

Committee Agenda



Epping Forest District Council

Licensing Committee **Wednesday, 13th October, 2021**

You are invited to attend the next meeting of **Licensing Committee**, which will be held at:

Council Chamber - Civic Offices
on **Wednesday, 13th October, 2021**
at **2.30 pm** .

Georgina Blakemore
Chief Executive

Democratic Services
Officer

Adrian Hendry (Democratic Services)
Tel: 01992 564243 Email:
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Members:

Councillors R Morgan (Chairman), J Jennings (Vice-Chairman), I Hadley, S Heather, P Keska, A Lion, L Mead, S Neville, C P Pond, B Rolfe, M Sartin, P Stalker, D Stocker, J M Whitehouse and K Williamson

<p>PLEASE NOTE THE START TIME OF THE MEETING</p>

<p>Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.</p>

<p>You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the Council's published policy and copies made available to those that request it.</p>
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<p>Therefore by entering the Chamber and using the lower public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for web casting and/or training purposes. If members of the public do not wish to have their image captured they should sit in the upper council chamber public gallery area</p>

<p>If you have any queries regarding this, please contact Democratic Services Officer on 01992 564246.</p>

1. WEBCASTING INTRODUCTION

1. This meeting is to be webcast and Members are reminded of the need to activate their microphones before speaking.

2. The Chairman will read the following announcement:

“I would like to remind everyone present that this meeting will be broadcast live to the Internet and will be capable of subsequent repeated viewing, with copies of the recording being made available for those that request it.

By being present at this meeting, it is likely that the recording cameras will capture your image and this will result in your image becoming part of the broadcast.

You should be aware that this may infringe your human and data protection rights. If you have any concerns then please speak to the Webcasting Officer.

Please could I also remind Members to activate their microphones before speaking.”

2. APOLOGIES FOR ABSENCE

3. DECLARATIONS OF INTEREST

To declare interests in any item on this agenda.

4. ANY OTHER BUSINESS

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs (6) and (24) of the Council Procedure Rules contained in the Constitution require that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order (6) (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks notice of non-urgent items is required.

5. MINUTES OF THE LICENSING COMMITTEE (Pages 5 - 10)

To confirm the minutes of the Licensing Committee meeting held on 30th November 2020.

6. MINUTES OF THE LICENSING SUB-COMMITTEES

The minutes from the Sub-Committee’s meetings will be available for the relevant Chairmen to sign off.

7. LICENSING STATISTICS (Pages 11 - 12)

Under the Licensing Act 2003, officers are required to report on the numbers of

applications received and the determinations of those applications. The following table outlines the applications received for the period from 1 October 2020 to 30 September 2021.

8. DIRECT RESIDENT CONSULTATION WITHIN 150M RADIUS (Pages 13 - 18)

To consider a report detailing the cost and implications of the Councils current process of writing to all residents within a 150 metre radius.

9. PAVEMENT LICENSING (Pages 19 - 22)

To consider a report on the current status of pavement licensing.

10. TAXI AND PRIVATE HIRE VEHICLE STANDARDS & NATIONAL REGISTER OF TAXI AND PRIVATE HIRE LICENCE REVOCATIONS AND REFUSALS (NR3) (Pages 23 - 26)

To consider the Government's the Statutory Taxi and Private Hire Vehicle Standards to licensing authorities aimed at safeguarding children and vulnerable adults.

11. LICENSING SUB-COMMITTEE MEETINGS (Pages 27 - 28)

To consider the attached report on the venue for future meetings of the Sub-Committees.

12. REVIEW OF LICENSING SUB-COMMITTEE PROCEDURES

To review the proceedings of the Licensing Sub-Committee held during the preceding period and consider any issues of procedure, policy or organisation that have adversely affected the operation or management of meetings.

13. REVIEW OF CURRENT AND FUTURE TRAINING NEEDS FOR THE COMMITTEE

To highlight any further training considered necessary for the members tasked with discharging the Council's Licensing function.

14. MATTERS ARISING

To consider any further matters arising in respect of the Council's Licensing function, not covered elsewhere on the agenda.

15. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
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Nil

Nil

Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Background Papers: Article 17 - Access to Information, Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information and in respect of executive reports, the advice of any political advisor.

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

16. DATE OF NEXT MEETING

The next meeting of the Licensing Committee has been scheduled for 15 March 2022 at 2.30pm in the Council Chamber.

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Committee **Date:** Monday, 30 November 2020

Place: Virtual Meeting on Zoom **Time:** 2.30 - 3.33 pm

Members Present: Councillors R Morgan (Chairman), J Jennings (Vice-Chairman), I Hadley, S Heather, P Keska, A Lion, S Neville, C P Pond, B Rolfe, M Sartin, P Stalker, D Stocker, D Sunger and J M Whitehouse

Other Councillors:

Apologies: L Mead

Officers Present: S Devine (Service Manager (Regulatory)), K Tuckey (Licensing Team Manager), A Hendry (Democratic Services Officer) and N Cole (Corporate Communications Officer)

1. **Webcasting Announcement**

The Chairman made a short address to remind everyone present that the virtual meeting would be broadcast live to the internet and would be capable of repeated viewing, which could infringe their human and data protection rights.

2. **Declarations of Interest**

There were no declarations of interest pursuant to the Members Code of Conduct.

3. **Any Other Business**

The Service Manager (Regulatory) asked that the Licensing Committee consider the consultation letter sent out to all properties within a 150 meter radius of an application site. Without an in-house printing section this was proving to be rather expensive for the Licensing Section to continue doing and other methods maybe available to officers.

After a short debate it was agreed that a full report be brought to the next Full Licensing Committee meeting, setting out the costs and any alternative procedures that could be undertaken instead.

RESOLVED:

That a report on the 150 meter consultation be brought to the March 2021 meeting of the Licensing Committee.

4. **Minutes of the Licensing Committee**

RESOLVED:

That the minutes of the meeting held on 09 March 2020 be taken as read and signed by the Chairman as a correct record.

5. Licensing Statistics

The Committee noted the number of applications received and determinations of those applications from 1st October 2019 to 30th September 2020. Included separately, for information and comparison, were the figures for the 6 month period between 1 April and 30 September for 2019 and for 2020, which largely reflected the impact of Covid on licensed businesses.

It was noted that the recent pandemic had affected taxis badly. Officers had offered the facility for taxi drivers to pay in instalments for their licences as their work had diminished during this period.

However, we were still receiving new premises applications and for TENS. Which proved difficult as they often conflicted with the Covid regulations.

Councillor Whitehouse asked for information on TENS applications. He was told that the Licensing Act was still in force, so we ask for a very strict risk assessment on how they were going to manage the Covid restrictions imposed. We cannot legally say that they cannot have their TENS application just because of Covid.

Councillor Sunger asked if any applicants had asked for a reduction in fees because of Covid. He was told that some had, and officers had extended the time that they could pay. There were also grants that they could access. The Council had been more than reasonable but were still bound by the regulations.

Councillor Morgan asked about pavement licences, had we had many applications? He was told that the Council had only 5 applications. A number of premises already used the pavements without having a licence from the highways authority. So, there were more than 5 premises that used the pavements but not all were licensed.

Councillor Sunger asked if the Council was doing enough to reach out to the local businesses. He was told that at the start of the period, in May and June, officers did a lot of work informing and engaging with local businesses and encouraging them, although the legislation was not brought in until the end of July which didn't give businesses much opportunity to prepare and take advantage of the summer season. Councillor Sunger asked if there was anything that local councillors could help with. Councillor Lion confirmed that every shop in Chigwell had been visited by himself and an officer but there had been very little response. Officers had done an exceptional job and there was not much more that could have been done.

Officers could always give detailed information to any Ward member that wanted it.

RESOLVED:

The Committee noted the statistics.

6. In Vehicle CCTV - in Taxis

The Regulatory Services Manager, S Devine, introduced the report on the consideration of in-vehicle CCTV in hackney carriage/private hire vehicles.

A report for consideration of in-vehicle CCTV in taxis was submitted and discussed by the Licensing Committee on 9 March 2020, as a potential means of addressing driver vulnerability and safeguarding of passengers. This followed high profile reports in other parts of the country connecting the taxi trade with serious concerns regarding child exploitation, human trafficking, criminal exploitation and drug trafficking.

A Task and Finish Group commissioned by the Minister of State at the Department of Transport in 2018 recommended the mandatory introduction of cameras in licensed vehicles. However, the Information Commissioners Office CCTV Code of Practice recognises that an important balance must be made between privacy and proportionality and that a mandatory policy around CCTV systems in taxis would require strong justification and should be kept under regular review.

Officers had undertaken their own intelligence gathering and looked at data from the police. No direct allegations relating to the public and their behaviour towards taxi drivers were found. There were no allegation on the Council's database as well. The crime data did not justify the introduction of CCTV and there were also concerns about making audio recordings. A consultation with the taxi drivers was also carried out and we received only 27 responses out of 415 taxi drivers. 8 were in support of CCTV and 19 against. Officers also spoke to other local authorities. Of the five that had responded four had considered it and rejected the idea on the basis that the crime data did not stack up.

It should also be noted that the taxi drivers themselves would have to pay for the equipment needed and its upkeep. This would put extra strain on a sector of the industry that had been hit hard by Covid, just as we would also be looking at the electrification taxis in the near future, although this should not prevent the Council requiring CCTV for safety reasons if felt appropriate.

If the council introduced either compulsory or voluntary CCTV the council would be responsible for the terms of compliance, and would also have to update its codes of practice and carry out a data protection impact assessment and update its ICO registration. The Community Resilience Team that control all CCTV in the council had the capability to manage this work, if mandatory licensing was considered appropriate.

Councillor Neville noted that we had moved on since the Committee had last considered this. Four other authorities had rejected the idea and there was an extremely low return for the taxi trade. There was no evidence to justify this at present. Perhaps we should revisit this in twelve months' time.

Councillor Sartin was surprised at the small number of responses and agreed that this was not the time to continue with this. She asked if there was any reason why a taxi driver could not put up their own cameras. She was told that some did, but they had to have appropriate notices displayed and they were checked for compliance during the annual MOT check.

RESOLVED:

That a report on CCTV be brought back to a future meeting, perhaps in a years' time.

7. Draft Statement of Licensing Policy

The Regulatory Services Manager, S Devine, introduced the report updating the Council's statement of Licensing Policy.

It was noted that the licensing authority had a statutory duty to review its licensing policy and as such, a consultation was carried out, beginning on 22nd September 2020. The closing date was 16th November 2020.

The new Policy updated the existing, to align with current internal council decision making; informing on current guidance and other publications and updating details of consultees. There was also a section that covered Exchange of Information, not included in the previous Policy document, which recognised the Council's responsibilities under the General Data Protection Regulations. The Policy document would be reviewed again no later than 2025 or such earlier time if deemed necessary.

Following the consultation there had been no substantive amendments made to the draft policy just some housekeeping amendments and updated information.

Councillor Neville questioned if all faith groups were consulted instead of just the ones listed in the report and had all resident's associations been contacted.

ACTION: It was agreed that the list should in future should say 'all major faith groups' had been consulted and that officers research all the resident's associations and add them to the consultation list.

RESOLVED:

That the Committee recommends to the Council that it adopts the Statement of Licensing Policy.

8. Gambling Act 2005 - Adult Gaming Premises

The Committee next considered the late supplementary report on adult gaming premises.

The Licensing Manager, K Tuckey said that officers had received a late application for an adult gaming premises. However, as this was the first application of its kind and the Council did not have an appropriate fee.

The licensing manager benchmarked fees against three other authorities, Brentwood, Harlow and Rochford

Harlow £1,800 per year
Rochford £2,000 per year
Brentwood £2,000 per year.

The fees charged would have to reflect no more than the cost of the officers' time in dealing with such and application.

RESOLVED:

That the Committee recommended that a fee of up to £1000 be set for an Adult Gaming application depending on officers' final estimates of costs.

9. Review of Licensing Sub-Committee Procedures

Extra Sub-Committee Member:

Due to the unpredictability of internet connections it was recommended by the Democratic Services Officer that the fourth member of any sub-committee stay and listen to any application being considered just in case one of the other members loses connectivity and could not continue.

AGREED: that the fourth member of the sub-committee remain and listen to the full case in case of loss of connectivity for another member.

Meeting Procedures:

Councillor Jon Whitehouse asked that the procedure for running a Licensing Sub-Committee meeting be reviewed at a future meeting for clarity. This was agreed.

10. Review of Current and Future Training Needs for the Committee

To be considered after the next elections in May for any new members of the Committee or as a refresher for current members.

11. Matters Arising

There were no matters arising.

12. Date of Next Meeting

The Committee noted the date for their next meeting, 17 March 2021.

CHAIRMAN

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Report to Licensing Committee

Date of meeting: 13th October 2021



**Epping Forest
District Council**

Subject: Licensing Statistics

Officer contact for further information:
David King Licensing Manager, 01992 564888

Committee Secretary: Adrian Hendry, 01992 564246

Recommendations:

To note the results of the statistics

Background

- Under the Licensing Act 2003 and Gambling Act 2005, officers are required to report on numbers of applications received and the determinations of those applications. The statistical report details the applications received between 1st October 2020 – 30th September 2021. For information and comparison, the figures for the previous twelve-month period between 1st October 2019 and 30th September 2020 have also been provided.

	01/10/2019 – 30/09/2020	01/10/2020 – 30/09/2021
PREMISES LICENCE APPLICATIONS/VARIATIONS		
Number of new applications	7	35
Number of renewals	251	386
Change of designated premises supervisor/variation	24	53
Number of applications considered by the sub-committee	5	28
Number of applications granted subject to conditions	5	12
Number of applications refused	0	1
Number of appeals to Magistrates	0	0
Number of revocations	0	0
TENS		
Application received	139	142
Late TENS	35	42
REVIEWS		
Application	1	0
Reviews refused	0	0
PERSONAL LICENCE APPLICATIONS		
Number of applications received	46	48
Number of applications granted under delegated authority	46	48
Number of applications refused	0	0
Number of appeals to Magistrates	0	0
GAMBLING ACT 2005		

Betting office applications granted	0	0
Club gaming permit granted	2	0
Notifications for 2 gaming machines	0	5

Report to Licensing Committee

Date of meeting: 13th October 2021

Subject: Direct resident Consultation within 150m radius

Officer contact for further information:

David King Licensing Manager, 01992 564888

Committee Secretary: Adrian Hendry, 01992 564246



**Epping Forest
District Council**

Recommendations:

The Licensing Committee is requested to note the implications and consider alternative proposals contained within this report.

Background

1. The Licensing Committee have requested a report detailing the cost and implications of the Councils current process of writing to all residents within a 150 metre radius to notify them of applications for the grant or variation of a premises licence or club premises certificate.

2. **Statutory Requirements on Advertising Applications**

The Licensing Act 2003 places a legal obligation on applicants for the grant or variation of a premises licence or club premises certificate to advertise the application in a prescribed manner, this includes:

- Prominently displaying a notice at the premises to which the application relates where it can be conveniently read from the exterior of the premises. The notice must be pale blue in colour, A4 or larger in size and printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. The notice must be displayed for a minimum of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.
- Publish the notice in a local newspaper on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the licensing authority.

The notice must provide the following information:

- the name of the applicant or club;
- the postal address of the premises or club premises;
- the relevant licensable activities that it is proposed to be carried on or from the premises or describe the proposed variation;
- the postal address and, where applicable, the web address where the register of the relevant licensing authority is kept and where and when the record of the application may be inspected;
- the date by which an interested party or responsible authority may make written representations to the relevant licensing authority;

- that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

It is also a requirement that the local authority publish a register on its website detailing applications received.

Epping Forest District Councils register can be found here [Current licensing applications – Epping Forest District Council \(eppingforestdc.gov.uk\)](http://www.eppingforestdc.gov.uk)

3. Statutory Consultation

It is a legal requirement that the following responsible authorities are consulted directly;

- The licensing authority itself
- Essex Police
- Essex Fire and Rescue authority
- The body responsible for enforcing health and safety at work
- EFDC Planning authority
- EFDC Public Health
- EFDC Environment & Neighbourhoods Team
- County Council Child Protection Team
- Trading standards
- County Council Public health
- Home Office Immigration

4. Current consultation above statutory requirements

In addition to the statutory consultation stated above, the Council also directly consults with residents within a 150-metre radius, Ward Councillors, Town/Parish Councils, Residents Associations (Loughton only) and details are included in the Members bulletin.

5. Benchmarking with neighbouring Councils

Whilst it is permissible for the Council to undertake consultation over and above that set out in the regulations, there is no legal obligation for it to do so. We are currently undertaking a bench marking exercise with neighbouring authorities and whilst we are still waiting for a number of responses, the early indication is that the majority, if not all, do not undertake additional consultation with residents.

Full details of the outcome of the consultation will follow in due course, once complete.

6. Cost Analysis

The Licensing Act 2003 provides for fees to be payable to the Licensing Authority in respect of the discharge of their functions. The fees are set by central Government, at a level to allow the full cost recovery for the administration, inspection and enforcement of the regime.

The fee payable for the grant or variation of a premises licence or club premise certificate is determined by the non-domestic rateable value of the premises. The fee bands are as follows;

BAND	A	B	C	D	E
FEE	£100	£190	£315	£450	£635

The Act does not allow for Local Authorities to levy addition fees to recoup additional costs incurred. The majority of premises sampled fall within band B & C.

Cost analysis shows:

- Application fees generated = £6,760 (28 applications)
- Printing and postage cost associated with writing to residents = £12,397
- Additional cost to the Council (excluding income) = £5,637
- Cost associated with 86% of applications (24) exceeded the application fee

It should be noted that the true cost to the Council will be much higher than £5,637 quoted as this figure does not include officer time processing applications or the cost to the Council in holding Licensing Committee hearings etc.

Analysis also shows that 48% of applications received attracted representations and required determination by the Licensing Sub-Committee. This figure, will in part, be attributed to the additional consultation being undertaken.

The above information is based on the current printing arrangements with an outside contactor, that commenced following the outsourcing of the Council's reprographics service. Following a recent tender and procurement process the Council has now contracted a new printing solution, PSL, that is more competitively priced and includes a print to post solution, that can be used for Licensing consultations. It is estimated that the printing costs can be reduced by at least 70%,

However, this reduction does not take into consideration the additional officer time in preparing the mail-merge process for printing, which may take several hours per consult depending on the location of the premises and the number of properties within the 150 metre radius. Therefore, the true overall saving will be far less than the 70% figure stated.

7. Implications/Risks

Whilst the current process undoubtedly brings some benefits in terms of increased community engagement and greater awareness of applications etc. it also presents additional reputational and financial risk to the Council.

Where the Council has adopted consultation over and above that what is legally required, in doing so, it has created a reasonable assumption that all residents within a 150 metre radius will be directly advised in writing.

Should the Council inadvertently fail to contact some residents in accordance with this policy, it may be at risk of legal challenge or judicial review.

Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association [2011].

In summary, Westminster Council had adopted a policy whereby they send written notification letters to residents within a 100-metre circle around the premises to which an application relates.

In this instance the Councils software did not capture some residents in the 100 metre radius of the Royal Albert Hall and as a result some residents were not notified.

Once the residents realised that an application had been submitted, they made written representation opposing the application. However, as the statutory consultation period had ended, the representations were rejected by Westminster Council and the licence was granted.

The decision was challenged by residents by way of appeal in the High Court. In determining the appeal, the Courts held that Westminster's decision to refuse to consider late representations was lawful, but its decision to grant the variation was unlawful because it had failed to fulfil the legitimate expectation of the residents that it would send them notification of the application.

The Courts determined that neither the Licensing Act 2003 nor the Regulations imposed any duty on a licensing authority to advertise an application or to take any steps to notify anyone affected by it that it had been made. The sole duty to advertise and to give notice of an application was placed on the person making the application.

Whilst this decision was subsequently overturned by the High Court of Appeal, in doing so Lord Justice Burnett stated;

"This did not mean that a decision by an authority to refrain from notifying persons affected by a licensing application could not be challenged. In theory, if it was thought that an authority was acting irrationally or otherwise unlawfully, an order could be sought requiring it to reconsider its decision, and if made sufficiently promptly the Court might grant relief, if it would have any practical value,"

150 Metre Radius

In 2010 the Government undertook public consultation 'Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing'.

Following that consultation, the Police Reform and Social Responsibility Act introduced a package of measures to overhaul the Licensing Act 2003.

One of those measures was to remove the requirement for interested parties to live or work in the "vicinity" of the premises to which the application relates. Its intent was to allow any person, body or business to make a relevant representation regardless of where they live.

The Council introduced the 150m rule for Licensing Act 2003 and Street Trading Consents a number of years ago (earliest reference in Licensing Committee reports is 8 October 2014), presumably as an area that could be reasonably be perceived to be subjected to any negative impact caused by the subsequent grant of a licence. However, neither the Licensing Act 2003 or its associated regulations and guidance make reference to a 150-metre radius.

Whilst this may be a reasonable approach, as it would be pointless and impossible to Consult with every resident in Epping Forest District Council, in doing so it could be perceived or implied that the Council has inadvertently introduced its own vicinity rule.

By adopting a 150-metre radius, it could be seen to infer that only residents living within that area, can reasonably be expected to suffer any potential negative impact, should the licence be granted. This is at odds with provisions of the Licensing Act 2003 which has no such restrictions and specifically removed the term "vicinity" under the Police Reform and Social Responsibility Act.

This also causes confusion with residents. Regular feedback questions why some households receive a letter but others, sometimes next door, do not?

Increased representations & burden on business and the Council

Analysis under point 6. indicates that 48% of applications received representations and subsequently required determination by the Licensing Sub-Committee. This

particularly high percentage will in part be attributed to the additional consultation being undertaken by the Council.

It is likely that increased consultation has also led to an increase in frivolous or otherwise unnecessary representations due to residents not being completely clear as to what is being applied for.

This was the case at a recent hearing where a number of residents withdrew their representation once it was made clear to them what the application was for.

Many businesses instruct legal representation to represent them at Committee, this comes at additional cost to the applicant. The Council also incurs the cost of the hearing and potentially any subsequent appeal.

In some instances, hearings could be avoided thus saving unnecessary financial and administrative burden on both the business and the Council.

8. Summary & Recommendation

Neither the Licensing Act 2003 or the associated Regulations impose any duty on a licensing authority to advertise an application or to take any additional steps to notify anyone that may be potentially affected by an application.

If Government felt that it necessary, it would have made additional consultation a statutory requirement, instead it places the sole duty to advertise and to give notice of an application on the person making the application.

This view is shared by the majority of Local Authorities who do not undertake consultation over and above that legally required.

Whilst it is permissible for the Council to undertake additional consultation with residents within a 150-metre radius, it implies that a "vicinity" rule applies and carries an unnecessary risk in terms of legal challenge.

It also brings an avoidable additional financial burden to both the Council and business.

The Act provides for fees to be payable to the Licensing Authority in respect of the discharge of their functions. The purpose of the fee is to allow the full cost recovery for the administration, inspection and enforcement of the regime.

The cost incurred through the additional 150 metre consultation currently far exceeds the revenue generated through the application process. Even with the new printing solution in place and the reduced costs that will bring, the cost is still likely to exceed the revenue generated due to the administrative burden on preparing the mail merge. This is not sustainable.

The Council already exceeds the statutory requirements by consulting directly with Ward Councillors, Town/Parish Councils, Residents Associations (Loughton only) and by including details in the Members bulletin.

Town/Parish Councils, on receipt of an application, could themselves consider if wider consultation through its own methods (residents' newsletters, website, community forums and consultation with resident's associations etc.) is warranted and discuss applications with residents should they wish.

This would maintain a high level of community engagement whilst avoiding the

unnecessary financial and administrative burden on the Council.

The Council will also strive to facilitate additional resident engagement, by advertising applications on its website and encouraging applicants to hold informal discussion with local residents, businesses and responsible authorities prior to submitting applications.

It will also continue to ensure that applicants meet their statutory obligations; advertising in a local newspaper and placing a notice at the premises to which it relates.

Report to Licensing Committee

Date of meeting: 13th October 2021



**Epping Forest
District Council**

Subject: Pavement Licensing

Officer contact for further information:

David King Licensing Manager, 01992 564888

Committee Secretary: Adrian Hendry, 01992 564246

Recommendations:

For information and to note the extension of temporary measures.

Background

1. The Business and Planning Act 2020 (the Act) received Royal assent on 22nd July 2020. The Act introduced a range of temporary measures intended to support businesses and the economy to recover from the severe disruption caused by Covid 19. Among those measures was the introduction of pavement licensing, a simplified and fast track route for pubs, restaurants and cafes to obtain a temporary permission to place furniture including outdoor tables and seating on the highway, allowing them to increase their outdoor capacity safely, quickly and at a low cost.
2. Due to Covid-19 many premises remained closed for extended periods due to lockdown, as they began to re-open, social distancing guidance significantly impacted on how businesses could trade and the number of patrons that could be accommodated safely. The new pavement licence process was part of a package designed to make it easier for businesses to make use of outdoor space for dining and the consumption of alcohol, whilst proving a safer and increased capacity to accommodate customers.
3. Previously, pavement licences were granted primarily under the Highways Act 1980. The fee for the process varied between local authorities, and there was a minimum 28 calendar day consultation period. However, this local authority have not applied these powers to date, The proposal for adoption of pavement licensing was considered by the Licensing Committee and decided against in April 2013, principally because the resource implications for the Licensing Team meant that the administration of pavement licensing would need to be on a full cost recovery basis, which was considered would be detrimental to the hospitality businesses.
4. The Business and Planning Act 2020, delegated new powers directly to local authorities, providing a cheaper, easier and quicker way for businesses to obtain a licence by setting a maximum fee at £100 and reducing the public consultation period to 5 working days. Where a decision is not given within a 14-day period, the licence is automatically deemed granted (tacit consent). This Council has administered these powers and has issued pavement licenses under this legislation since July 2020.
5. The provisions of the Act also temporarily modified the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences, to allow the sale of alcohol for consumption off the premises. This was intended to make it easier for businesses without previous off-sale permission, to sell alcohol to customers using outside areas without the need to apply to vary their existing permission.

6. The new off-sale permission allowed sales during the time the licensed premises are open for the sale of alcohol for consumption on the premises but subject to a cut off time of 11pm or the closure time of an outside area, whichever is earlier. Measures also suspended existing conditions in so far as they are inconsistent with the new off-sale permission. For example, any condition preventing the sale of alcohol in an open container.
7. The overarching principles of the Act are that Licensing Authorities should, wherever possible, seek to encourage and permit these temporary measures and in doing so adopt a pragmatic approach to support the hospitality trade and the economic recovery of our high streets. However, it also recognised the need to achieve a balance between the rights of business to trade and support the local economy and the rights of residents and others not to be adversely impacted by that activity.
8. To achieve this balance, the Act provides, that if there are problems of crime and disorder, public nuisance, public safety or the protection of children from harm arising from a premises using the new permission, any responsible authority, including the police or environmental health, could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process under the Licensing Act 2003. However, in the event that an off-sales review is triggered, it will only relate to off-sales authorised by the temporary provisions, or associated conditions. It cannot be used as a mechanism to revoke the existing premises licence or modify pre-existing licence conditions.
9. On 22 February 2021 the Prime Minister published a roadmap for easing the lockdown restrictions. Under in step two, on 12th April, hospitality venues would be allowed to serve people outdoors. Step 3 followed on 17th May, allowing indoor hospitality to re-open however, this was subject to restrictions including the requirement for customers to remain seated while ordering and consuming food and drink.
10. On 4th June the remaining restrictions, including those relating to social contact were lifted. However, in recognition of the ongoing disruption caused by Covid 19, Government announced its intention to extend the temporary measures introduced under The Business and Planning Act 2020 and in doing so, pavement licensing and the new off-sales permission has been extended until 30th September 2022.
11. Whilst the temporary measures have been extended, existing licences still expire on 30th September 2021 however, businesses wishing to extend the permission for a further period, can do so by applying for a new licence. Government has again requested local authorities to do everything possible to support businesses to reopen safely and prosper again.
12. During the period 2020-2021 Epping Forest District Council had issued 18 pavement licences. However, it should be noted that this figure is not a true reflection of the al fresco offer available, as many premises already benefitted from the use of external areas by way of a private forecourt, beer garden or historic tables and chairs tolerated on the highway where no pavement licensing process formally existed. During this period no reports of any adverse impact or complaints from residents or responsible authorities have been received.
13. The Council has taken a proactive approach and has written to all existing licence holders to encourage them to take advantage of the extended period. In addition, the Councils website has also been updated to reflect the changes. To simplify the process, where no change to the existing arrangement is being sought, applicants are requested to notify us in writing and to place a notice at the premises to which it relates. Where however, a variation is being sought, a full application including a revised plan of the outside area is required.

14. To date 17 extended licences have been granted and 1 remains due to expire on 30th September 2021. As before, where the applicant is a small independent operator, no fee is charged however, where the application is on behalf of a large hospitality operator the maximum fee of £100 applies. The total revenue generated under this function so far is £900.00
15. Finally, whilst pavement licensing has been extended until 2022, Government has indicated that it would like to see these regulations continue beyond this date. The Local Government Association (LGA) undertook consultation with Local Authorities during the summer and has recommended that Government does not extend the regulations further, due to operational and cost implications. They have however, suggested a reformed system that blends the best aspects of both the old and new framework. Officers will keep abreast of any developments with a view to making further recommendations regarding the regulation of pavement licensing going forward.

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Report to Licensing Committee

Date of meeting: 13th October 2021



**Epping Forest
District Council**

Subject: Taxi and Private Hire Vehicle Standards &
National Register of Taxi and Private Hire Licence
Revocations and Refusals (NR3)

Officer contact for further information:

David King Licensing Manager, 01992 564888

Committee Secretary: Adrian Hendry, 01992 564246

Recommendations:

For information & consideration

Background

1. In July 2020 the Government published the Statutory Taxi and Private Hire Vehicle Standards to licensing authorities aimed at safeguarding children and vulnerable adults. The Statutory Standards set-out a range of measures to protect taxi and private hire vehicle passengers and are intended to promote a standardised and consistent approach to Taxi Licensing across Local Authorities by requiring Councils to publish a single cohesive policy, that includes:

- Requirement for a Register to be kept by Private Hire Operators of their booking / dispatch staff
- Mandatory subscription by driver licence holders to the Disclosure and Barring Service (DBS) Update service
- Basic DBS checks to be made of such staff by the operators and prescriptive records to be maintained by Operators
- Mandatory annual Basic DBS checks for Private Hire Operator licence holders who do not hold a Private Hire or Hackney Carriage Driver Licence
- Oral and written English Language proficiency tests for drivers
- Twice yearly Disclosure and Barring Service (DBS) checks for licensed drivers
- A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS for consideration to be added to the barred list
- A robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees
- Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate)
- Reduction of the time period for notification of the investigation into offences by licence-holders from 72 hours to 48 hours
- "whistleblowing" in place for staff to raise concerns and for any concerns to be dealt with openly and fairly
- Multi-agency working between the Licensing Authority, the Police and the MASH team
- Introduction of CCTV in licensed vehicles

2. Contrary to its title, the Statutory Taxi and Private Hire Vehicle Standards are not mandatory. Licensing Authorities must reach their own decisions, both on overall policies and

on individual licensing matters in light of relevant law. Therefore, the Council may determine that none or only part of the recommendations set out in the Standards should be adopted.

3. However, the Department for Transport expects the recommendations to be implemented unless there is a compelling local reason for the Council to depart from the standards. If the Council were not to adopt some or all the recommendations it may be open to legal challenge if the new statutory guidance is not followed without sufficient justification.

4. Whilst a significant number of the DfT's Standards are already included within the existing policy, the Licensing service will undertake a detailed review of the policy and report back to Licensing Committee with its recommendation on changes required.

National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3)

5. There have been numerous high-profile cases where drivers who have been refused licences or had a licence revoked in one area have gone to another area and received a licence in that area by failing to disclose their previous history. This undermines public safety, if there are legitimate reasons why a licence was refused or revoked, and damages confidence in the hackney carriage/PHV licensing regime and trade.

6. As a result, the National Anti-Fraud Network (NAFN) was commissioned by the Local Government Association (LGA) to develop a national register as a practicable way for licensing authorities to check if an applicant has had a licence revoked or refused elsewhere. The initiative has been widely supported by reputable drivers and firms, as it will provide a mechanism for ensuring information about refusals and revocations can be shared between all licensing authorities in a safe and secure way, removing this potential loophole.

7. The register is voluntary however, where adopted, Licensing authorities will be responsible for adding basic details of drivers who have had applications for a licence either refused, revoked or suspended. The details will be limited to;

- Name
- Date of birth
- Address and contact details
- National insurance details
- Driving licence number
- Decision taken
- Date decision became effective

8. When a licensing authority receives an application for a licence, the applicant's details will be checked against the register to confirm that there is no record of them having been revoked or refused elsewhere. It will be up to individual authorities to follow up on any searches they make which come back with a match.

9. Licensing authorities are legally required to consider each licence application on its own merits. Therefore, if adopted, the Council will not refuse an application solely because an applicant may be recorded on the register. The purpose of the register is to ensure that licensing authorities have the full information necessary to help them reach a decision on whether an individual is fit and proper. If circumstances have materially changed since the decision that has been recorded, it may be appropriate for another licensing authority to award a licence.

10. Suspensions of licences are not be recorded on the national register. This is because suspension should be used as either a short-term punishment or to overcome a short-term situation (such as driving or medical issues). Where a driver is no longer considered to be a fit and proper person to hold a licence, the licence should be revoked, and the details recorded.

11. It is a legal requirement that individuals whose data is uploaded or entered onto the register are made aware of the collection, storage and use of their personal data via a privacy notice. In relation to register, the following details must be included in the privacy notice:

- The name and contact details of the licensing authority.
- The contact details of the authority's data protection officer.
- The purpose of the processing.
- The lawful basis for the processing.
- The recipients or categories of recipients of the personal data.
- The retention periods for the personal data.
- The rights available to individuals in respect of the processing.
- The right to lodge a complaint with a supervisory authority.

For current licensees or applicants, authorities should ensure that information about the register is included in:

- licensing policies
- application forms
- correspondence to named individuals that confirms that a licence has been revoked, or that an application for a licence has been refused.

12. Individuals whose details are added to the register will be notified of this when they are advised of the decision to refuse or revoke a licence. An individual can also submit a Subject Access Request (SAR) to the Council to ascertain if their details are recorded on the register. The National Anti-Fraud Network as the data processor (the organisation storing the data), will fulfil this request.

13. To comply with this requirement the Council must update its current policy to reflect the use of the register and the new processes arising from it, including that relevant information on the register will in future be part of the process for assessing licence applications and whether an individual is a fit and proper person.

14. It will also need to update application forms and related paperwork (such as guidance notes etc.) to make it clear that:

- all applicants will have their details checked against the register, and any relevant information taken into account in assessing the application
- where an application is refused, or where a licence is granted but subsequently revoked, this information will be entered into the register.

15. In addition, existing licensees will be notified that the authority has signed up to the register, and that if their licence is subsequently revoked or not renewed, this will be recorded.

16. The statements included in the privacy notice, licensing policy, forms and guidance etc. should provide assurance that this information will be processed in accordance with the DPA and GDPR. Critically, it should also make clear that there is a lawful basis for processing the data, which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence.

17. Wording to be included in the privacy notice and policy etc. has been provided by the Local Government Association in the Guidance on adopting the National Register of Taxi Licence Revocations & Refusals (NR3)

18. To access the register, Local Authorities are required to be members and subscribe to The National Anti-Fraud Network (NAFN). This Council is already a subscribing member to the NAFN which is administered by our Corporate Fraud Team Manager. The register is voluntary, and guidance has been developed that sets out the steps authorities will need to take to use the register in a way that complies with the data protection requirements, as well as with human rights law.

19. Data is retained on the register solely to assist licensing authorities fulfil their statutory duty to ensure that an applicant is a fit and proper person to hold a taxi or private-hire vehicle licence. These duties are set out under sections 51, 59 and 61 of the Local Government (Miscellaneous Provisions) Act 1976, and section 46 of the Town Police Clauses Act 1847. Data will be held on the register for 25 years, in line with the National Anti-Fraud Network NAFN retention policy.

20. Adoption of both the National Register of Taxi and Private Hire Licence Revocations and Refusals register and the Taxi and Private Hire Vehicle Standards will be considered as part of the detailed review of the existing taxi licensing policy, and the Licensing Service will report back to Licensing Committee with its recommendation on changes required.

21. This review will also include further consideration of in-vehicle CCTV in Taxi and Private Hire Vehicles which is included in the Statutory Standards and was introduced in a report at the last Licensing Committee meeting on 30 November 2020, about which members requested further information in due course.

Report to Licensing Committee

Date of meeting: 13 October 2021

Subject: Licensing Sub-Committee Meetings

Officer contact for further information: Adrian Hendry

Committee Secretary: Adrian Hendry, 01992 564246



**Epping Forest
District Council**

Recommendations:

That the Committee consider how they would like to continue holding their Sub-Committee meetings, either virtually on Zoom or in the Council Chamber or as a hybrid meeting.

Background

Over the past 18 months or so, because of the pandemic, we have been holding Licensing Sub-Committee meetings virtually, via Zoom. This was undertaken as a necessity to enable the Council to continue to carry out its business as usual.

Since the country has opened up again and face to face meetings have become viable and, in some cases, a legal necessity, we have continued to hold Licensing Sub-Committee meetings on Zoom. We had been advised that as the licensing laws came under a different Act, we could continue holding these meetings virtually. Virtual meetings continued to be held due to the fact that in the early days of the relaxation of the meeting restrictions, it was still uncertain how safe face to face meetings were and the Civic Offices were not ready at that time to accommodate full public meetings.

Report

1. We now, however, need to consider the situation and make a more formal decision on how (and where) we hold the Licensing Sub-Committee meetings. The pros and cons are listed out below. It should be noted that following legal advice, any taxi driver licensing meetings will have to be physical meetings as they come under a different Act. This would also be true for any Gambling or Street Trading applications as they too come under different legislation.

2. However, premises applications and associated application categories can still be held virtually.

3. In coming to a decision on whether to hold a meeting, either virtually or physically, members should consider the following.

4. For / Against holding virtual meetings:

- Members of the public attending the Sub-committee will not have to wait in the Civic Offices for their case to be heard, they would be at home or their office monitoring the meeting until needed;
- Occasionally there may be technical/connection problems which may mean an objector or applicant could not participate. All technical difficulties that have occurred have been addressed and not impacted upon the proceedings;
- The same may be said for the members of the Sub-committee although we do always have a fourth member attending in case of problems;

- Participants remain muted throughout the meeting, this allows focused attention, on the speaker;
- It is easier to exclude or mute a disruptive abusive speaker (with Chairman's permission);
- Interested members of the public can watch the meetings live via the webcast;
- There is also the Working Greener aspect of not travelling into the office with reduced carbon emission associated with reduced travel;
- Internet speeds may limit the effectiveness, but meetings can be accessed from anywhere (with Invite).

5. For / Against holding physical meetings in the Civic Offices:

- These will be held in a more formal situation, in the Council Chamber, where it may be said to be easier to question witnesses;
- No technical difficulties would interrupt the meetings;
- The meetings would also be webcast for interested members of the public to watch;
- As these will be daytime meetings it must be noted that the Council Offices now have significantly less parking available, aside from Council officers, the building will hold outside partners for the Council, such as the library, CAB and VAEF and also the private tenants on the 2nd floor. We will also have lost the rear car park;
- Members will also have to book their own parking space or if unavailable, park at the nearest public car park;
- Officers cannot guarantee a second private room to hold their private deliberations in;
- It may be possible to have witnesses join the meeting virtually to give their statements as happens presently at Planning Sub-Committee meetings (Hybrid meeting);
- It is easier for the Chairman to sign the decisions sheet of that meeting.

6. Members are asked to consider the alternatives and indicate how they would like the Licensing Sub-Committee meetings to continue.