

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 3 July 2019

Public Document: Yes

Exemption: None



Agenda item: 7

Subject: **Committee Update -
Licensing Act 2003, Gambling Act 2005, Taxis & General (Street Trading) Licensing**

Purpose of report: 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.

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

Financial implications: There are no financial implications.

Legal implications: There are no legal implications requiring comment.

Equalities impact: Low Impact

Risk: Low Risk

Appendices:

Appendix A – Comparison of Street Trading fees

Appendix B – Letter to Street Trading Consent holders

Link to Council Plan: Living in, working in, enjoying and funding this outstanding place

1 Licensing Act 2003

1.1 Applications Received, Licences Issued and Notices Given

1.1.1 This report is to inform the committee regarding work undertaken by the licensing team between the months of March to July 2019 in each licensing category that the service delivers beginning with alcohol related matters. Licensing officers have issued over 500 alcohol licences for new and for amending licensed premises, personal alcohol licences and Temporary Event Notices (TEN's) across the district. The work largely involved applications for licences in the run up to festivals that occur through the summer months including for Sidmouth Folk Week, Beautiful Days and other large outdoor events.

1.1.2 The Home Office (DCMS) require a mandatory annual return for licensing statistics at the end of each financial year concerning all alcohol and late night licences. The requirement was

relaxed this year although DCMS will seek the return in 2020. It has been possible to provide the statistics for year 2018/19 highlighting the volume of work which remains constant annually and the following licences were administered:

- 643 Premises Licences (compared to 621 in 2016/17, 642 in 2017/18),
- 48 Club Licences (compared to 51 in 2016/17, 49 in 2017/18)
- 2416 Personal Alcohol Licences (compared to 2197 in 2016/17, 2310 in 2017/18) and
- 849 Temporary Event Notices issued (compared to 837 in 2016/17, 856 2017/18).

1.1.3 Officers also undertake compliance visits to licensed premises and attended a premises near Exeter in April with Environmental Health staff regarding a noise complaint and to premises in Exmouth together with the police following an assault. Visits with partner agencies occur when there is a need in addition to those inspections completed each month by the team.

1.1.4 On 16 May officers attended the annual Devon County Show event checking the Temporary Event Notices issued to traders that sell alcohol. A total of 31 traders were inspected and were found to be operating properly. The work by the licensing team in the planning phase and run up to the event working with the show organisers works effectively each year.

1.2 Hearings

1.2.1 The licensing team continues to offer mediation meetings when representations have been made against new licensing applications to ascertain whether objectors and applicants can reach an agreed position. Mediation is often successful and reduces the number of contested hearings that need to go before a licensing sub-committee.

1.2.2 Two mediation meetings have occurred for new licence applications over this period, one for a restaurant requiring alcohol sales with the objector and applicant reaching agreement that allowed the objection to be withdrawn. A second mediation meeting occurred for an entertainment venue applying to sell alcohol in the north of the district when agreement could not be reached. A licensing sub-committee hearing then occurred to consider representations and the licence was granted with conditions regarding concerns of local residents.

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 provides guidance to local authorities. It is the responsibility of councils to oversee gaming and betting premises whilst the commission oversees operators, online betting and other functions. With an additional impact upon coastal licensing authorities by having more amusement arcades and holiday parks, officers attended an annual meeting at the commission's offices to consider legislation, strategies and national updates.

2.1.2 The Gambling Commission circulates a bulletin for licensing authorities outlining changes in legislation and any enforcement action taken. The bulletin for April can be viewed online at <https://www.gamblingcommission.gov.uk/PDF/LA-bulletin/June-19-LAB.pdf>

2.1.3 It is a statutory need that all authorities submit an annual return to the commission for the number of gambling licences, permits and notices issued in each district and detailing inspections and enforcement undertaken. Officers completed the return within the required timescale of 10 May.

2.1.4 It was widely reported following a review by DCMS that stakes on gaming machines in betting offices were reduced by £100 to £2 for Fixed Odds Betting Terminals (FOBT's) from 1st April.

2.1.5 Figures obtained on 1st June 2019 reveal that this licensing authority administers 1 Bingo Premises Licence, 4 Adult Gaming Centre Premises Licences, 8 Family Entertainment Centre Gaming Machine Permits, 10 Betting Premises Licences, 17 Club Machine Permits, 1 Prize

Gaming Permit, 9 Alcohol Licensed Premises Gaming Machine Permits and 164 Small Society Lotteries over the last year. In addition, 116 alcohol licensed premises gave notification of having gaming machines in public house premises.

2.2 Enforcement

- 2.2.1 Officers visit licensed and permitted gambling premises and whenever a licensed premises inspection occurs, the presence of gaming machines and matters of compliance are considered. Officers will assess suitability of gaming machines in public houses and to date it has not been necessary to take enforcement action.
- 2.2.2 During the previous period officers have conducted compliance visits in Axminster and in the west of the district inspecting the locations and suitability of machines in licensed premises.

3 Taxis

3.1 Applications Received and Licences Issued

- 3.1.1 Figures taken on the 1st May 2019 show that the licensing authority administers:

- 179 hackney (taxi) driver licences (compared to 206 in 2016/17, 195 in 2017/18),
- 161 hackney carriage vehicle licences (compared to 170 in 2016/17, 165 in 2017/18),
- 30 private hire driver licences (compared to 22 in 2016/17 and 26 in 2017/18),
- 24 private hire vehicle licences (compared to 18 in 2016/17 and 20 in 2017/18)
- 16 private hire operator licences (compared to 15 in 2016/17 and 13 in 2017/18),

The reduction of taxi driver licence holders over the last three years is evident being attributed to a number of drivers retiring. A small number have surrendered licences here in order to be licenced by Exeter City Council allowing them to work in the city. The reduction has been slightly balanced by increases in private hire driver and vehicle applications.

- 3.1.2 Reports to this committee previously highlighted regional and national changes increasing standards for taxi and private hire applications. Procedures now involve online checks with vehicle excise tax, vehicle write-off, MOT and DVLA driver licence codes now being available online. Revising this council's taxi policy in 2017 enhanced requirements for a driver assessments to include geographic, numeracy and policy questions. This occurs in addition to medical, character and driving ability checks to ensure the 'fit and proper' test.
- 3.1.3 In April, officers from licensing and legal services drafted a response to a government consultation for licensing authorities regarding standards and practices for protecting users of taxi and private hire vehicles. The ten week consultation assessed practice in England and Wales with thirty questions that ended on 22 April. The response by this authority outlined compliance with standards and measures being proposed. A summary is due to be published by Department of Transport later this summer and being available online here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784216/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf

3.2 Enforcement

- 3.2.1 Officers conduct inspections of taxi vehicles whilst parked on East Devon taxi ranks ensuring that vehicles comply with legislation and meet required safety standards. Officers also inspect new vehicles when determining applications to ensure safety and suitability.
- 3.2.2 The council's taxi policy requires all licensed vehicles when reaching 14 years from date of manufacture will be inspected and currently there are two taxis that will be subject of an extra review before being considered suitable for renewal. There are two further licensed taxis having reached 12 years of age that will be subject of an enhanced review next year unless replaced by the owners before that time.

3.2.3 At the previous meeting of this committee it was reported that two complaints had been investigated for taxis overcharging customers for journeys during the festive period by comparing the fare tariff against routes and fees that were charged. In the previous period a third report regarding fare costs was then received. Fares can increase considerably under Tariff 3 on bank holidays and all three journeys had occurred outside the daytime tariff. One review confirmed a slight overcharge for which the proprietor was warned whilst the other two established that the charged fares were within the set tariff and not being over charged.

3.3 Hearings

3.3.1 A meeting of the Licensing and Enforcement Sub-committee occurred on 10 April January to determine whether a new applicant for a hackney driver licence met the criteria as being fit and proper to hold a licence. The matter had previously been adjourned to allow the applicant to gather further information and the decision was taken to refuse the licence application.

3.4 Taxi Licensing Processes

3.4.1 In May authorities were notified regarding the introduction of a National Register of taxi licence revocations and refusals being implemented by the National Anti-Fraud Network (NAFN) with support of the Local Government Association (LGA). The database is intended to formalise information sharing between licensing authorities regarding individuals refused a licence or upon licence revocation. Further work will be necessary regarding policies and procedures and updates will be provided to this committee when available.

3.4.2 On 1 May 2019 new regulations came into force regarding taxi vehicle emissions under the Air Quality (Taxis and Private Hire Vehicles Database) Regulations 2019 making it a legal requirement for all licensing authorities to provide information on licensed vehicle emissions. DEFRA are leading and reported that there will be a phased approach to collection of the data in forthcoming months. The database forms part of the infrastructure that government is developing to support the introduction of charging Clean Air Zones by some local authorities to ensure compliance with statutory nitrogen dioxide limits. When introduced the task of providing the details for each vehicle will increase processing that officers undertake.

3.5 Fares Review for Hackney Carriages

3.5.1 Over the course of the previous year some sections of the taxi trade in East Devon requested that the council considers increasing fares that taxis can charge of the public. Although fares can be charged below the rate, taxis cannot charge above the fare tariffs set by the council. There are differing views with drivers being for or against a fare increase and because there has been no overall agreement officers circulated a comparison of the East Devon fare tariff against fares set by other Devon authorities together with balloting licence holders seeking their response.

3.5.2 The ballot was open from 5th November to 7th December 2018 asking the question of whether a fare review was sought and the subsequent responses were two to one in favour of a fare increase. Although 66% specified their wish to raise fares the number of responses was relatively low and identified that a third of all respondents still want to keep currently set fares.

3.5.3 The process to review and increase taxi fares has a number of legislative steps to follow involving formal consultation with licence holder and the public. Increasing the fares that taxis charge of the public should not be confused with fees charged for obtaining a licence. A further report is provided today with a recommendation to review the current fare tariff.

3.6 Safeguarding Awareness Training

- 3.6.1 At the last meeting of this committee approval was given revising the taxi policy making it a mandatory requirement that all drivers (taxi and private hire) attend a Safeguarding Awareness workshop within 12 months of their licence being granted or upon renewal.
- 3.6.2 Officers have continued preparing plans to introduce safeguarding briefings with a training provider who delivers safeguarding awareness sessions for other Devon authorities. Dates are being prepared to begin delivering sessions later this year. It remains the aim to provide funded awareness sessions free to licence holders in the first year in advance of costs being considered within later reviews of fees.

4. General Licensing – Street Trading Consents

4.1 Applications Received Street Trading Consents Issued

- 4.1.1. This council adopted the Local Government (Miscellaneous Provisions) Act 1982 provisions with effect from 1982 that provided legislation for local authorities to control street trading. In October 2017, the council introduced the current street trading regime by designating most of the district where street trading can be conducted with prior consent. Following the change, feedback was received from event organisers and those applying regarding complexity of application processes and the charges for obtaining consent. At the meeting of this committee in March 2018 steps were taken with approval to revise the policy and withdrawing charges.
- 4.1.2 Since 2017 the uptake of street trading has been significant with events occurring in villages and towns throughout the year. Organisers now use block booking arrangements when applying and experience shows that representations are far more likely to be received concerning mobile commercial traders rather than for community markets or festivals. In 2018 it was evident that more commercial mobile traders sought to trade in the west and the north of the district with applications for pizza, fish & chip and similar vendors received and generating local consultations. This increases work for officers accepting, consulting, visiting prospective trading locations and processing through to either grant or refusal.
- 4.1.3 It is evident there are two general types of trading arrangements occurring in the district, these being;
 - (a) Short term multiple trading at festivals, community and charitable events, often promoted or requested by parish and town councils (usually lasting for a day or weekend), and
 - (b) Commercial mobile trading businesses for repeated, long term trading in single or rotational locations trading throughout the year (static/mobile food sellers).
- 4.1.4 Refusals that have necessary have been on the grounds of vendors seeking to trade in unsuitable or unsafe locations with each application treated on the basis of their own merits.
- 4.1.5 210 street trading consents have been granted since October 2017 in East Devon and consistently around ten percent of applications received are for mobile traders operating continually throughout the year. Experience over the previous two years shows that short term events using block bookings involve 20 to 50 traders attending.
- 4.1.6 Officers continue to acknowledge feedback from applicants and event organisers and the use of trader lists to assist block bookings to reduce form filling is being supported.

4.2 Enforcement

- 4.2.1. The Council has a Regulatory Enforcement and Prosecution Policy and officers provide guidance and support to new applicants in the first instance for securing compliance. During previous periods officers undertook a visit to a location where an unlicensed trader had been identified and was located. Officers have engaged with that trader to arrange compliance through submission of a street trading application in the future.

4.3 Street Trading during Sidmouth Folk Week

- 4.3.1. In 2008 this committee approved the designation of Sidmouth Esplanade as a consent street for the purpose of street trading allowing the council to provide trading pitches during the annual Sidmouth Folk Week event. Applications are eagerly taken up within days of the process opening each April and are usually oversubscribed.
- 4.3.2 Prior to this arrangement there were repeated, annual problems regarding high numbers of unregulated traders, pedlars and entertainers filling the length of The Esplanade leading to complaints from the public, congestion for those attending Sidmouth Folk Week and increased risks due to the lack of control before 2008.
- 4.3.3 Officers from Licensing, Environmental Health, and Street Scene now engage in the planning arrangements. Partnership meetings held before and after the event now fall under this council's Safety Advisory Group or SAG (see Point 7.2). The trading pitches are managed and regulated by officers to ensure compliance by setting up promptly and operating within the conditions issued with each consent. Recent developments include Street Scene officers marking areas on The Esplanade at the request of the folk week organisers for buskers and folk week entertainers to reduce congestion near to the trading pitches.
- 4.3.4 At a meeting of the SAG late last year regarding folk week trading on Sidmouth seafront, representatives from the fire service specified the need to improve standards of trader gazebos requiring fire resistant material and sturdier gazebos for reasons of public safety at the event in 2019. The council has addressed this need with enhanced risk assessments, to meeting fire resistant standards and more uniformity of the gazebos for this year's event and officers are preparing to issue the trading consents for the event taking place between 2nd and 9th August.
- 4.3.5 The organisers of Sidmouth Folk Week also control trading and performance events in other areas of the town, some of which are licensed in accordance with the activities that take place. Last year the organisers verbally raised an option to take responsibility for the seafront trading pitches managed by this council although it was not followed up with a detailed proposal that allowed consideration before for this year's event.
- 4.3.6 Over the ten years that seafront trading has been administered by the council it has served its purpose by preventing the problems evident before 2008. The success is due to the approach of the numerous officers, council services and partner agencies being involved along with the traders themselves. It is now timely to consider the future approach given the demands upon the council through administering trading applications and pitch allocation from April through to the compliance work necessary at the event each year.

4.4 Street Trading Policy Review

- 4.4.1. At the last meeting of this committee members raised a need for officers to consider a review of the street trading policy by exploring options to re-introduce application charges for commercial street trading consents. The "Open for Business" guidance from LGA on locally set licence fees outlines that local authorities should consider fees that are charged for both administering and processing licences along with subsequent compliance arrangements.
- 4.4.2 Principles to be followed outline that any charges must be reasonable, proportionate and fair. The guidance requires that a local authority should achieve the following:
- a) To recover the reasonable costs of administration and enforcement of each licence,
 - b) To charge separately for application processing and for enforcement,
 - c) To seek service improvements to help reduce costs to businesses, and
 - d) To use evidenced based data as the basis of fee charges and retain this for transparency.

- 4.4.3 Upon implementing the new regime in 2017, the Council approved an additional officer post which has been necessary for delivering the work required to manage applications;
- i. Supporting new applicants in the requirements of making an application (pre-application)
 - ii. Visiting proposed trading locations across the district where trading has not previously been allowed or undertaken to consider suitability (pre-application)
 - iii. Processing applications and all associated documents
 - iv. Consulting other authorities for street trading applications,
 - v. Responding to objections and representations,
 - vi. Determining new and variation applications,
 - vii. Responding to requests to appeal refusals,
 - viii. Administering new consents (up to 12 months),
 - ix. Preparing sub-committee reports where necessary,
 - x. Compliance visits to traders, events and festivals following grant,
 - xi. Enforcement / investigation of traders operating without consent,
 - xii. Potential prosecution of unlawful traders being unwilling to engage.
- 4.4.4 A benchmarking exercise was carried out comparing street trading application fees set by other district and city councils in 2017. Those comparisons are available and shown for 2019 in **Appendix A**.
- 4.4.5 In May 2019 the licensing manager sent a letter to commercial traders (**Appendix B**) that have been granted a street trading consent in the district outlining a proposal to consider introducing application fees for which there was a low return of just three written responses, one of which clarified they would be happy to pay a fee and two requiring further notification and clarification for the reasons for this course of action.
- 4.4.6 Respondent One outlined in summary that “a fee should only be introduced on a pro rata basis” considering frequency and number of days per week that trading occurs along with not understanding why a small business should be charged fees in a difficult economic climate.
- 4.4.7 Respondent Two outlined in summary that as a small business there are a number of checks in place with costs of wages and insurance to pay and that any fee setting “is unfair for those small traders trying to make a simple living.” The respondent asked for 12 months’ notice to allow a decision of whether to cease trading.
- 4.4.8 Respondent Three clarified that they had obtained a street trading consent but had not yet started trading but are planning to work for two days each week concluding “we are happy to pay the fee” but await a right to work permit.
- 4.4.9 This council seeks to retain control over street trading activity ensuring the nature and quality of what is being sold, where it takes place and to ensure trading is acceptable and safe. Administering the regime since 2017 confirms the continuing demand for street trading in East Devon and the proposal to consider application fees will support the current standards and services to both traders and to the public.
- 4.4.10 It would be a matter for officers to prepare a detailed structure to allow further consideration for charging fees in line with the principles for setting fees (outlined in 4.4.2 above) when this committee next meets. A future proposal may consider introducing fees not above the level agreed by this committee previously in 2017 along with sufficient notice given to those who would be affected for applicants applying to trade in new locations or upon renewing an existing consent in 2020. The legislation allows for this to happen and also for consent to be revoked in certain circumstances regarding non-payment.

5.1 Sex Entertainment Venue Licensing

- 5.1.1 In 2010 the Policing and Crime Act 2009 classified lap and pole dancing clubs and similar venues as Sexual Entertainment Venues giving local authorities the option to adopt the

legislation to regulate them as Sex Establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. As a result this Council adopted the legislation requiring that all Sex Entertainment Venues within the district should be licensed.

5.1.2 At the time there was one Sexual Entertainment Venue operating in Exmouth that was subject to licensing arrangements until it closed in 2014. There are no licensed premises now under this category in East Devon and only a relatively low number across Devon.

5.1.3 Although legislation does not require councils to have a policy relating to the licensing of Sex Establishments it is regarded as good practice to indicate the authority's approach to licensing premises by setting out the requirements that will generally apply when making decisions on applications. This Council introduced its policy in 2011 and a further report is provided detailing the review that has been completed with some minor changes that are necessary.

6. General Licensing including Animal Licensing and Skin Piercing

6.1 Animal Welfare, Skin Piercing and Scrap Metal Dealers Licences and Permit

6.1.1 The responsibility for administering these functions was passed over to Environmental Health teams from the Licensing team in 2016 now being responsible for the administration of animal welfare, skin piercing, tattooing and scrap metal licensing.

6.1.2 Under the arrangements, staff from the Environmental Health teams conduct licence application inspection visits, oversee enforcement and have specialist knowledge of those licences types along with setting fees. Environmental Health managers' report to this committee when appropriate regarding changes to legislation, policy and fees.

7. Consultation and Partnership Working

7.1 Officers attend Licensees meeting

7.1.1 Officers attend Licensees meetings in the East Devon area whenever possible as these meetings should be supported and are a useful forum for the exchange of ideas, information and keeping up to date with issues. Attendance by council, local police and also police licensing staff is keenly sought by the licensing trade to discuss local crime and disorder matters. Officers have attended licensees meetings over the previous period where associations exist in Exmouth, Sidmouth and Axminster.

7.1.2 It has been evident in the previous period that staff from other organisations, particularly the police are facing challenges completing this work. Whilst council and police licensing staff work closely, challenges faced by operational police staff continue with very limited attendance.

7.2 Safety Advisory Group (SAG) Meetings

7.2.1 Officers attend meetings of this council's Safety Advisory Group (SAG) including a meeting in the spring and in June considering advanced planning for outdoor events. The SAG operates as a multi-agency, non-statutory group that meets providing guidance to event organisers. Meetings are arranged quarterly and core members from each responsible authority attend to support safely organised events.

7.3 Meeting between Members, Taxi Proprietors and Officers

7.3.1 The council holds two meetings with members of the taxi trade and the Licensing and Enforcement Committee every year with both officers and councillors attending in April and November. The Licensing Committee's Chairman and Vice Chairman normally attend these meetings and all members are welcome. The last meeting took place on 11 April 2019 at the council offices and provides a forum for regular communication allowing the taxi trade to

discuss relevant topics, changes in policy and to exchange views. Over the course of the last year the subject of increasing the fares that can be charged by the trade has been raised and which is subject of an additional report today. Although there is not an overall taxi association in East Devon there is an association of members for taxi drivers in Exmouth.

- 7.3.2 On 3 June 2019 officers attended a meeting of the Exmouth Taxi Association which had been called by the trade to highlight recent assaults upon taxi drivers. The association outlined two specific assaults by members of the public on drivers that were reported to the police and initial options have been proposed to prevent further incidents.
- 7.3.3 The next liaison meeting has been provisionally arranged for Thursday, 7 November 2019 commencing at 1300 hour in the council chamber, Blackdown House, Honiton.

8. Licensing Team update

- 8.1 Since the last meeting of this committee in February, the licensing team has completed staff recruitment following retirement and other changes last year to reach full staffing. The team consists of the manager, three licensing officers and four licensing support officers. Working methods involve lead officers with overall responsibility for taxis, licensed premises (alcohol) and gambling matters along with a duty cover arrangement on a daily working basis.
- 8.2 The support officers have lead responsibilities including managing incoming Temporary Event Notices, premises applications, lotteries and charitable street collections to ensure statutory timescales for receiving and issuing licences are met.
- 8.3 Officers in the licensing team are engaged in a number of IT projects this year, notably involving programming work in preparation to replace the licensing database planned for late 2019. The transformation project to deliver other IT systems will also involve staff from the team over the course of the next year.
- 8.4 Staff in the licensing team also have responsibility for burial and memorial requests in the three cemeteries managed by the council. The manager and one of the support officers oversee this area of work in addition to licensing matters. Policies regarding burial and cemetery matters are not reported to the Licensing and Enforcement Committee.

9. Member Training

- 9.1 Initial training was provided for Licensing and Enforcement Committee members last month at locations in Taunton, Yeovil and Honiton delivered by a leading expert, Phillip Kolvin QC. The training provided sufficient understanding for members to attend and to determine contested applications at licensing sub-committee hearings.
- 9.2 Due to the diverse types of licences and permits managed by this licensing authority it is proposed that committee members are provided with additional, short training sessions being provided after each Licensing and Enforcement Committee to inform and refresh knowledge. Experience has shown that contested applications most likely to appear before licensing sub-committees involve taxi and alcohol premises. Should members feel it is useful, sessions could be delivered beginning with these subjects from the next meeting planned in November.