

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 12 February 2020

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 – Home Office Correspondence

Link to Council Plan: Outstanding Council and Council Services

1 Licensing Act 2003

1.1 Applications Received, Licences Issued and Notices Given

- 1.1.1 This report is to inform the Committee of work undertaken by the licensing team and also with regard to any strategic or national updates for each category of work that the team oversees.
- 1.1.2 Officers undertake compliance visits to licensed premises where the supervisors change and in response to complaints or problems being reported. Visits to licensed premises within East Devon have occurred throughout the previous period with no serious issues being identified.
- 1.1.3 On 5 November 2019, officers attended the Ottery St Mary Tar Barrel event checking the various Temporary Event Notices issued for sales of alcohol sales and late night refreshment

food stalls. 25 licensing checks were conducted and the working arrangements involving licensing and the organisers works effectively over many months prior to the event.

1.2 Hearings

- 1.2.1 The licensing team continues to offer mediation meetings when representations have been made against new licensing applications to establish whether objectors and applicants can reach an agreed position. Mediation is often successful reducing the number of contested hearings that need to go before a Licensing Sub-committee.
- 1.2.2 Circumstances were reported at the last meeting of this Committee concerning an event organiser who had submitted applications for three time limited licences in quick succession in 2019, one of which led to a Licensing Sub-committee in August. The same applicant submitted another licence application over the last period for an event proposed on New Year's Eve with the situation compounded by the organiser applying to licence the event before seeking land owner permission from StreetScene. The timescales left insufficient time to allow a safely planned event and objections to the licence application were received from a number of responsible authorities. The application was subsequently withdrawn and further guidance has been provided to suggest a more timely approach in the future.

1.3 Correspondence from the Home Office to Licensing Committees

- 1.3.1 In December an email was received from the Home Office sent to all Licensing Committees with an attachment letter from Kit Malthouse MP, Minister for Crime & Policing. The contents were provided for the information of this Committee at **Appendix A** and primarily refer to the new government's desire to improve collaboration between Planning and Licensing committees. To assist members with the background, there was a Lords Select Committee review of the Licensing Act 2003 in 2017 with a recommendation being for Planning Committees to take over the responsibilities of Licensing Committees. That recommendation was not adopted and although there were comments about closer coordination, Planning and Licensing Committees continue to function with their own powers and legislation
- 1.3.2 The government did update its guidance to the Licensing Act in 2018 which can be found here [Revised guidance issued under Section 182 of the Licensing Act 2003.pdf](#). Whilst the revised guidance gave some helpful updates to Licensing Authorities, the actual update regarding Planning and Licensing was brief being limited to one paragraph at point **9.45**. The guidance was fully considered by this Council and some changes included removing the need for Licensing Sub-committees when representations are withdrawn in writing where agreement is reached between applicants and objectors (point **9.2**).
- 1.3.3 With regard to the latest correspondence, this Council like others has Licensing Councillors who also have Planning responsibilities at DMC and Strategic Planning, and Licensing Officers who consult and engage with Planning Officers on new and variation applications. Both Committees continue to operate effectively under separate legislation.
- 1.3.4 However the revised Section 182 guidance did not address the issue of nationally set licensing fees and whilst reference made under point **15**, the fees set by government for alcohol related applications have not increased since the act was first adopted in 2005.
- 1.3.5 In addition to the letter from the Home Office, the Queen's Speech in December 2019 announced government reforms regarding discounts to businesses, including public houses concerning business rates revaluation. The Chair of the Local Government Association (LGA) commented by outlining, *"The newly announced retail discounts will provide support for high street businesses and pubs, but it is crucial that in line with normal government practice, councils are fully funded for this loss of extremely important income."*

1.4 Nationally Set Fees for the Licensing Act 2003

- 1.4.1 In addition to discounted business rates, the continued deficit in the cost to Councils by issuing alcohol related licences with fees that have not changed for 14 years has been raised by some councils with the LGA.
- 1.4.2 The statutory fees are prescribed by virtue of the 'Licensing Act 2003 (Fees) Regulations 2005 (the Regulations) and were calculated as far back as 2004, coming into force under these Regulations on 7th February 2005. From that time Local Authorities became responsible for administering and enforcing a wide range of permissions that relate to the sale of alcohol, regulated entertainment and late night refreshment. Fees for such applications, as well as ongoing annual fees, are centrally set by the Secretary of State as prescribed by virtue of the Regulations. There is no discretion on fees, which must be administered and collected in accordance with the regulations.
- 1.4.3 In 2015, Local Authorities were asked by the LGA to provide evidence of Local Authority costs in delivering licensing functions under the Act. Over 200 Local Authorities responded to the LGA consultation and the majority agreed that fees were far below the level of cost recovery, with some indicating that enforcement abilities were limited due to cost.
- 1.4.4 Officers from EDDC Licensing and Finance services reviewed costs incurred to grant alcohol licences and notices and identified that a Temporary Event Notice (TEN), having a nationally set fee of £21, actually cost the Council in excess of £60 to administer in 2015. The impact of fees not increasing is evident given that the licensing team administered 849 TENs for the year 2018/19 amounting to uncollected fees of more than £30,000. Another Devon Licensing Authority has reviewed their processing costs for TENs since and the recent calculation found an average of over £70 for a notice despite all councils only recovering the fee of £21.
- 1.4.5 In conclusion the Home Office determined not to enact powers in 2015 that could allow Local Authorities to set the fees with more than 4 years since the LGA consultation. The Licensing Manager will attend an event on 3rd February hosted by the Institute of Licensing concerning fee setting. This Committee may wish to consider, when it meets whether there should be a further contact with the LGA and any other bodies with regard to the continuing situation of nationally set fees that were set under the original regulations 15 years ago to this month.

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 that have responsibility to oversee gaming and betting premises in each district. The Commission oversees national operators, all online betting and other functions.

2.2 Enforcement

- 2.2.1 The programme of visits to licensed premises and other premises where gaming is permitted continued and whenever a licensed premises inspection occurs, the existence of gaming machines and any issues of compliance are duly considered and inspected.
- 2.2.2 In November officers attended a premises licensed for alcohol sales following a report of gaming machines being sited without the necessary permit. The officers clarified that the machines were not yet available for public use and that the relevant permit application was prepared for submission to the licensing authority and so under the circumstances enforcement was not necessary.
- 2.2.3 The Gambling Commission circulates a bulletin for licensing authorities outlining changes in legislation and any enforcement action taken. The latest winter bulletin can be viewed online at [Gamblingcommission/LA-Bulletin/2020/January](https://www.gamblingcommission.gov.uk/LA-Bulletin/2020/January)

2.2.4 The Commissions last summer bulletin in a previous report to this Committee reported the intention of bookmaker William Hill to close 700 betting offices nationally in 2019/20. The company has closed a betting premises in Exmouth over the previous period and now has three betting offices across East Devon. The closures nationally followed changes last year when the stakes on gaming machines in betting offices were reduced from £100 to £2 for Fixed Odds Betting Terminals (FOBT's).

3 Taxis

3.1 Applications Received and Licences Issued

3.1.1 During the previous period, the majority of Hackney Driver and Vehicle licences were renewed by the licensing team and although the previous requirement ceased for all licence holders to renew annually by 31st October, a large proportion of licences still expire on that date. This presents significant work for officers receiving, quality assuring and issuing over 200 licences in a short period. In addition, renewal procedures involve postal applications being sent to licence holders and work continues by officers to manage renewals more efficiently with forthcoming IT solutions being developed this year (see point 5.1).

3.1.2 The October renewal period usually sees a small number of licence holders retiring and deciding not to renew their licences each year. Figures taken on the 1st November 2019, showed that the licensing authority administers:

162 Hackney Driver licences (compared to **206** in 2016/17, **195** in 2017/18, **179** in 2018/19) with a reduction of 44 hackney driver licences over the previous four years.

148 Hackney Vehicle licences (compared to **170** in 2016/17, **165** in 2017/18, **161** in 2018/19) with a reduction of 22 hackney vehicle licences over the same period.

37 Private Hire Driver licences (compared to **22** in 2016/17 and **26** in 2017/18 and **30** in 2018/19) with an increase of 15 over the same period.

31 Private Hire Vehicle licences (compared to **18** in 2016/17 and 20 in 2017/18 and **24** in 2018/19) again being an increase and by 13 vehicles over the same period.

21 Private Hire Operator licences (compared to 15 in 2016/17 and 13 in 2017/18 and 16 in 2018/19), being an increase of 6 operators over that period.

3.1.3 The continuing reduction of taxi driver licence holders over the last four years is still largely attributed to a number of drivers retiring when the October renewals commence with fewer new drivers coming forward to replace them. That trend is reported anecdotally by taxi proprietors commenting upon difficulties in recruiting new drivers to the trade.

3.1.4 A small number have also allowed their hackney licences to lapse and instead have taken up private hire licences with the reduction of hackney drivers being slightly balanced by increases in private hire driver and vehicle licences.

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 and by inspecting new vehicles when determining applications.

3.2.2 Officers have investigated five licence holders over the previous period, three of which concerned vehicle compliance and two relating to the behaviour of drivers resulting in written warnings being administered.

3.3 Hearings

3.3.1 It has not been necessary to hold a Licensing and Enforcement Sub-committee meeting over the previous period regarding taxis although a recent matter regarding the conduct of a licensed driver has been referred to the Licensing Sub-Committee for consideration today.

3.4 Taxi Licensing and Vehicle Emissions

3.4.1 From January 2020, new regulations introduced by Defra required all licensing authorities in England and Wales to submit details of currently licensed vehicles under the Air Quality (Taxis and Private Hire Vehicles Database) Regulations 2019. The details are publicly available on the council's public register regarding vehicle registration numbers, taxi licence numbers and the period each licence is held. Although this is a weekly requirement, officers have worked with Strata to produce an IT solution to retrieve and submit the information.

3.4.2 On 28th November 2019 licensing officers attended the Council's 'Climate Change Workshop' raising staff awareness of the climate change challenge to reduce our carbon footprint and in the future shaping Service Plans and policies going forward.

3.4.3 On 15th January 2020 licensing officers attended a licensing briefing organised by the Institute of Licensing where staff from Defra provided an update on the Air Quality Regulations including progress made by the cities creating Clear Air Zones (CAZ's). A CAZ is the term for an area in which a local authority has introduced measures to improve the air quality. CAZ's apply to buses, taxis, good vehicles and vehicles owned by the public. The creation of CAZ's to date has started in major UK cities as part of the government's broader Air Quality plan which includes the aim of banning all new petrol and diesel vehicles from 2040.

3.4.4 There are four classes of CAZ ranging from A to D and are distinguished by the vehicle type under a European Emissions Standard which are based upon the age of registration under 6 bands. Each city can decide what level of restrictions to apply to include charging and not charging vehicles to enter CAZ's. Since 2018 five cities outside London have been moving forward with introducing CAZ's and whilst Birmingham and Leeds have taken that on, others stepped back insisting they can cut emissions through other means. More recently Bristol, being the closest to this authority, has announced its aim of preventing privately owned diesel vehicles from entering the central zone in the daytime whilst proposing that taxis and buses will pay a charge to enter the CAZ.

3.4.5 It is this aspect of CAZ's that has generated most interest from the East Devon taxi trade particularly regarding possible plans for other south west cities considering CAZ's in the future. Currently Bristol will be the closest without any clear indications of any nearer cities taking that course of action. Contact by officers with those hackney and private hire drivers who undertake journeys to inner London where charges are payable confirms that proprietors pass any additional charges on with the customer being aware when making a booking.

3.4.6 This Council has identified climate change as a priority and has reflected this with the need for delivering greener policies along with examples being the possible uptake of Ultra-Low and Zero emission vehicles. The recent briefing by Defra last month confirmed that any package of loans or grants has concluded, being directed at urban areas and cities. It is proposed that communication with our taxi and private hire proprietors should continue with further work by officers over the next period that will allow this Committee to consider options in the Taxi Policy regarding vehicle age restrictions for older vehicles and those with higher emissions. Closer consideration of the present fleet of licensed taxis inline with the European Emissions Standard (under 3.4.4) may also be a consideration.

3.5 Fares Review for Hackney Carriages

- 3.5.1 Members have approved an increase to the Hackney Carriage Fare Tariff and resolved that Tariff 1 be increased on the first half mile by £0.50 to £3.50 along with the vehicle soiling/cleaning charge being increased from £50 to £80. This followed a lengthy period of deliberation and consultation with the taxi trade with the proposal being widely supported by the Exmouth Taxi Association but with less support for a low increase elsewhere.
- 3.5.2 Before the resolution can proceed, the relevant legislation requires that before any alteration to the tariff can take effect that a public notice explaining the changes must be placed in a local newspaper. The public will have 14 days to make comment and if no adverse comments are received the approved changes can take effect with this being the next course of action.
- 3.5.3 If adverse comment/objection is received on the next process then the matter must be returned to allow this Committee to consider the representations.
- 3.5.4 Over the last period officers have been preparing the ground work to introduce the fare increase prior to preparing the newspaper notice which comes with a cost to the Council for the notice. The final stage will require every hackney carriage having the meter changed in each vehicle and so before incurring the cost of the advert, officers have been engaging with the companies that complete the work on taxi meters. That work with the companies has identified that a number of taxis in this district operate on outdated taxi meters and whilst they currently function correctly, the old meters would not have the technical capacity to accept another tariff upgrade. In simple terms this will be similar to an older mobile phone no longer being able to accept new software updates. This recent development will be communicated by the Licensing Manager at a taxi association meeting taking place on 3rd February which meets after publishing this report. It will be necessary to identify how many taxis in the district will be affected and to contact taxi owners to establish the exact number of outdated taxi meters because of the need to replace them to allow the new fares to be added. The approximate cost will be £300 to replace an old meter quoted by the companies and this being a cost to be met by the taxi proprietors. Officers will bring the findings to this Committee when the full number of outdated taxi meters has been confirmed.
- 3.5.5 The need for proprietors to replace outdated meters will represent an additional cost, particularly to companies having to replace taxi meters for fleets and the trade may consider it necessary to request revisiting the proposed fare increase given that they had strived to keep it as low as possible. Incurring extra costs by replacing their taxi meters is considered likely to increase the frustration of those being required to do so. However the preparation and contact by officers with the meter companies has prevented this obstacle being identified after the costs of the newspaper notice has been incurred and then having to complete the notices again if there is to be a change. It also allows the update to be passed to the trade to consider their options now and should the trade perceive a need to seek a higher increase than that approved, it could be considered by this Committee accordingly.

3.6 Wellbeing Initiative for Taxi and Private Hire Drivers

- 3.6.1 The ongoing reduction in the number of licensed taxi drivers over the last four years was reported at the last meeting of this Committee with the latest figures being confirmed after the last renewal period. The previous briefing to members regarding the increasing health issues was also a factor as the higher level of medical assessments required of licensed drivers can be a barrier when certain illnesses occur. The continued wellbeing of licensed taxi drivers is therefore considered as important.
- 3.6.2 Engagement by the Licensing Manager with management of Leisure East Devon (LED) has confirmed an opportunity to arrange corporate membership at gyms across the district for

licensed drivers and LED staff have offered to attend taxi trade meetings to provide support and information. In a similar way, One Small Step, the Devon County commissioned health & wellbeing service with an interest in offering a wellbeing pop-up promotions has offered to support the taxi trade with current initiatives. The previous meeting of the taxi trade, members and officers that took place on 6th November 2019 confirmed a level of interest from drivers who attended. This initiative is being progressed over the next period to promote further healthy, wellbeing options.

3.7.1 Taxi Ranks

3.7.1 In addition to the report today regarding a taxi rank in Seaton, officers have received further submissions regarding one request to consider a new taxi rank in Honiton High Street that would be of benefit to the public along with representations made to a District Councillor regarding the need of the tank rank located in Mill Street, Ottery St Mary. The Licensing Manager has raised the feasibility of both locations with Devon County Council Highways and will provide updates for this Committee with any progress.

3.7.2 Those matters that have been raised with officers regarding taxi ranks in Seaton, Honiton and Ottery St Mary generated further work to assess the suitability and need of all taxi ranks across the district. Work completed by officers over the previous period identified a number of taxi ranks are poorly marked and an assessment of each rank and the level of work that may be necessary by Devon County Council Highways will be reported to this Committee.

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 and 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.

4.1.2 The uptake of street trading has been high for events occurring in villages and towns since October 2017 and implementation has identified changing trends in locations being sought by applicants with Cranbrook being an area where consents have been granted over the last two years. Licensing officers have worked closely in conjunction with Cranbrook Town Council and in December officers attended a meeting of the Town Council to consider the suitability of the town for future trading. The meeting was considered as being worthwhile as officers have gained a greater understanding of the issues that are now relevant to the town, in particular the continued growth in housing along with higher volumes of traffic presenting increased risks from trading vehicles on narrow roads in the town.

4.1.3 During December, applications were received from applicants seeking to trade from vans being parked in locations at Younghayes Road and Burrough Fields and as a result of the Town Council providing detailed reasoning for objecting during consultation, officers then completed an assessment of traffic confirming a far higher frequency of buses and cars. Both applications were refused on grounds of road safety and officers have provided new guidelines relevant to Cranbrook in the revised Street Trading Policy report today.

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 licensing officers attended a location in the east of the district following reports of an unlicensed food trader operating. The visit confirmed the presence of a roadside food seller and whilst the trader had obtained food hygiene certificates, they had not applied or gained street trading consent and were required to cease trading until an application and local consultation can be undertaken. This work is now considered of high importance to

ensure the safety of the public and to maintain the current standards of the street trading regime.

4.3 Street Trading during Sidmouth Folk Week

4.3.1. The Sidmouth Folk Week event is due to take place between 31st July and 7th August and the licensing team manages sea front trading pitches along The Esplanade being a process that has operated since 2008. Officer's work extended hours from 7am over all eight days and a review over the previous period has indicated that the high level of resourcing together with the weeklong compliance visits may no longer be cost effective. The Council's move to offices in Honiton increased the time officers are engaged at the event and the time spent by the licensing team from March through to August processing trading application places increasing demands on the team.

4.3.2 One option raised in the previous report to this Committee would be for the organisers of Sidmouth Folk week to have responsibility for trading on The Esplanade which mirrors arrangements in other areas of the town with StreetScene hiring areas of Council owned land. Discussions have taken place with the organisers of Sidmouth Folk Week who confirm an interest although it is still uncertain whether the sea front area would be hired this year being certainly more likely for year 2021. The present charging structure used by StreetScene would be applied and officers will provide further updates accordingly.

4.4 Street Trading Policy and Review of Application Fees

4.4.1. At the last meeting of this committee members confirmed a need for officers to progress the review to re-introduce application charges for commercial street trading consents. Officers now present a detailed structure to allow full consideration for charging fees going forward.

5.1 Change of Licensing Database

5.1.1 It was reported at the last meeting that officers have been extensively involved in an IT project to replace the current licensing database in use since 2005. This work continues with staff engaged in daily testing and programming work with Strata.

5.1.2 The benefits of adopting the new Uniform licensing system will provide many improvements on the existing system, however the current level of work being undertaken on the project impacts on the team being necessary to prioritise operational work.

6. Consultation and Partnership Working

6.1. 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. Officers have not attended licensees meetings over the previous period and have had to prioritise all other demands and priorities (see 5.1.2 above).

6.2 Safety Advisory Group (SAG) Meetings

6.2.1 Officers do attend quarterly meetings of this council's Safety Advisory Group (SAG) including to consider advanced planning for outdoor events. The SAG operates as a multi-agency, non-statutory group that meets providing guidance to event organisers and the officers attend to support safely organised events that are licensed in the district.

6.3 Meeting between Members, Taxi Proprietors and Officers

- 6.3.1 The council previously held two meetings annually with taxi proprietors and the Licensing officers and members in April and November. The Licensing Committee's Chair and Vice Chair normally attend these meetings and all members are welcome. The last meeting took place on 6th November 2019 and allowed communication by discussing relevant topics. The taxi trade is appreciative of the interest from the members of this Committee whilst accepting it is now necessary for the frequency to revert to being an annual meeting.
- 6.3.2 The Licensing Committee's Chair and Licensing Manager will attend a meeting of the Exmouth Taxi Association on 3rd February, this being the only association of taxi drivers across East Devon. Following a positive meeting (under 6.3.1), it is anticipated that membership will grow and drivers from other towns may join the Exmouth meetings.