
LICENSING AND REGISTRATION COMMITTEE18 FEBRUARY 2016

Present:- Councillor M E Platt (Chairman), Councillor R Callender (Vice-Chairman), Councillor C D Amos, Councillor B E Brown, Councillor V E Guglielmi, Councillor J Henderson, Councillor M C Newton, Councillor R E Raby, Councillor M Skeels, Councillor K P Watson, Councillor E F Whitmore, Councillor C P Winfield

Also Present:- Councillor L A McWilliams (Well-being and Partnerships Portfolio Holder)

In Attendance:- Environmental Services Manager (John Fox), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Senior Democratic Services Officer (Ian Ford), Democratic Services Officer (Katie Sullivan)

(7.30 p.m. - 7.50 p.m.)

25.. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillors Davis and White.

26. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Committee held on Wednesday 20 January 2016 were approved as a correct record and signed by the Chairman.

27. DECLARATIONS OF INTEREST

There were none.

28. PROPOSED TAXIWATCH SCHEME IN TENDRING

The Committee was aware that a representative of Essex Police had been due to attend the meeting to discuss, on an informal basis, the possibility of setting up a TaxiWatch Scheme in Tendring.

The Licensing Manager informed Members that due to ongoing organisational changes at Essex Police this item had had to be deferred until a future meeting of the Committee.

In response to a question from Councillor V E Guglielmi, the Licensing Manager outlined the purpose of a TaxiWatch Scheme to Members.

The Committee noted the forgoing.

29. CHANGE TO LICENSING ACT 2003 IN REGARDS TO LATE NIGHT REFRESHMENT

The Committee had before it a report which asked it to determine whether it wished to adopt the optional mechanism made available through the Deregulation Act 2015 in order to exempt premises that provided Late Night Refreshment (which was classified as the sale of hot food and/or hot drink between the hours of 11.00 p.m. and 5.00.a.m.) from the requirement to hold a licence, or permission to do so, under the Licensing Act 2003.

It was reported that in November 2015, the Government had introduced Regulations which gave Councils the ability to exempt premises that currently held a premises licence under the Licensing Act 2003 to provide Late Night Refreshment (LNR) from needing to be

licensed. The exemption would also apply to any premises wishing to include LNR as a licensable activity as part of a new premises licence application, or LNR as the sole activity permitted on a new application. In terms of premises that solely held a premises licence to provide LNR there were 28 of those licensed across the District. A list of those premises was attached as Appendix 1 to the report of the Corporate Director (Life Opportunities).

The Committee was made aware that the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 provided a list of prescribed premises which a Licensing Authority could exempt from the requirement under the Licensing Act 2003 for the provision of late night refreshment. That list includes premises such as:

- Motorway service areas;
- Premises used for the retailing of petrol or derv;
- Licensed Premises authorised to sell by retail alcohol for consumption on the premises between 11:00p.m and 05:00a.m;
- School and Local Authority premises where no more than 500 people are present (non-domestic premises); and
- Community premises and hospitals subject to certain requirements.

The Committee was also informed that Licensing Authority could also decide to exempt premises within a certain geographic area of the District from the requirement to license LNR, and also change the hours during which LNR premises would require a license which would apply across the whole of the District. For example, the Licensing Authority could decide that it would only require premises to hold a LNR license if they remained open between the hours of Midnight and 05:00a.m. Those were matters for the Licensing Authority's discretion and are not prescribed in any Regulations. In deciding whether to apply an exemption for either part of the District or the whole of the District the Licensing Authority would take into consideration matters such as the levels of late night anti-social behavior that occurred in the geographic area proposed for exemption, or the instances of late night anti-social behavior linked to a particular take away or takeaways in a geographic area, or the likely effect on late night anti-social behavior by applying an exemption from licensing to such premises.

Members were advised that, if the Licensing Authority, through the decision of this Committee decided to apply any of the exemptions to LNR that could be applied by implementing the new LNR Regulations it must publicize that exemption and also statutorily re-consult on its Statement of Licensing Policy in accordance with Section 5 of the Licensing Act 2003. As such, this would entail substantial costs to the Council in carrying out such a consultation and to report it back to this Committee. Exempting all premises from being required to hold a premises license to provide LNR could cost the Council £4095 annually through lost revenue to the Licensing Act 2003 budget. There was no provision within the Council's budget to balance that shortfall.

Members were further advised that there were three potential risks to the Council in agreeing to exempt premises from needing to hold a permission, or a licence, to provide Late Night Refreshment. Those were:

- Loss of control of Late Night Refreshment premises through the grant, variation or review of licenses under the Licensing Act 2003. This could have a potentially negative impact on the promotion of the licensing objectives.
- Loss of annual fee and grant of new license revenue.
- Once exempted, Late Night Refreshment premises could not be brought back into the licensing regime if, for example, the premises became the cause or source of crime and disorder and/or public nuisance.

The Committee was therefore requested to consider the potential for exempting premises from the requirement to be licensed to provide Late Night Refreshment in either part of the

District or the whole of the District that the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 allowed and to weigh the possible benefits of de-regulation to businesses against the loss of control and revenue to the Council and its residents that such an exemption was likely to bring. It was considered prudent and transparent that the Committee did so in order that if asked by any of the businesses or license holders concerned to consider implementing the Licensing Act 2003 (Late Night Refreshment) Regulations 2015, it would be clear that the Council had considered the matter and had taken a position on it.

Having considered the responses it was moved by Councillor V E Guglielmi, seconded by Councillor Callender and RESOLVED that the Committee:

(a) notes the content of the report and the Home Office document 'Guidance on the licensing of late night refreshment'; and

(b) agrees not to implement any of the optional provisions of 'The Licensing Act 2003 (Late Night Refreshment) Regulations 2015'.

30. REVIEW OF TENDRING DISTRICT COUNCIL'S CURRENT HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE SEATING CAPACITY POLICY FOR MULTI-PURPOSE VEHICLES (MPV'S) WHICH CARRY UP TO EIGHT PASSENGERS

The Committee had before it a report which asked it to review the Council's current seating capacity for Multi-Purpose Vehicle (MPV) hackney carriage and private hire vehicles which carried up to eight passengers and to agree that this review be subject to a public consultation.

It was reported that the Council's seating capacity policy had been introduced with effect from 1 August 2003 in order to sustain and promote passenger safety in licensed taxi and private hire MPVs following a decision made by the Council's Licensing Sub-Committee on 29 May 2003 which followed consultation with the taxi trade and submissions from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).

The Committee was now requested to agree to a review for the following reasons:

(1) there had been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration;

(2) the MPV seating capacity policy had recently been challenged in the Magistrates' Court by a hackney carriage vehicle proprietor and whilst that challenge was not binding on the policy itself and related purely to that individual who had made the challenge, it did add weight to the prudence of reviewing and re-consulting on the policy;

(3) it appeared that, when formulating the current MPV seating policy, consideration had been given by Members to the view of RoSPA that the seating configuration requirement for a licensed MPV carrying up to eight passengers should be arranged so that that 'no person has to remove, push forward or dismantle any seat or other obstacle; nor should it be necessary to climb over any person being carried in the vehicle or require any person to leave their seat to allow anyone to enter or leave the vehicle'. In contrast to the position held by RoSPA, the Department of Transport in their best practice guidance for taxi and private hire vehicle licensing dated March 2010, had advised that "it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers)".

Members were made aware of the current seating capacity policies for MPVs of other Local Authorities in Essex and, in addition, Ipswich Borough Council.

The Licensing Manager drew the Committee's attention to a potential solution to the different emphasis placed on seating capacity and configuration for licenced MPVs between the view held by RoSPA and the guidance given to Local Authorities by the Department for Transport in their taxi and private hire licensing best practice guide dated March 2010 which had been adopted by Basildon Borough Council in January 2015 in consultation with their taxi and private hire trades and which offered an alternative to Tendring's current seating policy, but still sought to protect and promote customer safety for customers accessing and exiting the rear of licensed MPVs. Prior to adopting this new standard, Basildon had also required the permanent removal of a nearside seat from the middle row seats to enable unrestricted access and egress from a vehicle.

The new seating policy standards adopted by Basildon in January 2015 were as follows:

- (1) In respect of minibus and other MPV style vehicles a minimum of three doors to the passenger accommodation shall be provided.
- (2) Have proper signs on how to lift the second row of seats. The sign should be clearly visible to any persons seated in the rearmost seats providing customers with instructions on the operating mechanisms for the seat that may be required to be tipped/moved forward in order to gain access/egress from the vehicle.
- (3) The operating levers to be coloured yellow/orange so that they are easily identifiable. They can be coloured by using the appropriate colour tape. Tape should remain damage free at all times and replaced when worn.
- (4) Have windows on the near and offside in respect of the rear row of seats and that they be free from obstruction at all times to allow access in the event of an emergency.
- (5) Have well positioned exit window signs (where appropriate).
- (6) Have an internal device for the rear hatch door to be opened from the inside. This can be by way of an emergency 'quick release' button which can be fitted to the rear hatch door which can be operated by passengers in order to allow access/egress in the event of an accident and one of the side passenger doors being inaccessible.

Those criteria did not apply to purpose built wheelchair accessible vehicles however which were still required to ensure that the passenger compartment provides unobstructed entry and exit from the back row of seating of the compartment and which included the requirement that no persons entering or exiting the vehicle should have to remove or dismantle a seat or obstacle to climb over a person. In terms of colouring the operating levers which lift and tip seats yellow/orange, those conformed to national safety health and safety standards.

Members were also informed that Basildon would not licence a vehicle for the maximum seating capacity shown on the vehicle registration document where the seat did not meet Schedule 6 of the Construction and Use Regulations 1986 that required seat width to be not less than 400mm (16 inches) wide (not taking into account any armrests, whether they were folded back or otherwise put out of use), or where the seat was not suitable for an adult because of weight or height restrictions placed on the seat by the manufacturer.

It was therefore suggested to the Committee that the above standards form part of the proposed consultation process to review Tendring's current seating policy for MPVs and that the trade and all other interested parties were also asked to comment on those proposed standards as part of the consultation

Having considered the matter it was moved by Councillor Callender, seconded by

Councillor V E Guglielmi and RESOLVED that the Committee agrees to:

(a) review and publicly re-consult on the Council's current seating capacity policy for Multi-Purpose Vehicles (which carry up to eight passengers) in order to determine a wide range of opinions on whether that policy should remain in place, or whether it should be amended in any way;

(b) retain the current policy until the public consultation has been carried out and the results have been fully evaluated and considered by the Committee at a future meeting; and

(c) include the solution adopted by Basildon Borough Council in terms of interior vehicle signage on how to lift seats and colouring seat operating levers yellow/orange in order to promote passenger welfare and safety in MPVs as part of the consultation exercise.

31. REVIEW OF THE COUNCIL'S DRAFT STATEMENT OF LICENSING POLICY AFTER PUBLIC CONSULTATION

The Committee had before it a report which asked it to consider the responses received from the public consultation that had taken place for the review of the Council's Statement of Licensing Policy and decide whether to amend its draft policy in light of the responses received before agreeing a final policy and recommending its adoption by the full Council. The draft policy had been approved by the Committee at its meeting on 12 October 2015.

The Licensing Manager (Simon Harvey) reported that responses had been received from:

- Essex County Fire and Rescue Service; and
- Ms G Bridle, a resident of Clacton-on-Sea.

Essex County Fire and Rescue Service had asked for a small number of amendments to be made to the Policy at paragraphs 2.7, 4.2(b) and Appendix C. The Licensing Manager had subsequently confirmed to the Fire Service that the amendments requested by it had been incorporated within the final draft of the Policy, subject to the approval of the Committee.

Ms G Bridle, a resident of Clacton-on-Sea, had responded to the consultation asking if noise limiters could be made compulsory under the Prevention of Public Nuisance Licensing Objective for all licensed premises that had music played on their premises. The Licensing Manager had advised Ms Bridle that it would not be possible to do so because the Licensing Authority cannot impose blanket conditions on premises, but had to consider each application in its own right and on its own merit and had given her further advice on dealing with a problem premises using the review mechanism available under the Licensing Act 2003 and/or reporting the noise nuisance as a complaint to the Council's Environmental Services Noise Team.

Having considered the responses it was moved by Councillor Raby, seconded by Councillor V E Guglielmi and RESOLVED that:

(a) The final draft Statement of Licensing Policy, as attached as Appendix 1 to item A.1 of the Report of the Corporate Director (Life Opportunities), be agreed and recommended to Council for adoption at its meeting to be held on 9 February 2016; and

(b) Council be further recommended to agree that any future amendments to the revised adopted and published Policy that were minor, or administrative only in nature be delegated to the Environmental Services Manager and/or the Licensing Manager, in consultation with the Monitoring Officer and the Chairman, or failing him, the Vice-Chairman, of the Committee without the need to publicly consult again, or re-adoption of

the Policy by the Council.

32. REVIEW OF THE COUNCIL'S DRAFT STATEMENT OF LICENSING POLICY FOR PUBLIC CONSULTATION

The Committee had before them a report which requested it to review and agree the draft revision of the Council's Statement of Licensing Policy which would run for five years from 31 January 2016 following public consultation and adoption by the Council.

Members were reminded that the Council was required to review and renew its Statement of Licensing Policy every five years in accordance with the Licensing Act 2003 (as amended by the Police Reform and Social Responsibility Act 2011). The review and renewal of the policy was subject to public consultation and must be adopted by Council on a recommendation from the Committee. The Licensing Manager pointed out that there had been a number of changes since the last review of the Licensing Policy in 2010, although revisions had subsequently been made to its text.

Mr Harvey advised the Committee that further legislative administrative changes could be issued from the Home Office which would mean updates being required to the Policy. He therefore asked the Committee for delegated authority for minor, or non-contentious changes to be delegated to him and/or the Environmental Services Manager and in consultation with the Chairman, or failing him, the Vice-Chairman of the Committee.

Mr Harvey explained to the Committee that the draft policy that it was being asked to approve for public consultation, had been amended so that it was in line with all current legislation and Government guidance. He added that the changes made to the policy were in the main, administrative or best practice.

Mr Harvey advised the Committee that the draft policy also now actively promoted the Tendring Community Safety Partnership (TCSP) 'Reducing the Strength' initiative and encouraged off-sale retailers to participate in the scheme by not stocking or selling super-strength lager, beer or cider above 6.5% alcohol by volume at a very low cost. He explained that participation in the initiative had to be strictly on a voluntary basis in order for retailers to comply with the competition and market authority rules on competition and price fixing. He said that the TCSP initiative fully complied with all Local Government Association and competition authority guidance, but nevertheless the Committee should be aware that it's inclusion in the policy may prove to be unpopular with organisations such as the British Beer and Pub Association (BBPA) and the Association of Licensed Multiple Retailers (ALMR) who had spoken out and campaigned against such initiatives nationwide. He added it was likely that they may lobby to have the encouragement in the policy for retailers to participate in the scheme removed.

The Licensing Manager added that he was confident the scheme that the Council worked to was sound and the TCSP had maintained a dialogue with individual retailers for a sensible approach for selling alcohol, i.e. not to sell at irresponsibly low prices and not to sell to drunken customers etc. He said that this had caused extra work for Licensing and the Police, but in the long term was proving effective. He also advised that dialogue with off-sale retailers had taken place over a long period of time and said that they were realising working with the Council, Police and the TCSP to help reduce the problems with street drinking in Clacton town centre was in their own best interest and also in the best interest of their customers and community as a whole. He hoped by gentle persuasion and ongoing dialogue and enforcement where necessary, that the word would get around and he believed the message was getting through.

Members asked questions on when the consultation would go out to the public and when it would be due back, and were informed the draft Policy was ready to go out with any

amendments requested by the Committee. When asked by a Member about checks on sales to under-age persons the Licensing Manager informed the Committee that regular checks were made to public houses and off-sale establishments, which involved working closely with the Police and Trading Standards. He added that late night checks, test purchasing and checks on premises were being undertaken where there had been more risk of under-age sales or incidents had occurred. He added that the Licensing section had a very good working relationship with both Trading Standards and the Police.

It was moved by Councillor White, seconded by Councillor Raby and RESOLVED that:

(a) The draft revisions made to the Council's Statement of Licensing Policy be agreed and that the draft Policy go out to public consultation; and

(b) Any future amendments to the revised adopted and published Policy that were minor, or administrative only, in nature, be delegated to the Environmental Services Manager and/or the Licensing Manager, in consultation with the Chairman, or failing him, the Vice-Chairman of the Licensing and Registration Committee without the need to publicly consult again or a re-adoption of the Policy by the Committee and Council.

Chairman