



### **Licensing Sub-Committee Tuesday, 2nd April, 2019**

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

**Council Chamber, Civic Offices, High Street, Epping  
on Tuesday, 2nd April, 2019  
at 10.00 am .**

**Derek Macnab  
Acting Chief Executive**

**Democratic Services  
Officer**

Democratic Services (Direct Line 01992 564243)  
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#### **Members:**

Councillors M Sartin (Chairman), I Hadley, J Jennings and R Morgan

**PLEASE NOTE THE START TIME OF THE MEETING**

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**  
  
(Director of Governance) To declare interests in any item on this agenda.
- 3. PROCEDURE FOR THE CONDUCT OF BUSINESS (Pages 5 - 10)**
- 4. 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):

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
5	Local Government (Miscellaneous Provisions) Act 1976 as amended & Town & Police Clauses Act 1847 – Driver's Licence H686– Mr A D	1

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	Harper	
6	Local Government (Miscellaneous Provisions) Act 1976 as amended & Town & Police Clauses Act 1847 – Driver's Licence H1665– Mr F W Meads	1

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.

**5. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AS AMENDED & TOWN & POLICE CLAUSES ACT 1847 - DRIVER'S LICENCE H686-MR A HARPER (Pages 11 - 14)**

To consider the attached report.

**6. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AS AMENDED & TOWN & POLICE CLAUSES ACT 1847 - DRIVER'S LICENCE H1665-MR F MEADS (Pages 15 - 26)**

To consider the attached report.

**7. INCLUSION OF PUBLIC AND PRESS**

To invite the public and press back into the meeting for the remaining items of business.

**8. PREMISES LICENCE TRANSFER AND DPS CHANGE UNDER THE LICENSING ACT 2003 FOR WO FAT, 270-272 HIGH ROAD LOUGHTON (Pages 27 - 30)**

To consider the attached report. (Further background documents to follow).

## Licensing Committee - Terms of Reference

- (1) The full Committee shall comprise 15 Councillors appointed by the Council at its annual meeting, including a Chairman and Vice-Chairman.
- (2) For the functions set out in Appendix 1, and the legislation listed in Appendix 2, a Subcommittee consisting of no more than any three Councillors drawn from the members of the full Committee shall be formed. Any such Subcommittee shall include, by rota, one of the six Licensing Subcommittee Chairmen appointed at each Annual Council meeting.
- (3) The Quorum for the Committee is set out in the Rules set out in Part 4 of this Constitution save that no business shall be transacted unless either the Chairman or Vice-Chairman of the Committee is present.
- (4) The Committee and Subcommittees shall have full authority to hear and determine licensing applications.
- (5) The Committee and Subcommittees shall be further empowered to determine appeals made against the decisions of the Director of Neighbourhoods taken under delegated authority on licensing applications. (See Council delegation schedule for more details)
- (6) The Committee shall at all times carry out its duties solely within the policy from time to time determined by the Council and shall conduct its proceedings in accordance with the requirements set out in Appendix 3 (Conduct of Business by Licensing Committee and Subcommittees).
- (7) The Licensing Committee shall take no part in the production or revision of the statement of licensing policy made under Section 5 of the Licensing Act 2003, however, they may determine policy under the legislation listed in Appendix 2 to this Article.
- (8) To be responsible for the consideration and approval of Designation Orders under Section 13 of the Criminal Justice and Police Act 2001 (Exercise of Controls over the consumption of alcohol in Public Places).

**LICENSING ACT 2003 – LIST OF FUNCTIONS AND DELEGATED AUTHORITY**

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Subcommittee</b>	<b>Officers</b>
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	
All policy matters except the formulation of the statement of licensing policy	All cases		

**LIST OF STATUTORY POWERS**

Those functions pertaining to licensing and registration and permits and consents contained in the following legislation and any regulations, orders, byelaws or other subsidiary legislation made under the above Acts:

Animal Boarding Establishments Act 1963  
Breeding & Sale of Dogs (Welfare) Act 1999  
Breeding of Dogs Act 1973  
Breeding of Dogs Act 1991  
Caravan Sites & Control of Development Act 1960  
Caravan Sites Act 1968  
Dangerous Wild Animals Act 1976  
Gambling Act 2005  
Guard Dogs Act 1975  
House to House Collections Act 1939  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Pet Animals Act 1951  
Pet Animals Act 1951 (Amendment) Act 1983  
Riding Establishments Acts 1964 & 1970  
Scrap Metal Dealers Act 1964  
Scrap Metal Dealers Act 2013  
The Game Act 1831  
Town Police Clauses Act 1847  
Town Police Clauses Act 1889  
Zoo Licensing Act 1981

**PART A – CONDUCT OF BUSINESS BY LICENSING COMMITTEE AND SUBCOMMITTEES**

All references to committee in this annex shall be taken to infer a reference to the associated subcommittees.

**1. General Conduct**

- 1.1 All hearings of the Licensing Committee under the Licensing Act 2003, are to be held in accordance with the Personal Licences, Hearings, Premises Licences and Club Premises Certificates, and Licensing Register Regulations, made under the Licensing Act 2003.
- 1.2 The Council's Constitution shall regulate the conduct of and debate at meetings.
- 1.3 In the case of hearings under the Licensing Act 2003, the Committee shall only consider those matters relevant to the licensing objectives as set out in the Licensing Act 2003 and the statement of licensing policy adopted by the Council.

**2. Declarations of Interest**

- 2.1 Members of the Committee are subject to the Council's Code of Conduct.

**3. Participation in the Hearing**

- 3.1 Debate shall be restricted to members of the Licensing Committee. Where a local ward member, not being a member of the Committee, wishes to participate in the hearing, they may do so only with the permission of the Chairman and their participation shall be subject to the same rules as are applied to any other witnesses to the application.
- 3.2 In hearings other than those under the Licensing Act 2003, where a ward member is a member of the Committee, and wishes to object to the application, the member shall give 14 days' notice of their intention, and shall play no part in the decision-making process of the Committee. In hearings under the Licensing Act 2003, those named as responsible authorities and interested parties in the Act may only make representations within the time limits set out in the relevant statutory provisions.
- 3.3 All persons participating in the hearing shall be made aware of the limitations or scope of statements that will be acceptable and, in particular, that statements should be factual or a fair statement on a matter of public interest.
- 3.4 In the case of any hearing pursuant to the summary review procedure under the Violent Crime Reduction Act 2006, the membership of any Subcommittee adjudicating on such a review shall comprise any three members drawn from the Licensing Committee subject to the proviso that no member should serve more than one hearing.

#### **4. Attendance of the Public**

- 4.1 The Council's Constitution and relevant statutory provisions relating to the admission or exclusion of the public shall apply to all meetings of the Licensing Committee.

#### **5. Natural Justice**

- 5.1 There are two elements to natural justice:

##### **(a) Fairness**

- (i) All persons affected by the decision or in the case of matters associated with the Licensing Act 2003, those named as responsible authorities and interested parties in the Act, will be allowed a hearing before a decision is made.
- (ii) Only objectors who can show clearly that they are affected by a decision shall be afforded the right to be heard or, in the case of hearings under the Licensing Act 2003, only those named in the Act as responsible authorities or interested parties.
- (iii) All information shall be made available, where possible in advance, to the applicant and the Committee.
- (iv) All members of the Committee shall be present throughout the hearing of a particular application. Where a member arrives late or leaves during a hearing of a particular application, that member shall play no part in the decision-making process. Where an application is adjourned it shall be continued by the same members only, and no others.
- (v) The Committee shall have discretion in respect of 'late' objections. Such objections shall be clearly marked on the agenda as such and the Committee shall decide on their acceptability. The applicant shall be advised of any late objections. In the case of representations made in relation to the Licensing Act 2003 applications, these shall only be accepted in accordance with the relevant statutory provisions.

##### **(b) Prevention of Bias**

- (i) The rules on the declarations of interest shall be firmly applied.
- (ii) If the Committee moves into private session to consider its decision, it shall be accompanied only by its advising officers, none of whom shall have taken a substantive part in the hearing, and shall play no substantive part in the decision-making process.

#### **6. General Procedures for Hearings**

- 6.1 The following procedural requirements shall be followed at all times:

- (a) There shall be no recommendation from officers on the agenda;
- (b) The Committee shall be supplied with copies of all relevant documentation and the process and order of procedure shall be as follows:

- (i) The Chairman will open the meeting and introduce persons as appropriate asking applicants and representatives to identify themselves.
- (ii) The Chairman will outline the procedure to be followed.
- (iii) The Lead Officer will outline the matter in hand.
- (iv) The applicant or representative will present his/her case, with or without witnesses, and be questioned by members or any objectors/persons making representations present.
- (v) Any objectors/persons making representations may then present their objections/representation, with or without witnesses, and be questioned by members or the applicant/s or their representative.
- (vi) The objectors/persons making representations may make a final statement (without introducing new issues).
- (vii) Finally, the applicant has the right to make a final statement (without introducing new issues).
- (viii) All evidence/disclosures are to be made in the presence of all persons, unless someone voluntarily excuses themselves from the proceedings.
- (ix) Committee members shall restrict themselves to questions and not discussion or comment.
- (x) The applicant, objectors/persons making representations shall be allowed to ask officers questions of a technical/factual nature at any time during the proceedings.
- (xi) An adjournment should be granted where to do otherwise would deny a fair hearing.
- (xii) The Committee may resolve to decide upon the application in private session, however, if it becomes necessary to recall anyone for additional information, everyone shall be invited to return to the Hearing.
- (xiii) The decision shall be given in the presence of all parties that wish to be present and confirmed in writing as soon as possible thereafter. If legal advice is given to members this advice will be repeated in summary form.



By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## **Report to the Licensing Sub Committee**

**Date of meeting: 2 April 2019**

**Subject: Wo Fat 270 to 272 High Road Loughton Essex IG10 1RB**



**Epping Forest  
District Council**

**Responsible Officer: Kim Tuckey (01992 564034) Licensing Manager**

**Democratic Services: R Perrin**

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### **Decisions Required:**

**To determine the applications for a Premises Licence Transfer and DPS change under the Licensing Act 2003**

### **Report:**

#### **Applications**

Applications have been made by the Vital Eats Limited (trading as the Wo Fat Restaurant) for a Premises Licence transfer and change of DPS for the above premises. The applications were received on the 7 March 2019.

The authority received two objections, one from the Home Office Immigration Department and one from Essex Police.

Under Section 42 (6) of the Licensing Act 2003, where a Chief officer of police considers the granting of the transfer of a Premises Licence would undermine the crime prevention objective or the Immigration Office considers granting the transfer of the licence would be prejudicial to the prevention of illegal working at a premises, they may make an objection. This is also referred to in Paragraph 9.25 of the revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018 edition).

Under section 37 (5) of the Licensing Act 2003 for the change of a DPS (designated premises supervisor) both the police and the Immigration office may make representations to the application where they are satisfied in the exceptional circumstances of the case, the application would undermine the crime prevention objective which according to Paragraph 2.6 of the Guidance includes the prevention of illegal working in licensed premises.

As a result of an operation by both the police and the Immigration office a review application was submitted to the authority on the 29 January 2019. On the 18 March 2019 a Sub-Committee considered the review application and Members of the Licensing Sub Committee decided to revoke the licence subject to the right of appeal.

Members must now consider the representations regarding the Premises Licence transfer & DPS change that was received on the 8 March 2019.

Although the decision was to revoke the premises licence, this continues in existence until any appeal is determined or abandoned. It is therefore perfectly possible to transfer a licence during this time.

Any transferred licence will be transferred subject to that appeal and the transferee must recognize that they are quite likely to end up with no licence if the appeal is lost.

## **Licensing Act 2003**

When considering applications for a Transfer of the Premises Licence and change of DPS the authority must **have** regard to steps that are appropriate to promote the crime and disorder licensing objective.

It must also have regard to its Statement of Licensing Policy and any guidance issued by the Secretary of State.

## **Consultation**

The Responsible Authorities consulted with Essex Police and the Home Office.

The authority received two representations from the Home Office and Essex Police to the immediate Transfer application and DPS change.

The Objections relate to the prevention of crime i.e. illegal working in the licensed premises.

## **Guidance Issued by the Secretary of State**

The Licensing Act 2003 provides that the licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182.

Paragraphs 2.1 to 2.6, 4.31 to 4.41, 8.88, 8.99 to 8.102 and 9.25 of the Guidance apply to this application.

## **Options**

In determining this application, the Sub-Committee may take any of the following steps as it considers necessary for the promotion of the licensing objectives, namely:

- (a) to grant the transfer of the Premises Licence and DPS change as submitted or when it is to take effect;
- (b) to grant the transfer of the Premises Licence and refuse the DPS change;
- (c) to grant the DPS change and refuse the transfer of the Premises Licence; or
- (d) reject both applications.

## **Determination**

The Sub-committee is asked to determine the application having regard to

- (a) the content of this report and representations
- (b) any additional information obtained from the hearing
- (c) the Council's statement of licensing policy
- (d) Guidance issued by the Secretary of State, and
- (e) the steps appropriate to promote the licensing objectives.

## **Appeal**

If any party is aggrieved with the decision they can appeal to Magistrates court. The appeal period is 21 days from notification of the decision.

## **Background Papers Used in Preparing This Report:**

- The Licensing Act 2003  
<http://www.legislation.gov.uk/ukpga/2003/17/contents?view=plain>
- The Secretary of State's Guidance issued under Section 182 Licensing Act 2003



- Epping Forest District Council's statement of licensing policy.  
<http://www.eppingforestdc.gov.uk>

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**Attached documents (This information will follow)**

- Application for Transfer of premises licence
- Application for change of DPS
- Representation from Immigration Office
- Original objection from Essex Police dated 8<sup>th</sup> March 2019
- Objection to the variation to specify the Designated Supervisor & Transfer of Premises Licence from Essex Police
- Map showing the area
- Copies of Sections 37 (5) and 42 (6) of the Licensing Act 2003.
- Copies of paragraphs 2.1 to 2.6, 4.31 to 4.41, 8.88, 8.99 to 8.102 and 9.25 of the Guidance.

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