
BRECKLAND COUNCIL

At a Meeting of the

LICENSING COMMITTEE

**Held on Monday, 7 April 2014 at 10.00 am in
Anglia Room, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mr S.G. Bambridge (Chairman)	Mr K. Martin
Mr J.D. Rogers (Vice-Chairman)	Mrs K. Millbank
Mrs S Armes	Mr F.J. Sharpe
Councillor C Bowes	Mrs P.A. Spencer
Mr T.J. Lamb	

Also Present

Mrs L.S. Turner	Mr M. A. Wassell
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In Attendance

David Lowens	- Solicitor, nplaw
Rowland Wilson	- Licensing Manager
Tiffany Bentley	- Licensing Officer
Julie Britton	- Senior Committee Officer

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24/14 MINUTES (AGENDA ITEM 1)

The Minutes of the meeting held on 9 October 2013 were confirmed as a correct record and signed by the Chairman.

25/14 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Paul Darby, Thomas Monument and Karen Pettitt.

26/14 NON-MEMBERS WISHING TO ADDRESS THE MEETING (AGENDA ITEM 5)

Lynda Turner and Michael Wassell.

27/14 CONSULTATION ON FEES UNDER THE LICENSING ACT 2003 (AGENDA ITEM 6)

The Licensing Committee were asked to consider the Home Office consultation so that an agreed response could be returned to the Home Office before 10 April 2014.

The Government was committed to cutting red tape within the licensing regime for responsible businesses. It had recently reduced regulation on live music and had also brought forward additional proposals for further

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By**

deregulation of entertainment, and removing burdens on late night refreshment providers as well as reducing the burden of the personal licence holder.

As part of the Government's proposals to rebalance the Act, it had recognised that some Licensing Authorities faced significant deficits in carrying out the licensing function as the fee levels had remained unchanged since the implementation of the Act in 2005. The current fee regulations prescribed different fee amounts for grants, variations, and annual fees, which had been set in bands depending on the non domestic rateable value of a premises.

The Government introduced provisions in the Police & Social Responsibility Act 2011 to enable locally set fees based on cost recovery. The Government decided not to continue to set fees centrally as it recognised that costs could vary and could result in fee payers paying too much in certain areas.

The proposed locally set fees could not be used to raise extra revenue, or tackle crime but should be based on recovering the costs that an authority incurred carrying out the licensing function. It was important to make it clear to the fee payers that locally set fees were set transparently and were based on a cost recovery basis.

The Government's intention was not to impose excessive duties or complex processes that would increase the costs of the licensing system; therefore, views were being sought on how to create a proportionate system of fees. Additionally, caps on the levels of each fee were being introduced.

The consultation on fees ran from 13 February 2014 to 10th April 2014 and a copy of the document had been attached at Appendix A of the agenda.

It was noted that the Government was looking for responses from all Councils across the country by 10 April 2014 and with this in mind, Tiffany Bentley (Licensing Officer) had attended a seminar in London and a copy of the proposed responses had been attached at Appendix B on page 56 of the agenda.

The Chairman asked if Members had any comments to make on the Home Office document. Cllr Rogers asked if Breckland Council had been charging enough to cover its costs. The Licensing Manager advised that it was.

Referring to section 1.5 of the agenda, the Chairman asked if the Council could in fact set a fee that covered the costs of those people who applied for a licence but were refused. Members were informed that the fee had to be reimbursed to the applicant if the licence was refused.

Cllr Lamb reminded Members that the Government was trying to simplify the whole system but felt that this was a retrograde step in comparison to the previous system which he felt had been far superior; this had been when all applications had to go through the Magistrates court. The Chairman said that the Council was within the system it was in and could not do anything about it.

Cllr Armes asked if there was any way that the process could be accelerated so that applications went through much quicker. The Chairman felt that Breckland Council did deal with applications within a suitable timeline. The

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Licensing Manager advised that both Breckland and South Holland were on par with each other but reminded Members that all Councils had to be guided by statutory deadlines. Cllr Wassell felt that Breckland Council was very efficient.

The Chairman mentioned the Hearings that had recently taken place. The Licensing Officer explained that a great deal of mediation work took place beforehand and a Hearing was considered to be the last resort.

Referring to Appendix A, the Chairman asked if Members would prefer to go through the document page by page or whether Members would prefer to go straight to Appendix B, Breckland Council's proposed responses. The latter was agreed.

The consultation document introduced the subject and set each question in context. Each response was highlighted by the Licensing Manager and the reasons behind each response were explained.

Consultation Question 1:

Do you agree or disagree that the use of National Non-domestic Rateable Value bands as a criterion for variable fee amounts should be abandoned?

Response - **Agreed**

Consultation Question 2:

If you disagree, please provide evidence that higher National Non-domestic Rateable Value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

Response - **N/A**

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

Response - **Agree**

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Response - **Additional costs are incurred due to enforcement work, which includes late night inspections, dealing with noise and anti social behaviour complaints .Additional costs are also incurred during a premises licence application process for a late night hour, through receipt of representations, mediation / hearings.**

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

Response - **Agree**

**Action
By**

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Response - **N/A**

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

Response - **Disagree**

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

Response – **The Council agrees that the licensing authority should be able to determine the hours during which the higher fee is payable and the disagreement relates only to timing. 23.00 hours is a more appropriate time as it corresponds to the public view, previous terminal hour as recognised by the public, and to tie in with noise nuisance legislation.**

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

Response - **Agree**

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Response - **Licensing Authorities should be able to determine what premises should be excluded, for example premises that are authorised to open late only on certain nights of the year, for example Bank Holidays or New Years Eve.**

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

Response - **Disagree**

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Response - **Costs are more linked to late terminal hour, and other activities such as entertainment and off sales**

Consultation Question 13:

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By**

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

Response - **Disagree**

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Response - **It is difficult to define 'exclusively or primarily' and could lead to costly disputes. For example defining whether a petrol station should be licensed for the sale of alcohol can currently be problematic.**

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

Response - **Disagree**

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

Response - **Agree**

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

Response - **Premises providing overnight accommodation, where the alcohol is supplied to residents only, for consumption on the premises, Theatres, where alcohol is supplied to ticket holders in relation to a relevant production at the premises or people concerned in the performance only, Cinemas, where alcohol is supplied to ticket holders in relation to the exhibition of a film at the premises only, and for example Bingo Halls**

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

Response - **Premises that are located in special policy areas, cumulative impact areas/zones, as these premises within these areas are usually used exclusively or primarily for the consumption of alcohol and the provision of late night regulated entertainment. More enforcement work is carried out in these areas by licensing authorities.**

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

**Action
By**

Response - **Agree**

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Response – **No comment**

Consultation Question 21: (TEN)

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

Response - **Agree**

Consultation Question 22:

Please set evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Response - **The number of TENs that are determined at sub committee hearings is minimal. Applicants are usually willing to work with responsible authorities regarding their concerns.**

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:23a: publish their proposed fee levels?;

23a. Response - **Agree**

23b: publish the basis on which they have been calculated?

Response - **Agree** (changed from disagree to agree)

23c: publish the measures they have taken to keep costs down?

Response - **Agree** (changed from disagree to agree)

23d: invite comments from interested parties?

Response - **Disagree**

Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Response - **Increase electronic communication with applicants and licence holders. Continue with targeted and proportionate enforcement.**

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

Response - **Agree**

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25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

Response - **Agree**

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

Response - **Agree**

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990.

Response - **Agree**

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Response - **General advice and guidance on Licensing Act 2003 applications. Notifications to Members and Parish Councillors and Town Councils of applications.**

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

Response - **Disagree**

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

Response - **Don't know**

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

Response - **None**

In relation to question 4, Cllr Lamb asked if the extra work was due to complaints, and if these complaints were found to be groundless, would the applicant have to pay extra costs. The Chairman advised that if there were

**Action
By**

grounds for the complaints the licence would automatically have to be reviewed. The Licensing Officer explained that checks would be carried out in the first instance to ensure that the complaints were valid and would be included as an objection if validity was found; a penalty would not be applied to the applicant.

Cllr Millbank asked why question 7 had been marked as disagreed. The Licensing Officer explained that although the question had been quite difficult to understand, it was the start time of midnight that they had not agreed with and felt that it should have been earlier. The Chairman believed that the Council should be able to set a charge from 2300hrs. Cllr Spencer felt that if the Licensee was asking for extra hours, the Licensing Committee must have an input. She felt that matters such as these had always been a bone of contention. The Licensing Officer explained that the applicant would not be expected to pay a fee; however, more complaints/issues were received when premises opened later. Cllr Wassell felt that the answer should be more explicit to the question and explained that the Licensing Officers were disagreeing with the timing – it should be from 2300hrs not midnight.

Cllr Lamb said that the new regulations that had been brought in previously had been to liberalise the timings across the country; 24 hour opening had been the aim; however, now it seemed that it was being suggested to revert back to the original regime. The Chairman pointed out that a Licensing Authority could not unreasonably restrict the opening hours and mentioned the fact that the last three Hearings heard by the Committee Members had found it very difficult to make decisions that were considered fair for everyone. Cllr Rogers was convinced that the Government had announced that it would be making allowances on opening times during the World Cup. In response, the Chairman asked if this meant that more premises would be able to remain open past its normal licensing hours. The Licensing Manager explained that all licensed premises that remained open beyond 1am would have to apply for a Temporary Event Notice (TEN). He did point out; however, that the opening time allowance was only for England games. The Licensing Officer reminded the Committee that such allowances had been made for the Queens Jubilee and the Royal Wedding. In terms of fees, there would not be any change as long as the application met with the criteria and all would be subject to normal controls such as noise nuisance etc. Cllr Rogers asked if the Council had the same powers as the Police. In response the Chairman said that it did not, however, Members were able to review the licence if complaints had been received. The Chairman asked the Committee to concentrate on the subject matter being discussed which was the fees.

Referring to question 10, Cllr Armes asked how village halls fitted into this criteria and also asked about the Carnegie Rooms in Thetford being a public hall. Members were informed that the majority of village halls did not have alcohol licences and therefore would have to apply for a TEN. In response to the latter question, the Licensing Officer advised that the Carnegie Rooms was licensed until 1am. This particular question was non standard and therefore if it was for a permanent permission on a licence the applicant would be charged more. Cllr Lamb asked if an applicant indicated that they wanted to open beyond 11pm would the additional fee be added to the licence, and if it was occasional he presumed that the applicant would not have to pay any extra on top of their annual licence. Members were informed that this was correct. Cllr Armes hoped that all villages etc and Town

**Action
By**

Councils would have this notification spelt out to them for clarity. The Licensing Manager stated that information would be sent out once the consultation responses had been received by Government and when the new legalisation came into force.

In relation to question 17, the Chairman asked if this would apply to village halls and premises under a TEN. Members were informed that if it was operating for example as a cinema then it would. Cllr Armes asked what the outcome would be if someone charged an entrance fee that included a free glass of wine or visa versa. The Licensing Manager said that he would speak to the Member after the meeting. Cllr Lamb asked if a hotel guest could demand a drink after hours. Members were informed that it would be at the Licence Holder's discretion.

The Chairman felt that cumulative impact zones under question 18 should be kept in mind for a future discussion.

In relation to question 21, the Chairman asked what would happen if a person applied for a TEN every month of the year. The Licensing Officer explained that licensing authorities had little control in relation to TENs unlike a premises licence. The Licensing Manager referred to the £100 cap and said that it was unlikely that Breckland Council would have anything near to that. It was highlighted that the current charging price was £21. The Chairman said that he had never heard of any objections to a TEN. Members were informed that this was due to the Licensing Team working very closely with the Police.

Referring to question 23b, Cllr Millbank asked why the response had been marked as disagreed as she felt that proposed increases to fee levels on the basis that they had been calculated should be published. Members were informed that there was too much detail involved. The Chairman reminded Members that when the fees were calculated a report had to be prepared and published on an agenda for the Licensing Committee which was a public document. Cllr Wassell asked if a link could be put on the website directing the public to the Minutes once the meeting had been convened. He felt the same about question 23c. The Licensing Officer explained that this was about the level of detail as there were certain matters that could be classed as enforcement issues and she would rather not have this information in the public domain. Cllr Millbank agreed with the link to the Minutes option.

It was agreed that questions 23b and 23c be changed from disagree to agree. Mr Lowens, the Council's Solicitor reminded Members that this could open the Licensing Team up to a great deal more administration. The Licensing Officer reported that the questions in relation to cost recovery did form a large part of the discussion at the Home Office. Cllr Turner said that the key statement should be to remind the public that this was just a cost recovery exercise and that the Council was not allowed to make money from fees. Cllr Sharpe asked what would be published under 23c now that the response had been changed. It was agreed that a simple statement would be published. The Chairman reminded Members of the Committee process that the fees would have to go through.

Under 23d, it was suggested that the question itself should be changed from 'invite' to 'accept'. Members were informed that the questions could not be changed.

**Action
By**

Referring to question 24, the Chairman asked how many electronic applications were received. It was noted that such applications were less than 10% mainly from the larger organisations. Cllr Wassell asked if there were any differences in costs in relation to paper and electronic applications and payments. Members were informed that it did save the Council money in the long run.

Cllr Lamb asked for the rationale behind question 27. The Licensing Manager explained that it would be very difficult to agree one date; at the moment each individual premise licence was issued from the date it was applied. If this single national payment date came into effect it would put a lot of strain on the Officers. The Licensing Officer pointed out that there was nothing to prevent an applicant paying their whole fee upfront before the payment due date. Members were informed that this would be something that would be looked at in the future. The Chairman said that if someone did not pay their renewal fee on time the licence would automatically be suspended which had worked well in the past. He preferred to keep it as it was on a rolling/monthly basis. Cllr Martin asked if there was a time limit if someone did not pay their fee on time. The Licensing Manager advised that there was a statutory deadline in place and the process was explained.

The Chairman asked Members if they had any further comments to make. Cllr Sharpe asked about timelines for implementation. Members were informed that the timeline was unknown at this present time. Cllr Armes asked about the proposed de-regulations. The Licensing Manager explained that further deregulations were anticipated in May. In relation to VAT on alcohol, letters had been sent out to 800 premises; however, at 5.30pm on 4 April, the Government then issued a statement informing all licensing authorities that the deregulation of VAT on alcohol was not now being implemented.

Once again Cllr Lamb expressed his dismay about the claims from Government that these reforms would be simplified which, in his opinion, were clearly not.

RESOLVED that a formal response be sent to the Home Office providing answers to the questions posed with the consultation, and that this (as above) be the response from Breckland Council.

Following further discussions about other Licensing matters it was agreed that the next meeting of the Licensing Committee scheduled for 30 April 2014 be cancelled.

The meeting closed at 11.15 am

CHAIRMAN