AGENDA

NOTE: In the case of non-members, this agenda is for information only

Committee - LICENSING COMMITTEE

Date & Time - WEDNESDAY 16 MARCH 2016 AT 10.00 AM

Venue - NORFOLK ROOM, THE CONFERENCE SUITE, ELIZABETH HOUSE, DEREHAM

Members of the Committee requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting. If the information requested is available, this will be provided, and reported to Committee.

<table>
<thead>
<tr>
<th>Members:</th>
<th>Persons attending the meeting are requested to turn off mobile telephones</th>
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<tr>
<td>Mr S.G. Bambridge (Chairman)</td>
<td>Mrs K. Millbank</td>
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<td>Mr K. Martin (Vice-Chairman)</td>
<td>Mr T F C Monument</td>
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<td>Mrs E J Bishop</td>
<td>Mr W. R. J. Richmond</td>
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<td>Councillor C Bowes</td>
<td>Mr F. J. Sharpe</td>
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<td>Mr P R W Darby</td>
<td>Mr M. S. Robinson</td>
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<td>Mr K.S. Gilbert</td>
<td>Mrs J Hollis</td>
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Democratic Services
Elizabeth House, Walpole Loke,
Dereham Norfolk, NR19 1EE

Date: Monday, 7 March 2016

Please ask for Teresa Smith  Telephone (01362) 656295
e-mail: teresa.smith@breckland.gov.uk
**PART A- ITEMS OPEN TO THE PUBLIC**

1. **MINUTES**  
   To confirm the Minutes of the meetings held on 30 November 2015.

2. **APOLOGIES**  
   To receive apologies for absence.

3. **URGENT BUSINESS**  
   To note whether the Chairman proposes to accept any item as urgent business, pursuant to Section 100(B)(4)(b) of the Local Government Act, 1972.

4. **DECLARATION OF INTERESTS**  
   Members are reminded that under the Code of Conduct they are not to participate in the whole of an agenda item to which they have a Disclosable Pecuniary Interest. In the interests of transparency, Members may also wish to declare any other interests that they have, in relation to an agenda item that supports the Nolan principles detailed within the Code of Conduct.

5. **NON-MEMBERS WISHING TO ADDRESS THE MEETING**  
   To note the names of any non-members who wish to address the meeting.

6. **LATE NIGHT REFRESHMENT EXEMPTIONS UNDER THE LICENSING ACT 2003**  
   Report of Executive Manager for Public Protection.

7. **INTRODUCTION TO POLICE LICENSING OFFICER**  
   To receive a verbal update.

8. **LICENSING MATTERS**  
   To receive a verbal update.

9. **NEXT MEETING**  
   To note the arrangements for the next meeting to be held on 15 June at 10:00am in the Norfolk Room, Elizabeth House.

   **SAFEGUARDING TRAINING**  
   Immediately following the meeting a training session on Safeguarding will be held.
BRECKLAND COUNCIL

At a Meeting of the

LICENSING COMMITTEE

Held on Monday, 30 November 2015 at 10.00 am in
Norfolk Room, The Conference Suite, Elizabeth House, Dereham

PRESENT
Mr S.G. Bambridge (Chairman)  Mr T F C Monument
Mr K. Martin (Vice-Chairman)  Mr W. R. J. Richmond
Mrs E J Bishop  Mr F. J. Sharpe
Mr P R W Darby  Mr M. S. Robinson
Mrs J Hollis

In Attendance
Tiffany Bentley  - Interim Licensing & Business Support Manager
Helen McAleer  - Senior Democratic Services Officer

Action By

16/15 MINUTES (AGENDA ITEM 1)

The Minutes of the meeting held on 3 June 2015 were confirmed as a correct record and signed by the Chairman.

17/15 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Councillors Gilbert and Millbank.

18/15 URGENT BUSINESS (AGENDA ITEM 3)

None.

19/15 DECLARATION OF INTERESTS (AGENDA ITEM 4)

No declarations were made.

20/15 NON-MEMBERS WISHING TO ADDRESS THE MEETING (AGENDA ITEM 5)

None.

21/15 LICENSING ACT 2003 POLICY REVIEW (AGENDA ITEM 6)

Councillor Gilbert was unable to attend the meeting but he had asked for his concern about the lack of consultation with the Town & Parish Councils to be raised. The Chairman asked if other Members had the same concerns.

The Licensing Officer explained that when a Policy was first implemented, much wider consultation took place. In the present
case there had been no major changes to the decision making process. Therefore a smaller consultation had taken place with only those directly affected being contacted.

It was pointed out that the details of all licence applications were made available on the public website and could be easily accessed. The Chairman noted that he received a weekly list of applications by e-mail which he found very useful. It was agreed that in future that information should be sent out to all Members and Substitute Members of the Licensing Committee.

The Licensing Officer then presented the report and advised that no responses had been received to the public consultation that had taken place. She noted that one area that Members might like to review was the exemption of late night refreshment licences which had come into force on 5 November 2015. That had been too late to include it in the current review.

The change in legislation gave Local Authorities the power to remove the requirement for a licence for late night refreshment. Currently if an establishment provided hot food and drink between the hours of 11pm and 5am it was required to have a licence.

As the power to provide the exemptions was new, it was difficult to determine what effect it would have. Currently, all such premises had to be licensed and each of the licences could have conditions applied, which covered such issues as litter and noise. If the requirement to have a licence was removed, there would no longer be any direct control over those issues.

Members were advised that the average cost of a late night refreshment licence was about £180 per year.

Councillor Sharpe asked what the Police had to say about the change in legislation and he was advised that there was to be a multi-agency meeting the following week at which the views of the police and other authorities would be heard.

Councillor Darby considered that there was not enough information for Members to make a decision.

The Licensing Officer pointed out that the Council was required to publish the statement of its Licensing Policy by 7 January 2016. To meet that deadline, the Policy review had to be approved by Council in December. If Members wished to consider the late night refreshment licensing issue they could do so at a later date.

It was proposed and seconded that the Policy on late night refreshment should remain as it was for the time being and would be reviewed at the next meeting when more information, including consultation with adjoining Authorities, would be available.

RESOLVED to RECOMMEND TO COUNCIL that the revised Statement of Licensing Policy, required for the Council as licensing authority to discharge its statutory duties under the
Licensing Act 2003, be approved.

It was further **RESOLVED** that the deregulation of the licensable activity of late night refreshment would be reviewed at the meeting on 16 March 2016.

### 22/15REVISED STATEMENT OF PRINCIPLES (GAMBLING ACT 2005) (AGENDA ITEM 7)

The Licensing Officer presented the report which reviewed the Council’s principles that applied to exercising its functions under the Gambling Act 2005. The principles were reviewed every three years and the revised Statement of Principles had to be published by 31 December 2015. Consultation had been carried out and two responses had been received. Norfolk Constabulary had made no comments.

The Chairman had concerns about gambling which he knew affected many families although it was hard to get figures for specific towns or districts. Internet gambling; including on-line bingo, was a big cause for concern but the Council had no control over that. He was also concerned about the cumulative effect of betting shops, although he acknowledged that they were generally well regulated.

The Licensing Officer pointed out that in the Representation on page 143 it explained how the organisations were required to look at the risks, based on the locality of their premises. In guidance which had been released at the end of September there was a requirement for an evidence based approach.

The Chairman suggested that Members might like to attend a Local Government Association Conference in London in January. He would e-mail the information to them.

Councillor Robinson asked if the Planning and Licensing departments worked together when an application for a betting shop was received.

The Licensing Officer advised that two separate applications had to be made. Generally the planning application was sought first and then the Licence. Proliferation was not something that could be considered by the Licensing Authority.

The Chairman thought that the Licensing Committee would have to have very strong reasons to refuse a Licence once planning permission had been granted. The Council had not considered it necessary to introduce a policy to restrict the number of such establishments in the District. He encouraged Members to write to their MP if they felt they had a problem with gambling in their Ward. He also suggested that the Committee could invite someone from the gambling business and someone from a charity involved with people suffering the effects of gambling, to attend a future meeting.

Councillor Darby asked if the Council had any control over the number of slot machines at a premises and it was confirmed that they did.
The Chairman said that Members of the Committee could request to accompany the Licensing Team when they carried out visits to premises or to spend time with the Team to understand their work.

With regard to the report, Members confirmed that they had considered the representations made and did not require any changes to the Statement.

**RESOLVED to RECOMMEND TO COUNCIL** that the revised Statement of Principles, required in order for the Council to act as the licensing authority and discharge its statutory duties under the Gambling Act 2005, be approved.

23/15 NEXT MEETING (AGENDA ITEM 8)

The arrangements for the next meeting were noted.

The meeting closed at 11.13 am

CHAIRMAN
BRECKLAND DISTRICT COUNCIL

Report of: Executive Manager Public Protection - Phil Adams

To: Licensing Committee 16/03/2016

(Author: Tiffany Bentley – Licensing Officer)

Subject: Late night refreshment exemptions under the Licensing Act 2003

Purpose: To outline the powers that the licensing authority has to opt to exempt some late night refreshment from the requirements of the Licensing Act 2003.

Recommendation:

1) That Members consider the information in this report, the powers available and decide whether any exemptions are appropriate for the Breckland district. It is the Officer’s recommendation that Breckland continues to require all late night refreshment providers to be licensed.

1.0 BACKGROUND

1.1 Section 71 of the Deregulation Act 2015 came into effect on 05/11/2015. This had the effect of amending the Licensing Act 2003 which regulates the provision of late night refreshment. The provision of late night refreshment is defined as the supply of hot food or hot drink on or from premises to members of the public between 11pm and 5am for consumption on or off the premises. This is in addition to the supplies of late night refreshment that are already exempted under the Licensing Act 2003.

1.2 The new powers for Breckland Council allow exemptions in three areas. Supplies of hot food or hot drink are exempt if it takes place (a) on or from premises situated in an area designated by the authority; (b) on or from premises of a description designated by the authority (from a prescribed list) or (c) during a period (beginning on or after 11pm and ending on or before 5am) designated by the licensing authority. Attached to this report as Appendix A is the ‘Guidance on the licensing of late night refreshment’. This guidance was produced by the Home Office and is intended to assist licensing authorities and police forces with monitoring and enforcement activity in relation to the provision of late night refreshment.

2.0 OPTIONS

2.1 Do nothing

2.2 Consider the new powers and take no further action at this stage

2.3 Consider the new powers and make recommendations for amendments to the statement of licensing policy, subject to the statutory consultation process. Members would need to determine the times that an exemption would apply and the types of premises which would benefit.

3.0 REASONS FOR RECOMMENDATION
3.1 Licensing authorities do not have to use the exemptions and can continue with the current licensing scheme for late night refreshment premises. However licensing authorities are advised within the guidance that they should consider the option of deregulation where appropriate.

3.2 Licensing authorities must also consider the potential impact of any exemption on the promotion of the four licensing objectives:
- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- The protection of children from harm

3.3 Whilst late night refreshment premises remain within the scope of licensing they are subject to regulation and inspection. The statutory review process is also available in the event of any problems in relation to the above licensing objectives.

4.0 EXPECTED BENEFITS

4.1 Legislative compliance

5.0 IMPLICATIONS

5.1 Constitution & Legal

If any exemptions are to be designated the consultation requirements of the Licensing Act 2003 apply.

5.2 Corporate Priorities

Supporting Breckland to develop and thrive
Developing the local economy to be vibrant with continued growth

6.0 WARDS/COMMUNITIES AFFECTED

6.1 All

7.0 ACRONYMS

7.1 Not applicable

Background papers:-

Lead Contact Officer
Name and Post: Tiffany Bentley – Licensing Officer
Telephone Number: 01362 656371
Email: tiffany.bentley@breckland.gov.uk
Key Decision: No
Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A – Guidance on the licensing of late night refreshment
Guidance on the licensing of late night refreshment
1. Introduction

1.1 This guidance sets out what activities are to be treated as the provision of late night refreshment and as such are regulated under the Licensing Act 2003 ("the 2003 Act"). It also sets out which activities are exempt from the late night refreshment aspects of the licensing regime. In particular, it includes guidance on the provisions in the Deregulation Act 2015 which amends the 2003 Act to give licensing authorities powers to opt to exempt supplies of late night refreshment from the licensing requirements of the 2003 Act which are made at or from certain designated locations, types of premises or times.

1.2 This guidance is not issued as part of the statutory guidance under section 182 of the 2003 Act but will be incorporated into the section 182 guidance when it is next updated. It is intended to assist licensing authorities and police forces with monitoring and enforcement activity in relation to the provision of late night refreshment. It may also help businesses who wish to provide hot food or drink to determine whether they will require a licence under the 2003 Act in order to do so.

2. General

2.1 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of 'hot food and hot drink' between the hours of 11pm and 5am. Under Schedule 2, food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

2.2 Shops, stores and supermarkets selling cold food and cold drink, whether it is immediately consumable or not, from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.

2.3 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.

2.4 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.

2.5 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions.

2.6 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol.

2.7 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as "free of charge". Supplies by a registered charity or anyone authorised by a registered charity are also exempt.
2.8 Supplies made on moving vehicles (for example boats, trains or coaches) are also exempt. However supplies made from a vehicle which is permanently or temporarily parked, such as from a mobile takeaway van, are not exempt (see section 3.4 below for more detail on provisions for ‘Vessels, vehicles and moveable structures’).

2.9 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplied to:

- a member of a recognised club supplied by the club;
- persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation;
- an employee of a particular employer (for example in a staff canteen);
- a person who is engaged in a particular profession or who follows a particular vocation (for example, a tradesman carrying out work at particular premises);
- a guest of any of the above.

3. Exemptions based on designated locations, premises types and times

3.1 The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.

3.2 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with anti-social behaviour or disorder associated with the night time economy. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.

3.3 The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:

- a) on or from premises which are wholly situated in a designated area;
- b) on or from premises which are of a designated description; or
- c) during a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).

3.4 When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.
Vessels, vehicles and moveable structures

Under section 189 of the 2003 Act, a vehicle which is not permanently situated in the same place and is or is proposed to be used for one or more licensable activities while parked at a particular place, is to be treated as if it were premises situated at that place. Therefore, a mobile provider of late night refreshment, such as a kebab van, could be treated as exempt if it supplied hot food to the public late at night in an area which had been designated as exempt. If the mobile van drove to and began operating in a non-exempt area, a licence to carry on this activity would be required. Should the licensing authority introduce an exemption, and subsequently wish to revoke it if problems arise, it has the power to do so. Areas which are likely to be considered for exemption by licensing authorities (for example, an area outside a town centre) are unlikely to be areas in which mobile kebab vans would frequently operate. As such, mobile vehicles selling late night refreshment are likely to still require licences in the areas in which they are more commonly found.

3.5 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:

- Motorway service areas;
- petrol stations;
- local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- hospitals (except domestic premises);
- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
- licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.

3.6 When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 11pm and 5am when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.

3.7 A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.

3.8 Where a premises is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premises such as a motorway service area sits across the boundary of two or more licensing authority areas.
3.9 Licensing authorities do not have to use the exemptions at all and can continue to require all late night refreshment providers to be licensed. However, licensing authorities should consider deregulation where appropriate.

3.10 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premises is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.

3.11 When deciding which exemption to use, if any, the relevant licensing authority should always first consider what the risks are in terms of the promotion of the licensing objectives. The decision to make an exemption is a licensing function that licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in section 5 of the 2003 Act. However, it is for the licensing authority to decide on the detail and extent of the consultation beyond the statutory minimum. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy. It is also for the licensing authority to decide within its statement of licensing policy whether the decision to grant exemptions is delegated to its licensing committee or to an officer.

3.12 When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.

3.13 Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual premises back into the licensing regime if there is a problem with that particular premises. In such cases the licensing authority would have to take a decision about the entire exemption and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.