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Licensing and Registration Committee

2 October 2024

**MINUTES OF THE MEETING OF THE LICENSING AND REGISTRATION
COMMITTEE,
HELD ON WEDNESDAY, 2ND OCTOBER, 2024 AT 6.30 PM
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-
ON-SEA, CO15 1SE**

Present:	Councillors J Henderson (Chairman), Wiggins (Vice-Chairman), Casey, Codling, A Cossens, Davidson and Smith
In Attendance:	Keith Simmons (Head of Democratic Services and Elections & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Michael Cook (Licensing Manager), Bethany Jones (Committee Services Officer) and Emma King (Licensing Officer)

15. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

An apology for absence was submitted on behalf of Councillor Skeels (with no substitute).

16. MINUTES OF THE LAST MEETING

It was moved by Councillor Davidson, seconded by Councillor A Cossens and:-

RESOLVED that the minutes of the previous meeting of the Committee, held on Wednesday, 24 July 2024 be approved as a correct record and be signed by the Chairman.

17. DECLARATIONS OF INTEREST

Councillor Smith declared for the public record that he was a London Taxi driver but that he had no ties in that capacity to the District of Tendring.

18. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

On this occasion no Councillor had submitted notice of a question pursuant to Council Procedure Rule 38.

19. MISCELLANEOUS LICENSING SUB-COMMITTEE

It was moved by Councillor Wiggins, seconded by Councillor A Cossens and:-

RESOLVED that the Committee formally received and noted, for its information only, the Minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Tuesday, 9 July 2024.

20. PREMISES/PERSONAL LICENCES SUB-COMMITTEE

It was moved by Councillor Smith, seconded by Councillor A Cossens and:-

RESOLVED that the Committee formally received and noted, for its information only, the Minutes of the meetings of the Premises/Personal Licences Sub-Committee held on

Monday 17 June, Wednesday 31 July, Monday 2 September and Monday 9 September 2024.

21. **REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.1 - LICENSING ENFORCEMENT AND INSPECTION POLICY 2024 - 2028**

Further to Minute 8 (24.7.24), the Committee considered the revised Licensing Enforcement and Inspection Policy following a 5-week period of consultation on a draft revised policy. The report (A.1) set out both the proposed policy to be adopted and the outcome of the public consultation which had been conducted for a period of 5 weeks from 30 July 2024 to 3 September 2024.

The Committee was reminded that the draft revised Licensing Enforcement and Inspection Policy, as set out at Appendix A to the report (A.1), was intended to support the following themes from the Council's Corporate Plan 2024-28:-

- *Pride in our area and services to residents*
- *Working with Partners to improve quality of life*
- *Promoting our Heritage offer, attracting visitors and encouraging them to stay longer*
- *Financial sustainability and openness*

Members were advised that, in exercising the express powers of the Council as Licensing Authority under the Licensing Act 2003 it must do so with a view to promoting the licensing objectives defined in that Act, as follows:-

- *The prevention of crime and disorder;*
- *Public Safety;*
- *The prevention of public nuisance;*
- *The protection of children from harm.*

Additionally, in respect of the express powers under the Gambling Act 2005, the Licensing Authority must carry out those functions with a view to aiming to permit the use of premises for gambling in so far as the Authority thought it was, inter alia, reasonably consistent with the licensing objectives defined in that Act, as follows:-

- *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.*

It was reported that, in addition to a page created for the consultation on the Council's website and a public notice displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea., the below had been written to inviting them to comment on the draft policy:-

- *All Tendring District Councillors*
- *All Parish Councils*
- *Responsible Authorities as defined in the Licensing Act 2003 (including Essex Police)*
- *Institute of Licensing*

- *A number of licensing solicitors*
- *A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)*

In addition to those consultation letters the Licensing Team had also visited a number of licence holders within the District handing out consultation postcards to encourage the trader to voice their opinions.

The Committee was made aware that two members of the public had sent in responses to the consultation. Their comments were as follows:-

- *“The policy itself is fine - but without effective enforcement it is just empty words. In my experience, TDC’s enforcement, whether in relation to illegal traders or bylaws is woeful. Unless your enforcement capability is seriously improved, no amount of policy wording will make any difference”.*
- *“We must acknowledge the income licenced premises bring to the locality however they must adhere to licencing rules to protect the community and the most vulnerable persons in the locality”.*

The Head of Democratic Services & Elections informed the Committee that the first comment referred to the Council’s resource allocation which was not within the Policy but would be kept under review. In relation to the second comment this referred to the need for balance and the Head of Democratic Services & Elections confirmed that the Policy was intended to apply a balancing act between proportional enforcement action and the public good.

Members were informed that the Council had had due regard with reference to the Human Rights Act 1998 in ensuring no right was unreasonably compromised by the way in which the Council made enforcement decisions and that enforcement was considered proportionately, balancing the public need with the need of the individual or organisation concerned.

In preparing this report, due consideration had also been given to the Council’s statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority had had due regard too to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- *eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);*
- *advance equality of opportunity between people who share a relevant characteristic and people who do not;*
- *foster good relations between people who share a protected characteristic and people who do not.*

It was considered overall that the implementation of a consistent and staged approach to compliance and enforcement matters would assist Officers when engaged in any enforcement process. This would lead to more robust and defensible decisions in

relation to action concerning breaches of the legislation, conditions and unlicensed traders. In adopting a compliance and enforcement policy, the Courts would understand the rationale and reason behind Officers' actions and where public / customer safety was at serious risk the Council would act swiftly and robustly.

It was moved by Councillor Wiggins, seconded by Councillor A Cossens and:-

RESOLVED that –

- (a) the revised draft Licensing Enforcement and Inspection Policy be recommended to Cabinet for its formal adoption; and
- (b) once adopted, the Assistant Director (Governance) (or other authorised Officer) be authorised to make minor amendments to that Policy in order to ensure that it reflected the operational positions of the Council and legislative / case law relevant to the Policy.

22. REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.2 - SEX ESTABLISHMENT POLICY

Further to Minute 9 (24.7.24), the Committee considered recommending to Cabinet a revised Sex Establishment Policy following a 5-week period of public consultation on a draft revised policy. The report (A.2) set out both the revised proposed policy to be adopted and the outcome of the consultation which had been conducted from 30 July 2024 to 3 September 2024. The draft policy, as set out at Appendix A to the report (A.2), was intended to support the following themes from the Council's Corporate Plan 2024-28:

- *Pride in our area and services to residents*
- *Working with Partners to improve quality of life*

It was reported that, in addition to a page created for the consultation on the Council's website and a public notice was displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea, the below had been written to inviting them to comment on the draft policy:-

- *Licensed Sex Establishment Premises*
- *All Tendring District Councillors*
- *All Parish Councils*
- *Responsible Authorities (including Essex Police)*
- *Institute of Licensing*
- *A number of licensing solicitors*
- *A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)*

In addition to those consultation letters the Licensing Team had also visited a number of licence holders within the District handing out consultation postcards to bring the consultation to the attention of the trader and to invite them to voice their opinions.

Members were made aware that one member of the public had sent in a response to the consultation. Their comments were as follows:-

“Although, there are only one such premises within the locality it is essential that the policy framework exists to ensure should there be an increase in such venues wishing to establish themselves that the local authority has the tools available to ensure adherence to their rules and to maintain the King's peace without causing intentional outrages of public decency. On the other hand, there must also be provision made to ensure the welfare of those employed in these premises to protect them from any abuses from employers due to the taboo nature of sex establishments”.

The Licensing Manager considered that the above response was a generalised comment that did not require any amendment to the Policy as presented.

The Committee was reminded that the current policy on licensing Sex Establishments had been published in 2018 and that this Council currently had one licensed sex shop and this was located within Clacton-on-Sea. There were no Sexual Cinemas or Sexual Entertainment Venues currently operating within the District.

Members were aware that since November 2005, the Licensing Act 2003 (the 2003 Act) had required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority.

Members were familiar with the restrictions in the 2003 Act which meant that any representation against a premises licence could only be based on the four licensing objectives. Whilst licences could be subject to the review procedure they otherwise continued in force for the life of the business.

The Committee recalled that Sex Shops and Sex Cinemas were licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gave a licensing authority a wider discretion in determining whether to grant or refuse a licence than was provided for in the 2003 Act, e.g. a power to set a limit on the number of premises that might be suitable for a particular location, greater flexibility of applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop and sex cinema licences were only valid for one year at a time.

Members were advised that Schedule 3 of the 1982 Act amended through Section 27 of the Policing and Crime Act 2009 had extended the definition of Sex Establishments from sex shops and sex cinemas to include sexual entertainment venues. Consequently, from that point on, lap dancing venues and similar premises had required licensing under the 1982 Act provisions and the Licensing Act 2003 for alcohol sales etc.

The now proposed Policy had been developed taking full account of the requirements of the legislation and guidance.

The Policy provided that each application would be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application would be considered as to whether it was suitable given the nature of the particular locality in question.

The Committee was notified that, in preparing the report (A.2), due consideration had been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority had had due regard also to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have had due regard to the need to:

- *eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);*
- *advance equality of opportunity between people who share a relevant characteristic and people who do not;*
- *foster good relations between people who share a protected characteristic and people who do not.*

A member and the Head of Democratic Services & Elections highlighted a small number of formatting errors and a textual amendment.

The Committee felt that having a policy which was clearly detailed and compliant with the legislation, fit for purpose and clear to applicants would assist in implementing rules whilst also being a key document in the event of a legal challenge by way of an appeal or judicial review.

It was moved by Councillor Casey, seconded by Councillor Davidson and:-

RESOLVED that –

- (a) the Committee recommends to Cabinet that the revised draft Sex Establishment Policy, as attached to this report (A.2) but subject to the amendments highlighted at the meeting, be adopted; and
- (b) once adopted, the Assistant Director (Governance) (or other authorised Officer) be authorised to make minor amendments to that Policy to ensure that it reflects the operational positions of the Council and legislative / case law relevant to the Policy.

23. REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.3 - GAMBLING ACT 2005 POLICY

Further to Minute 10 (24.7.24), the Committee considered the revised Statement of Policy (Gambling Act 2005) following a recent 5-week period of consultation on a draft revised policy. The report (A.3) set out both the proposed policy to be adopted and the outcome of the consultation which had been conducted from 30 July 2024 to 3 September 2024.

The Committee recalled that the Council was required to review and renew its Statement of Gambling Policy every three years in accordance with Section 349 of the Gambling Act 2005. The review and renewal of the Policy was subject to public consultation and must be adopted by Full Council upon a recommendation from both the Licensing and Registration Committee and Cabinet.

Members were reminded that a Review had been last undertaken three years ago and that no significant issues had arisen through use of the current policy since that last review. The proposed changes were considered minor and an internal consultation had been undertaken with the Council's Corporate Enforcement Group through this review process.

The Committee was aware that then Government had introduced a Gambling White Paper in April 2023. Should the recently elected Government pursue those proposals it was likely that there would be changes to the Gambling Commission's Guidance issued to Local Authorities, which in turn would have an impact on the Council's Gambling Policy. This, therefore, could require a further "mid-term" review of the Gambling Policy. Regrettably, however, the Council was unable to extend the term of its existing Gambling Act policy and must review its existing policy within the statutory time period.

It was reported that, in addition to a page created for the consultation on the Council's website and a public notice displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea, the below had been written to inviting them to comment on the draft Policy:-

- *All Tendring District Councillors*
- *All Parish Councils*
- *Responsible Authorities under the Gambling Act 2005 (including Essex Police)*
- *Institute of Licensing*
- *A number of licensing solicitors*
- *A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)*

In addition to the consultation letters, the Licensing Team had also visited a number of licence holders within the District handing out consultation postcards to bring the consultation to the attention of the trader to voice their opinions. One licensing solicitor (Gosschalks, acting on behalf of the Betting and Gaming Council) had sent in responses to the consultation. Their comments were attached as Appendix B to the report (A.3). The Head of Democratic Services & Elections highlighted that Gosschalks had requested amendments to paragraphs 15.11 and 24.2 of the Policy and he asked Members to give consideration to those requests in making their decision.

The Committee was reminded that the Policy must be based on the three licensing objectives as set out in the Gambling Act 2005, which were:-

- *Preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime;*
- *Ensuring that gambling is conducted in a fair and open way;*
- *Protecting children and other vulnerable people from being harmed or exploited by gaming.*

Members noted that this proposed draft of the Policy would be the sixth that had taken place since the first Policy had been adopted in 2006. The framework of this Policy had been originally initiated and designed by the Essex Licensing Officers' Forum so that applicants and existing businesses in the betting and gaming industry that had outlets across Essex would have a template to recognise and work with across a wide range of different Local Authorities in Essex. It also ensured a framework of generic best practice amongst all Essex Authorities and ensured that any necessary regulatory requirements did not unnecessarily burden businesses who had applications to make for licensed outlets across Essex such as a chain of betting shops for example.

This had also enabled the development of a robust and practical policy through partnership for how the Gambling Act 2005 would be administered and compliance was managed for applicants and licence and permit holders alike.

It was reported that the draft revised policy, as set out at Appendix A to the report (A.3) was intended to support the following themes from the Council's Corporate Plan 2024-28:

- *Pride in our area and services to residents*
- *Working with Partners to improve quality of life*
- *Promoting our Heritage offer, attracting visitors and encouraging them to stay longer*

It was also recognised that the Betting and Gaming industry in the District provided significant direct and indirect employment, skills and training for local people and particularly in the family friendly and family orientated seaside resort areas of Clacton, Dovercourt and Walton-on-the-Naze. It also offered some welcome leisure attractions for visitors to the District.

In preparing the report (A.3), due consideration had been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority had had due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- *eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);*
- *advance equality of opportunity between people who share a relevant characteristic and people who do not;*
- *foster good relations between people who share a protected characteristic and people who do not.*

Members acknowledged that the Council's reviewed and revised Gambling Policy must be adopted, published and in place by 31 January 2025. Failure to comply or meet with this deadline would mean that the Council could not lawfully accept or process Gambling Act 2005 applications after that date which would have a significant negative impact on the Council being able to recover its reasonable costs in relation to operating its licensing service for this function.

It was therefore moved by Councillor A Cossens, seconded by Councillor Davidson and:-

RESOLVED that the Committee recommends the revised Gambling Licensing Policy Statement 2025 - 2028, as attached as Appendix A to the report (A.3), to Cabinet and thence Full Council for its formal adoption.

24. REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.4 - PAVEMENT LICENSING POLICY

Further to Minute 11 (24.7.24), the Committee considered the Pavement Licensing Policy following a 5-week period of public consultation on a draft revised policy. The

report (A.4) set out both the proposed revised policy to be adopted and the outcome of the consultation which had been conducted from 30 July 2024 to 3 September 2024.

Members recognised that the Policy was required following the passing of the Levelling Up and Regeneration Act 2023 which had come into force on Sunday 31 March 2024. The draft revised Policy, as set out at Appendix A to the report (A.4) was intended to support the following themes from the Council's Corporate Plan 2024-28:

- *Pride in our area and services to residents*
- *Working with Partners to improve quality of life*
- *Promoting our Heritage offer, attracting visitors and encouraging them to stay longer*

It was reported that, in addition to a page created for the consultation on the Council's website and a public notice displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea, the below had been written to inviting them to comment on the draft policy:-

- *All Tendring District Councillors*
- *All Parish Councils*
- *Responsible Authorities under the Licensing Act 2003 (including Essex Police)*
- *Institute of Licensing*
- *A number of licensing solicitors*
- *A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)*

In addition to the consultation letters the Licensing Team had also visited a number of licence holders within the District handing out consultation postcards to bring the consultation to the attention of the trader and to invite them to voice their opinions. As a result, 5 members of the public, 2 businesses, 1 Town Council and 1 Responsible Authority (ECC Highways) had sent in responses to the consultation. Their comments were set out in Appendix B to the report (A.4). The Head of Democratic Services & Elections drew the Committee's attention to those comments and that several suggestions had been incorporated into the Policy, now presented.

The Committee was notified that, in preparing the report (A.4), due consideration had been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority also had had due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:-

- *eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);*
- *advance equality of opportunity between people who share a relevant characteristic and people who do not;*
- *foster good relations between people who share a protected characteristic and people who do not.*

Having acknowledged the new legislation that had come into force on 31 March 2024 that had made changes to the previously temporary pavement licensing regime introduced under the Business & Planning Act 2020 and the related changes including a new capped level fee structure for new and renewal applications:-

It was moved by Councillor Wiggins, seconded by Councillor A Cossens and:-

RESOLVED that –

- (a) the Committee recommends the Pavement Licensing Policy, as attached as Appendix A to the report (A.4), to Cabinet for its formal adoption; and
- (b) once the Policy is formally adopted, the Assistant Director (Governance) (or other authorised Officer) be authorised to make minor amendments to the Policy to ensure that it reflects the operational positions of the Council and legislative / case law relevant to the Policy.

25. DATE OF THE NEXT MEETING OF THE COMMITTEE

It was **RESOLVED** that the next meeting of the Committee would be held on Monday 20 January 2025, commencing at 6.30 p.m.

26. EXCLUSION OF PRESS & PUBLIC

It was moved by Councillor Wiggins, seconded by Councillor A Cossens and:-

RESOLVED that –

- (a) under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Item 13 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act; and
- (b) under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from the meeting during consideration of Agenda Item 14 on the grounds that the public interest in so doing outweighs the public interest in that part of the hearing taking place in public.

27. EXEMPT MINUTES - MISCELLANEOUS LICENSING SUB-COMMITTEE

It was moved by Councillor Wiggins, seconded by Councillor Smith and:-

RESOLVED that the exempt minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Tuesday, 9 July 2024 be formally received and noted.

28. EXEMPT MINUTES - PREMISES/PERSONAL LICENCES SUB-COMMITTEE

It was moved by Councillor Wiggins, seconded by Councillor Smith and:-

RESOLVED that the exempt minute of the meeting of the Premises/Personal Licences Sub-Committee held on Wednesday, 31 July 2024 be formally received and noted.

The meeting was declared closed at 7.06 pm

Chairman

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