

Report to: Licensing and Enforcement Committee



Date of Meeting 20 July 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release

Committee Update - Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing

Report summary:

The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005, Taxi legislation and General Licensing including Street Trading and Pavement Licences

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That the report be noted

Reason for recommendation:

To keep the Council's statutory committee up to date with current arrangements relating to the Licensing Service

Officer: Steve Saunders, Licensing Manager (Governance and Licensing)

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1 Licensing Act 2003

1.1 Applications Received, Licences Issued and Notices Given

- 1.1.1 This report informs the Committee with regard to any legislative, strategic or national updates for each area of licensing work covering the period to the end of June. Applications received over the previous period include those for newly licensed businesses, from businesses varying existing licences and still those for outdoor festival events arranged this year.
- 1.1.2 A sharp upturn in applications was largely due to an increase of temporary event notices to celebrate the Queens Jubilee at the start of June. The number of weddings being arranged with licensable activities also contributed to higher submissions, with 222 temporary event notices issued over the previous period. This exceeds figures for the same pre-pandemic period in 2019 showing how the events industry has bounced-back.
- 1.1.3 This work was timed with a national chain of licensed stores submitting applications to transfer their licences to a competitor when being upon the brink of liquidation. When the holder of a premises licence experiences bankruptcy, there is only a short opportunity to transfer the licence otherwise it will lapse under the Act.
- 1.1.4 The mandatory return provided by officers to the Home Office (DCMS) for licensing statistics has confirmed the increase in alcohol and late night licences. The requirement paused during the two years of the pandemic and DCMS received the return for year 2021/22 confirming the following licences administered in East Devon:
- **657** Premises Licences (compared to 621 in 2016/17, 642 in 2017/18, 643 in 2019/20),
 - **48** Club Licences (remains unchanged since 2017/18). The number of private members clubs has decreased as they continue to adopt new premises licences that allow non-members and the general public to use the services.
 - **2648** Personal Alcohol Licences (2197 in 2016/17, 2310 in 2017/18, 2416 in 2019/20), being the licence individuals must hold to act as Designated Premises Supervisor.
 - **510** Temporary Event Notices issued (compared to 837 in 2016/17, 856 2017/18, 849 2019/20). It is expected that the number for the current year will be the highest yet given the increase over the last 3 months (see 1.1.2).

1.2 Hearings

- 1.2.1 Licensing hearings are convened when a sub-committee is required to consider a contested application, within timescales set out in regulations. Officers will arrange mediation, if appropriate, when representations are received for applications.
- 1.2.2 Licensing sub-committee hearings have occurred on:
- 27th April for a new premises licence in Budleigh Salterton, and
 - 15th June for the variation of a licensed premises in Lympstone

1.3 Changes to Legislation

- 1.3.1 Regulations that have applied to England and Wales since 2020 temporarily allow the sales of alcohol for consumption off the premises for licensed premises that do not have that

permission under a licence. This provision has been provided up to 30 September 2022 under the Business and Planning Act 2020 and in addition to providing the temporary Pavement Licence regime, the Act temporarily modified the Licensing Act 2003. It provides an automatic extension to the terms of premises licences which only permit the sale of alcohol for consumption 'on the premises' to allow the sale of alcohol for consumption 'off the premises' too. Over the last two years this relaxation was used by some licensed venues across the district by having the benefit of 'off-sales' in contradiction of their current licence, or in contradiction of licence conditions. With the relaxation set to end, those businesses may need to vary their licences to formally add the option or to amend existing conditions.

- 1.3.2 The 'Levelling Up & Regeneration Bill' is currently passing through Parliament and proposes many missions about local democracy, planning and other changes including the provision for making the temporary Pavement Licence regime permanent. However the current modification to the Licensing Act 2003 (1.3.1) for alcohol sales off the premises, given under the Business and Planning Act 2020, is not specified or included in the new Bill.
- 1.3.3 Licensed businesses that use the provision will be required to revert to current licence conditions, or otherwise apply to vary those licences. Officers will monitor the situation as it will be relevant to a number of businesses across the District requiring a change to their operation. The nature of each application to be made, whether by a minor or full variation requires that each case be considered on its merits, being a proviso within our Licensing Act policy. The Home Office announced in May that it will be seeking the views of the licensing industry and the authorities as there currently sees no legal basis for using the relaxations that are due to end on 30th September.
- 1.3.4 Officers have started engaging with premises supervisors and licensees to ensure that they are informed and aware of the changes to allow them to consider whether applications may be necessary for those taking advantage of the easements. With the next meeting of this Committee occurring after the end of the changes, officers will keep you posted as to developments with the onus will be on licence holders to address their own licence issues.

1.4 Application Procedures

- 1.4.1 It was reported at the last meeting that licensing authorities must be able to accept electronic application forms to comply with the EU Provision of Services Regulations 1990 which has been provided by the GOV.UK Licensing Service for over ten years. The likelihood of this online service ending next year is still being reviewed to consider other alternative processes.
- 1.4.2 Officers will keep this Committee informed and there is a potential solution for the three Strata councils (EDDC, TDC, ECC) to collaborate and adopt similar web based applications to those of GOV.UK, or by using the 'Firmstep' solution. That option would require significant programming (Strata) and testing processes (officers) before GOV.UK forms cease next year.

2 Gambling Act 2005

2.1 Applications Received, Licences Issued and Notices Given

- 2.1.1 The Gambling Commission is the regulatory authority nationally and it provides Guidance to Local Authorities ('the GLA') that have responsibility to oversee gaming and betting premises in each district. The Commission oversees national operators, all online betting and other functions.
- 2.1.2 The Gambling Commission circulates a regular bulletin for Licensing Authorities outlining changes in legislation and any enforcement action taken. The latest bulletin can be viewed online at [June LA Bulletin \(mailchi.mp\)](mailto:June LA Bulletin)

- 2.1.3 On 14 June officers engaged with the Gambling Commission and other authorities in a virtual meeting that the commission arranges annually. The updates provided were largely those listed in the bulletin at 2.1.2.
- 2.1.4 Government proposals to reform the Gambling Act 2005 are still due to be published along with a White Paper due last year. The Commission awaits publication and whenever the contents are revealed, the details will be reported to this Committee.
- 2.1.5 Officers engaged with an event organiser seeking to operate Bingo activities under a time limited premises licence granted for an event due to occur in the autumn. Following contact with the Gambling Commission and through legal advice, it was confirmed the Bingo proposal is a licensable activity that could not operate legally as proposed. The Commission publishes details of [How to run bingo legally \(GC\)](#) and the proposals did not fall under any of the exemptions, the organiser is not a licensed Bingo operator and there isn't a gambling licence the event can rely on. With the event being a paid entry for a specific purpose, Bingo could not be operated under an exemption of 'pub bingo' where players enter freely and access Bingo with lower prizes for which no amount can be deducted from stakes or prizes, along with participation fees being relevant. Bingo is a licensable gambling activity, being a subject that the Commission monitors closely with regard to unregulated activities.

2.2 Surveys and Consultations

- 2.2.1 As reported, officers provided the return to the Gambling Commission regarding licences administered and details of enforcement work over the period April 2021 to 31 March 2022. The data required by the Commission was more streamlined than in previous years.
- 2.2.2 The statistics obtained in April 2022 reveal that this licensing authority administers 1 Bingo Premises Licence, 4 Adult Gaming Centre Premises Licences, 11 Family Entertainment Centre Gaming Machine Permits, 7 Betting Premises Licences, 12 Club Machine Permits, 1 Prize Gaming Permit, 9 Alcohol Licensed Premises Gaming Machine Permits and 145 Small Society Lotteries over the last year. In addition, 105 alcohol licensed premises gave notification of having gaming machines in public house licensed premises.
- 2.2.3 The numbers shown in 2.2.2 were generally down in comparison with the year 2019, except for Bingo and Adult Gaming Centre Premises Licences which remained constant. The only small increase was by 3 new Family Entertainment Centre Gaming Machine Permits. The decrease in Club Machine Permits is attributed to fewer Private Members Club licences (see also 1.1.4). The decrease in licensed betting offices was reported as being due to the reduction in prizes now possible for Fixed Odds Betting Terminal gaming machines (FOBT's).

3 Taxis

3.1 Applications Received and Licences Issued

- 3.1.1 New applications for drivers, vehicles and operators continue to be received in and processed along with licence renewals. Latest figures for the end of June confirm the ongoing growth in taxi and private hire licences in East Devon. The statistics that follow, indicate returning towards the number of licenses issued in 2019 prior to the pandemic, the only notable difference being for taxi vehicle licences, some of which have been licensed to become Private Hire vehicles as vehicles cannot hold both forms of licence.

| Year | Taxi Driver Licences | Taxi Vehicle Licences | Private Hire Drivers | Private Hire Vehicles | Private Hire Operators |
|------|----------------------|-----------------------|----------------------|-----------------------|------------------------|
| 2016 | 206 | 170 | 22 | 18 | 15 |

| | | | | | |
|--------------------------|------------|------------|-----------|-----------|-----------|
| 2017 | 195 | 165 | 26 | 20 | 13 |
| 2018 | 179 | 161 | 30 | 24 | 16 |
| 2019 | 162 | 148 | 37 | 31 | 20 |
| 2020 | 155 | 126 | 40 | 32 | 18 |
| 2021 | 156 | 129 | 41 | 37 | 19 |
| 2022 (To July) | 161 | 136 | 48 | 39 | 20 |

3.1.2 Officers continue work reported previously for testing and implementing online taxi application processes using 'Firmstep'. The online processes will allow applicants to upload and submit their licences and renewals on a 24/7 basis which the trade has previously requested given their working hours.

3.1.3 The mandatory HMRC tax codes checks continue to be suitably arranged by those renewing their licences. Use of the National Revocation (NR3) register continues with the necessary officer training only being available last month that allowed officers to use the database.

3.2 Enforcement

3.2.1 The licensing team records and investigates complaints that are received from the public which is recognised as an effective procedure by the DoT. There were no complaints received over the previous period.

3.3 Hearings

3.3.1 It has not been necessary to convene a Licensing sub-committee hearing for taxi or private hire related matters over the previous period.

3.4 Taxis and Private Hire Vehicles (Disabled Persons) Act 2022

3.4.1 The Department for Transport has circulated information of commencement of the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 which took effect on 28 June. It amends the Equality Act 2010 to support and ensure that disabled people can continue to access transport services, free from the fear of discriminatory treatment or being faced with additional charges. The Act reinforces the requirement under the 2010 Act, which this authority meets, for all licensing authorities to publish a list of their licensed [Wheelchair Access Vehicles \(WAV's - East Devon\)](#).

3.4.2 The DoT acknowledged in June shortly before the circulation that short notice and timescales were provided and a review of the Act has been conducted. Officers will contact all licensed drivers and operators to ensure that they are aware of the new legislation which builds upon accepting and providing transport for any disabled person. A broad summary of the changes circulated by the DoT is provided at **Appendix A**.

3.5 Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022

3.5.1 The [Taxis and Private Hire Vehicles \(Safeguarding and Road Safety\) Act 2022](#) received assent and places formal obligations on all authorities to record and report concerns or allegations to another authority where a driver is licensed. This legislation is already part of the managing and recording complaints procedure outlined under **3.2** and places emphasis on sharing reports with the original licensing authorities.

3.6 East Devon Taxi and Private Hire Policy

3.6.1 Members of this Committee will be aware that various new regulations, in addition to those under **3.4** and **3.5**, have been implemented by the government and DoT since 2019, with some increasing officer work through checking, processing and returning information (Air Quality Regulations 2019, HMRC Tax check, NR3 suitability checks and others). Updates have been included to the Councils Tax and PH policy when necessary and the policy is due for full review following its introduction in 2017.

3.6.2 It is proposed to address all such changes and those still expected this year, by including all developments within a revised, taxi policy to be circulated for this Committee to consider. It will be necessary to fully consult the existing licensed trade in conjunction with other authorities and the general public.

3.7 Meeting between Councillors, Taxi Proprietors and Officers

3.7.1 Previous meetings with members of the taxi trade and the Licensing and Enforcement Committee were held each year with officers and Councillors attending. The Licensing Chair and Vice Chair attended which became an annual meeting and Licensing Councillors were welcome. The last meeting took place in November 2019 at the council offices and although the forum provided a means of communication with the taxi trade on key subjects, the time and day to meet was a challenge to the trade due to the need to be working at key times. Towards the end in 2018/19, attendance had dropped considerably.

3.7.2 Officers also take the opportunity to attend meetings, upon invitation that are arranged by the Exmouth Taxi Association whenever possible and were informed that membership has recently increased to welcome drivers and proprietors from across East Devon, now being renamed as the East Devon Taxi Association.

3.7.3 The forthcoming work by officers to prepare amendments to the East Devon Tax and PH Policy may be suitable for further communication with the trade at one forum, although the Licensing Manager is mindful of the increasing number of Council meetings and Committees already taking place and that attending two taxi forums provides duplication. Members are asked to consider whether maintaining an annual attendance in late 2022 or early next year through just one forum may be helpful, officers will continue to attend the association meetings and to report back to this Committee.

3.8 Taxi Tariffs Fares

3.8.1 A further report today refers to a new request from taxi proprietors seeking an increase to the East Devon taxi fares tariff.

4. General Licensing – Street Trading Consents

4.1 Applications Received Street Trading Consents Issued

4.1.1. Currently there are 28 Street Trading Consents granted across the district on public areas with a further new and renewal applications under consultation.

4.1.2 Interest for street trading across the district continues with new and existing mobile businesses continuing to seek consent to trade in public places.

4.1.3 Collaboration with Sidmouth Town Council continued regarding suitability of prohibited streets for Street Trading in the town. The Town Council has expressed a desire to remove that designation which was previously requested by the town when implementing the policy in 2017. The Street Trading policy is due for review later this year when it is proposed to provide a report at the next meeting of this Committee with a timeline and proposals that will require a public consultation.

5.1 Temporary Pavement Licences (Business & Planning Act 2020)

- 5.1.1 Take up by businesses applying to the Licensing Authority to place tables and chairs on public highways has remained low since 2020 when the new, temporary powers were passed to District Councils. There are two regimes that businesses can apply for, being the temporary 'fast track' arrangements that District Councils administer since 2020, alongside the continuing regime for pavement licences the County Council has held the responsibility for many years.
- 5.1.2 Devon County Council has granted 26 pavement licences, many being on annual renewal. EDDC licensing authority has granted 3 pavement licences, for businesses all located in Exmouth. The temporary regime offered by District Councils requires an application fee of £100, with the County Council service charging an application fee of £212, subsequent renewals annually costing £90.10. Devon County Council licences can be viewed at [Current Pavement Licences - Roads and transport \(devon.gov.uk\)](https://www.devon.gov.uk)
- 5.1.3 The temporary regime administered by District Councils remains in place until 30 September 2022 despite the Government outlining its commitment to make the measures permanent. As legislation has not yet extended power for District Councils to grant pavement licences beyond September, it means if a licence is deemed granted it will not be valid beyond that date.
- 5.1.4. Key points to consider still for the temporary regime are that it is not procedurally possible for the Licensing Authority to grant a pavement licence:
- a) Contrary to any refusal submitted by the Highways authority when consulted,
 - b) For any location that does not fall under the definition of being a highway or,
 - c) On land owned by EDDC or on any other privately owned land.
- 5.1.5 Over the previous period, the licensing team received 3 applications from businesses seeking a temporary pavement licence, with 1 licence granted and 2 refused upon receipt of objections submitted by DCC Highways.
- 5.1.6 Permission to place tables and chairs on land owned by EDDC does not fall within this licensing process, instead being managed by other Services under 'Sitting Out Consents' or through contract lease agreements.

5.2 Proposed Pavement Licence Regime (Levelling-up and Regeneration Bill)

- 5.2.1 The Government have tabled the Levelling-up and Regeneration Bill (The 'Bill') which is currently in draft being scrutinised by Parliament before becoming law. It proposes to make the regime for Pavement Licences issued under the Business and Planning Act permanent, being the regime that District Councils adopted in 2020.
- 5.2.2 The 3 Pavement Licences issued by EDDC under the Business and Planning Act cannot be extended beyond the date set by the Act for 30th September 2022 and new applications cannot be granted after this date until the Bill becomes law.
- 5.2.3 The Bill proposes to make some amendments to the current provisions of the Act, which are summarised broadly as:
- a) To amend the fee councils can charge applicants by increasing from £100.
 - b) Extend the consultation period and determination period.
 - c) Extend the maximum duration of pavement licences from 1 year to 2 years at the discretion of the local authority.
 - d) Pavement Licences can be amended by the local authority with the consent of the licence holder if it is considered that the conditions on the licence are not being met.
 - e) Prohibit a local authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement permit is capable of being granted under this Bill

- f) Insert a new Enforcement schedule providing powers to the local authority to remove furniture if a premise is not abiding by its pavement licence conditions and hours.

- 5.2.4 One of the intended benefits of the temporary pavement licence regime was that once a pavement licence is granted by the local authority, the premises benefits from deemed planning permission for the furniture for the duration of the pavement licence and there is no proposal to change this under the Bill. However, the low take up of the temporary pavement licences has been due to uncertainty of any extension beyond September 2022. Some businesses that have applied to EDDC have also subsequently received objections submitted by DCC Highways that have ended the application process.
- 5.2.5 Unless the new Bill is progressed swiftly and prior to the expiry of the 3 pavement licences granted by EDDC, the alternative is for those holders of a temporary pavement licence to apply to DCC for a new licence beyond September.
- 5.2.6 The licensing manager has requested a meeting with managers from DCC in view of two regimes being likely to overlap and is yet to receive a response. Until the Bill proceeds with more specific details, the procedures under 5.2.3 (a-f) cannot be confirmed. Delivering a permanent pavement licensing regime will require a review of licensing staffing to meet extra demand, the delegated powers necessary for enforcement, a review of the fees and drafting policy for this Committee to consider.
- 5.2.7 The Bill is currently a draft piece of legislation, is subject to change and applies to England and Wales only.

6.1 Safety Advisory Group (SAG)

- 6.1 Officers attend meetings of this council's Safety Advisory Group (SAG) that allows authorities to consider and support advanced planning for outdoor events. The SAG operates as a multi-agency, non-statutory group to provide guidance to event organisers. EDDC meetings are arranged quarterly and core members from each responsible authority attend to support safely organised events.
- 6.2 Administering and chairing this council's SAG has been the responsibility of the Service Lead for Environmental Health, in conjunction with the Principal Environmental Health and Safety Officer since implementation. That service manages council Health and Safety responsibilities and with both posts vacant over recent months pending recruitment, the June SAG meeting was chaired by the Licensing Manager, with administrative support kindly provided by Democratic Services. The importance of this group is evident nationally and in this District to allow the authorities to support safely organised events. The handover of temporary responsibility back to both senior Environmental Health managers will occur upon recruitment.

6. Councillor Training

- 6.1. Initial training was provided for Licensing and Enforcement Committee Councillors in 2019 and through subsequent virtual training events.
- 6.2 Training is mandatory to provide sufficient understanding when determining contested applications at licensing sub-committee hearings.
- 6.3 Councillors who have received training were provided with a link for refresher training following the last meeting using the tools offered by Cornerstone Barristers. It will be appropriate to complete the refresher training this year and to inform Democratic Services upon completion of the refresher training.
- 6.4 Further training opportunities were offered by the Institute of Licensing via Zoom on 8th June and 14th July 2022 and were circulated to Councillors to consider attending.

Financial implications:

There are no finance implications

Legal implications:

There are no legal implications requiring comment