council to amend the Council's Constitution.

### 3 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications to this report as it is a matter of transferring an existing responsibility from one sub-committee to another.

## **4 THE REPORT**

- 4.1 Sections 115 A-K of the Highways Act 1980 relate to the provision of Amenities on certain highways.
- 4.2 Upon application the Council may grant permission to provide, maintain and operate facilities for recreation and/or refreshment on a highway.
- 4.3 A grant of permission under Section 115E of the Highways Act 1980 is not to be unreasonably withheld but permissions may be given subject to any reasonable conditions that the Council thinks fit (Section 115J of the Highways Act 1980).
- 4.4 In accordance with current Bath & North East Somerset Council policy, the Licensing Service consult on all applications received with the Police, the Council's Highways Maintenance Services, Property Services, Development Control Services, Ward Councillors and affected frontagers.
- 4.5 When objections are received against the application then the matter is brought before the Taxis, Street Trading and Miscellaneous Sub-Committee for determination, as in accordance with the Council's Terms of Reference for the Licensing Committee. A full copy of the Council's Terms of Reference for the Licensing Committee are provided in Appendix A.
- 4.6 The Chair of the Gambling and Licensing Sub-Committee has asked for a report to be brought before the Licensing Committee in order that the Committee can discuss moving the responsibility of determining applications for Amenities on the Highways from the Taxis, Street Trading and Miscellaneous Sub-Committee to the Gambling and Licensing Sub-Committee on the grounds that the significant number of premises with Amenities on the Highway also have a licence to sell alcohol.
- 4.7 Out of 68 issued Tables and Chairs permits, 39 are licensed to sell alcohol.
- 4.8 If the Licensing Committee are minded to move the responsibility of determining applications for Amenities on the Highway from one sub-committee to another then the main committee will need to make a recommendation to Council that the Terms of Reference are amended to reflect the change.

## **5 RISK MANAGEMENT**

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

## **6 EQUALITIES**

- 6.1 The Council's Equality Policy has been followed in writing this report and there are no issues as the function remains intact.

## 7 CONSULTATION

7.1 This report has been drafted together with the Council's Legal and Democratic Services.

## 8. HUMAN RIGHTS

8.1 In order to be compatible with the European Convention of Human Rights (the Convention) regard must be had to Convention rights in the decision making process. Therefore, the Council must strike a fair balance between the competing interests of individuals and the community as a whole.

## 9 ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Social Inclusion; Public Safety.

## 10 ADVICE SOUGHT

10.1 The Council's Monitoring Officer (Council Solicitor) has had the opportunity to input to this report and have cleared it for publication.

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<b>Background papers</b>	Bath and North East Somerset's Constitution; Section 5 Terms of Reference for the Licensing Committee.
<b>Please contact the report author if you need to access this report in an alternative format</b>	

## **Extract from the Bath and North East Somerset Council's Constitution.**

Part 5 Terms of Reference

### **LICENSING COMMITTEE**

#### **Status of the Committee**

The Licensing Committee shall be a statutory committee of the Council appointed to perform the discharge of the local authority's licensing functions, except the approval of Licensing policy and the setting up of a Committee.

Licensing policy shall be the responsibility of the Cabinet Member for Service Delivery except where there is a statutory requirement for Full Council to determine policy.

The setting up of a Licensing Committee shall be the responsibility of Full Council.

#### **Membership of the Committee**

The Committee shall comprise 12 elected members of the authority in the political group proportion (5 Cons: 5 Lib Dem: 1 Labour: 1 Independent), or such other proportion agreed by the Council from time to time.

The Solicitor to the Council shall be authorised, by the Council, to fill vacancies on this Committee in accordance with the nominations of the relevant political group which holds the nomination rights to the vacancy.

The Committee shall be chaired by a nominee of the Liberal Democrat Group.

#### **The Council's objectives on Licensing**

In exercising its functions the Committee will have regard to the Council's visions of:-

- Building communities where people feel safe and secure
- Improving transport and the public realm
- Enabling and promoting sustainable growth
- Protecting the young, old and vulnerable

In addition, the Committee will have regard to the statutory licensing objectives under the Licensing Act 2003, i.e.

- the prevention of crime and disorder ;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

The Committee will also have regard to the statutory licensing objectives under the Gambling Act 2005, i.e.

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way, and

- protecting children and other vulnerable persons from being harmed or exploited by gambling.

In addition the Committee will, where applicable, have regard to –

- (a) the Council's Statement of Licensing Policy, published under section 5 of the Licensing Act 2003;
- (b) the Council's Statement of Principles published under section 349 of the Gambling Act 2005;
- (c) any other policy determined by Council or the Cabinet Member for Customer Services;
- (d) any Codes of Practice and Guidance issued from time to time by the Secretary of State;
- (e) the Council's Corporate Plan and improvement priorities insofar as these do not conflict with statutory requirements which take precedence.

### **Powers and Duties of the Committee**

1. At the request of the Council, to review the Council's licensing policies at any time within the statutory 3 year period under the Licensing Act 2003 and Gambling Act 2005 and to make recommendations to the Council for change, after the prescribed consultation has been completed.
2. To carry out all of the Council's licensing functions as covered in the Licensing Act 2003 and the Gambling Act 2005, excluding the making of the Licensing Policy, and the setting up of a Licensing Committee (these being functions of the Council).
3. To determine individual licence applications which fall outside Officer delegations, or which are referred by Officers for Member attention, in relation to the issue and renewal of all registrations, licences, permits, consents etc in relation to the enactments listed below and all such other enactments as may fall within the remit of the Committee:

<i>Animal Boarding Establishments Act 1963</i>	<i>Local Government (Miscellaneous Provisions) Act 1976</i>
<i>Animal Welfare Act 2006</i>	<i>Local Government (Miscellaneous Provisions) Act 1982</i>
<i>Breeding of Dogs Act 1973</i>	<i>Performing Animals (Regulation) Act 1925</i>
<i>Breeding of Dogs Act 1991</i>	<i>Pet Animals Act 1951</i>
<i>Canal Boats Act 1877</i>	<i>Pet Animals 1951 (Amendment) Act 1983</i>
<i>Caravan Sites and Control of Development Act 1960</i>	<i>Petroleum (Consolidation) Act 1936</i>
<i>Charities Act 2006</i>	<i>Poisons Act 1972</i>
<i>Dangerous Wild Animals Act 1976</i>	<i>Police Factories, etc (Miscellaneous Provisions) Act 1916</i>
<i>Deer Act 1980</i>	<i>Public Health (Control of Disease) Act 1984</i>
<i>Environmental Protection Act 1990</i>	<i>Riding Establishments Act 1964</i>
<i>Fireworks Act 2003</i>	<i>Riding Establishments Act 1970</i>
<i>Food Act 1984</i>	<i>Scrap Metal Dealers Act 1964</i>
<i>Food Safety Act 1990</i>	
<i>Gambling Act 2005</i>	
<i>Game Act 1831</i>	

*Game Licences Act 1860*  
*Guard Dogs Act 1975*  
*Highways Act 1980 Part VIIA*  
*House to House Collections Act 1939*  
*Hypnotism Act 1952*  
*Licensing Act 2003*

*Theatres Act 1968*  
*Town Police Clauses Act 1847*  
*Town Police Clauses Act 1889*  
*Transport Act 1981*  
*Vehicles (Crime) Act 2001*  
*Violent Crime Reduction Act 2006*  
*Zoo Licensing Act 1981*

4. To determine appeals against decisions made by the Proper Officer under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.
5. To establish one or more Sub-Committees and, subject to statutorily prescribed exceptions, to delegate any of its functions to such Sub Committee(s).
6. Subject to statutorily prescribed exceptions, to delegate any of its functions to an Officer of the authority

### **How the Committee will operate, including Substitution and Delegated Powers**

The Committee will meet in full to consider any matters on which it is asked or required to submit a recommendation to the Council.

Substitutions will be permitted at meetings of the Licensing Committee from among other members of the Council, in accordance with non-Executive Committee Procedure Rule 11, as set out in the Constitution.

The Committee has appointed 2 Sub-Committees to act as hearing Panels as follows:

- Licensing (Gambling and Licensing) Sub-Committee [3 Members - 2 Liberal Democrat, 1 Conservative] – this Sub-Committee hears and determines all applications made under the Licensing Act 2003 and the Gambling Act 2005 relating to Premises Licences, Personal Licences and gaming and club machine permits;
- Licensing (Taxis, Street Trading and Miscellaneous) Sub-Committee [3 Members – 2 Conservative, 1 Liberal Democrat] - this Sub-Committee hears and determines all applications relating to licences for hackney carriage and private hire vehicles/drivers/operators, Street Trading Consents and all applications relating to licences, permits and or consents for any other functions not covered by the other Sub-Committee.

(Chairing nomination rights for both Sub-Committees are allocated to the Liberal Democrat Group).

The Committee has delegated to those Sub-Committees and Officers the power to determine applications in the circumstances set out in the tables below.

The Committee has approved a scheme for substitutions with regard to the Sub Committees. Substitutes will only be drawn from the membership of the Licensing Committee and the scheme allows for any member of the Licensing Committee to substitute at Sub-Committee meetings in accordance with the wishes of the political group arranging the substitution.

## TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
<b>LICENSING ACT 2003</b>				
Approval of three year Statement of Licensing Policy and review	All cases			
Application for Personal Licence			If a police objection is made	If no objection made
Application for Personal Licence, with unspent convictions			If a police objection is made	If no objection made
Application for Premises Licence/Club Premises Certificate			If a relevant representation is made	If no relevant representation is made
Application for Provisional Statement			If a relevant representation is made	If no relevant representation is made
Application to vary Premises Licence/Club Premises Certificate			If a relevant representation is made	If no relevant representation is made
Application to vary Designated Premises Supervisor			If a police objection is made	All other cases
Request to be removed as Designated Premises Supervisor				All cases
Application for transfer of Premises Licence			If a police objection is made	All other cases
Application for interim authorities			If a police objection is made	All other cases
Application to review Premises Licence/Club Premises Certificate			All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.				All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application			All cases	
Determination of a police objection to a Temporary Event Notice			All cases	
Determination of Minor Variation applications for premises licences and for club premises certificates				All cases
Determination of the removal of a Designated			If a relevant representation is	All other cases

<b>MATTER TO BE DEALT WITH</b>	<b>FULL COUNCIL</b>	<b>LICENSING CTTEE</b>	<b>SUB COMMITTEE</b>	<b>OFFICERS</b>
Premises Supervisor or Personal Licence Holder at community premises			made	
Applications for the classification of unclassified films			All cases	
<b>GAMBLING ACT 2005</b>				
Approval of three year Statement of Licensing Principles and review	X			
Policy not to permit casinos	X			
Fee Setting - when appropriate				X (to be approved by Cabinet Member)
Application for premises licences			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a transfer of a licence			Where representations have been received from the Commission or responsible authority	Where no representations received from the Commission or responsible authority
Application for a provisional statement			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Review of a premises licence			X	
Application for club gaming /club machine permits			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Cancellation of club gaming/ club machine permits			X	
Applications for other permits				X
Cancellation of licensed premises gaming machine permits				X
Consideration of temporary use notice				X
Decision to give a counter			X	



<b>MATTER TO BE DEALT WITH</b>	<b>FULL COUNCIL</b>	<b>LICENSING CTTEE</b>	<b>SUB COMMITTEE</b>	<b>OFFICERS</b>
notice to a temporary use notice				
Consideration of an Occasional Use Notice				X
Designation of "authorised person".				X
Exchange of information between various persons/bodies listed in the Act				X
Decision to initiate criminal proceedings.				X
Power to make Orders disapplying exempt gaming and the automatic entitlement to gaming machines in relation to specified premises.				X
Functions relating to the registration and regulation of small society lotteries.				X
To appoint an Advisory Panel		X		
Stage 1 of an application for a casino licence			X	
Stage 2 of an application for a casino licence		X		
<b>OTHER</b>				
Determination of applications for hackney carriage/private hire drivers' licences where applicants are aged 70 or over with no medical problems				X