

Gloucester City Council

| | | | |
|-------------------------|--|---------------------------------|----------------------------------|
| Meeting: | Licensing and Enforcement Committee | Date: | 18th June 2013 |
| Subject: | Members' Update for Licensing and Enforcement Committee | | |
| Report Of: | Martin Shields, Director of Services and Neighbourhoods | | |
| Wards Affected: | All | | |
| Key Decision: | No | Budget/Policy Framework: | No |
| Contact Officer: | Lisa Jones, Food Safety and Licensing Service Manager | | |
| | Email: lisa.jones@gloucester.gov.uk | Tel: | 396047 |
| Appendices: | None | | |

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To outline to Members, details of key Licensing Activities carried out in the last quarter, including enforcement work, progress updates of our work plan and any changes in Licensing Law.

2.0 Recommendations

- 2.1 Members of the Licensing and Enforcement Committee note the contents of this report.

3.0 Updates on Licensing Activities in the last Quarter

- 3.1 On March 7th, a Licensing and enforcement sub-committee hearing was held to consider an application for Tesco's Stores at 21/25 Southgate Street, Gloucester for the sale of alcohol off the premises from 06:00 until 23:00 every day. This application was granted subject to conditions attached.
- 3.2 On March 13th, a Licensing and Enforcement sub-committee was held to consider an application for a Private Hire Driver, who previously had his licence revoked following convictions for plying for hire without an appropriate licence and benefit fraud. The convictions held did not fall in line with our current guidelines for convictions, which recommended that 3- 5 years should elapse for dishonesty convictions. Members had recommended that a minimum of 3 years

should elapse upon the decision to revoke his licence. Members considered his case and supporting character references decided to refuse his application on the grounds that the offences were serious, the driver had not declared his convictions on the application form nor had he notified us of the offence whilst he was previously licensed.

3.3 On 9th April, the Licensing and Enforcement Sub-Committee considered a new application for a Private Hire Driver who previously had his licence immediately suspended following a notification that he was disqualified from driving. The applicant also had convictions for being in possession of loaded weapon in public, driving whilst disqualified and driving with no insurance. The convictions held did not fall in line with our current guidelines for convictions, which recommended that 3 years should elapse for violence offences and 1-3 years for major motoring convictions. Members had recommended that a minimum of 3 years should elapse upon the decision to revoke his licence. Members considered his case and supporting character references but did not feel that he demonstrated he was now a fit and proper person to hold a private hire licence. His application was refused.

3.4 On 22nd April, the Licensing and Enforcement Sub-Committee held a hearing to consider a new application for a premises licence at Morrisons, Metz Way, Gloucester. The application was for the retail sale of alcohol (off sales only) Monday to Sunday (inclusive) from 06.00 to Midnight.

The Sub-Committee decided to grant licence in accordance with the application but with a condition requiring the applicant to risk assess the need for SIA guards at least once per quarter and to provide a copy of the assessments to the Licensing Authority the Police on request, for the following reasons:

1. To identify any further measures that may be required to promote the licensing objectives.
2. The Committee considered that the Police evidence was insufficient to support the condition they had requested.

3.5 Taxi Rank Review

The City wide taxi rank review is now complete and an Officer's findings will be presented to Members of the Licensing and Enforcement Committee on 18th June 2013. Further work will be needed in future to continue to improve the current taxi rank provision, however, some of this is reliant on liaising closely with developers for areas including the Docks, the Oxbode, Kings Square and the Bus Station when they are re-designed.

3.6 Eastgate Street Closure on Weekends –

During the weekends of 5th, 13th and 20th April, Eastgate Street was fully pedestrianised between 11pm and 5am on Friday and Saturday nights for a trial period. The Licensing Team worked out of hours during these weekends to monitor the activities of the taxi and private hire vehicles during this time. The change in location for the taxi rank positioned outside GL1 leisure centre proved successful and taxi drivers welcomed this approach. The Taxi Marshalls also

followed the rank to this location to continue to monitor and coordinate activities. The team also worked closely with Private Hire Operators to ensure they could still collect their customers safely and legally without entering Eastgate Street itself. Despite a few teething problems, the trial was successful and Police did see a reduction of crime in the City centre.

3.7 Gating Order-

The licensing Team have recently completed a formal consultation on a proposal to gate Organ's Alley which runs alongside Butlers nightclub Between Eastgate Street and Russell Street. An informal consultation was carried out with nearby residents who maybe affected by the gating order during November to December 2012 and evidence has been collated on the problems found and experienced in Organs Alley. The formal consultation sought representations from key stakeholders including statutory undertakers over a period of 28 days and no objections were received from statutory bodies however, once objection has been received from an interested party. The matter will be now be referred to Cabinet for decision on 10th July 2013.

3.8 New Licensing Applications

Between 1st March 2013 and 1st June 2013 we have received 125 new Licensing Act applications; the majority consisted of Temporary Events Notices where 57 were received. This mirrors the amount of applications received in the previous quarter (we reported 121 applications and 56 TENs). 48% of all Licence applications received related to Private Hire and Taxi licensing which was smaller in numbers than last quarter as we reported 58%. 30% related to applications under the Licensing Act 2003 (last quarter we reported 28%). This quarter has seen a high number of licensing applications with the team also taking over street trading consents. Seasonally, this is consistent with our expectations but we will expect a higher number of temporary event applications over the summer months as more events are planned.

3.9 The Food and Licensing Team have taken over the responsibility of Street Trading, there has been a staggered handover from the city centre management team to ensure less disruption for the consent holders.

4.0 **Court cases and other Enforcement Work**

4.1 There have been no Licensing Court cases for Gloucester City Council in the last quarter.

4.2 A court case is scheduled for 20th July in Cheltenham Magistrates Court to consider a prosecution of a private hire driver, who was caught plying for hire in December 2012.

4.3 **Taxi and Private Hire Enforcement:**

During 17th May, Gloucestershire Police and Gloucester City Council ran an operation in Gloucester city centre to monitor both Hackney and private hire taxis which saw a total of five private hire drivers and one taxi driver was reprimanded for minor faults on their vehicles that evening. Police Officers will continue to use Licensing Enforcement Powers where Licensed vehicles are found to be dangerous. This will support the City Council's Licensing Enforcement role assisting more regular checks on Licensed vehicles particularly where the Police can use their additional powers to stop vehicles on the road.

4.6 **Reform to taxi and private hire law consultation:**

The Law Commission have reviewed the current legislation governing taxi's and private hire and recently consulted on some proposals during the summer of 2012. The Law Commission has now collated the feedback from the consultation and aim to publish the final report and draft Bill at the end of 2013. In their interim statement they have indicated the following proposals:

1. Retaining a two tier system to distinguish between taxis and private hire.
2. No longer recommend abolishing quantity controls of licensed taxi's.
3. Who and what is covered by licensing:
 - a) Recommends that wedding and funeral cars remain exempt from licensing
 - b) Recommends that Pedicabs and limousines are brought within the scope of licensing.
4. Setting national standards for both taxi and private hire services.
5. Allowing local authorities to retain the ability to set local standards for taxis.
6. Only national standards should apply to private hire services.
7. Retain restriction on taxi's from working cross border but allow private hire operators to use vehicles or drivers licensed in another district.
8. Retain private hire operator licensing but only cover dispatch functions.
9. Recommend all drivers undergo disability awareness training and make it a duty to stop for disabled passengers.
10. Introducing a range of tougher powers for licensing officers, including ability to stop licensed vehicles, impounding and fixed penalty schemes, and clarifying the touting offence.
11. Magistrates courts will continue to hear appeals in respect of licensing decisions and a simplified judicial review procedure in the County Court to challenge local taxi conditions.

New Case Law

- 4.7 Members should be aware of recent High Court licensing case: R (Hemming & Others) v Westminster City Council, Court of Appeal, 24th May 2013, where a group of sex shop owners have won a major victory in the Court of Appeal after a three year campaign to reduce its licence fees. Since 2005, Westminster City Council charged sex shop owners in the West End of London £29,102 for their annual licence. In 2009, new European laws came into force in the United

Kingdom, which prevented licensing authorities from charging fees going beyond the actual costs of the authorisation process.

A group of seven shop owners, claimed that at most 10% of the fee was justified – the remainder being spent by the Council on prosecuting unlicensed operators, which, it was argued, could not be charged back to the licensees. In May 2012 their claim was upheld in the High Court, but Westminster City Council appealed to the Court of Appeal, arguing that their charges were not affected by the new laws.

The effect of the judgment is that Westminster City Council will have to repay the great majority of fees charged since the beginning of 2010. Also, the Council has been ordered to pay interest at 10% above the Bank of England Base Rate and “indemnity costs” because it rejected an offer to compromise the claim on much better terms at the start of the proceedings. Westminster City Council was also ordered to recalculate fees going back to 2004 because of deficiencies in its procedures for determining fees. The cost to the Council of the award, the interest and costs is likely to approach £2 million.

The judgment has important consequences for the funding of regulation in the United Kingdom because the new laws apply to all forms of authorisation to provide service activities. These include all forms of licensing (except for gambling and taxis which are excluded), street trading, subscriptions payable by professions including the legal professions in order to be able to practice and even the fees for planning applications.

Most importantly, the judgment will limit the scope of fees which licensing authorities will be able to charge under the Licensing Act 2003, following the right to determine fees introduced by the Police Reform and Social Responsibility Act 2011. The Home Office has delayed introducing Regulations implementing the legislation, it is thought in order to enable it to consider the Hemming judgment.

5.0 Future Work

- 5.1 **Eastgate Taxi Rank** – Following the success of the trial period to close Eastgate Street during 3 consecutive weekends in April 2013. The Licence Team will be working with the Nightsafe Group to continue with this approach on a 6 month experimental period whilst a full consultation is carried out with the public to make this a more permanent measure. It is hoped that the 6 month experimental Order will commence by August 2013. Toward the end of the 6 month experimental Order, once all teething problems have been addressed the Licensing Team will carry out a 28 day consultation process and liaise with the County Highways to seek this as a permanent measure.
- 5.2 The Licensing Team will be consulting upon a proposal to have a new designated public place order (DPPO) in the Barton and Tredworth Ward. This consultation

was postponed from September 2012 due to additional areas being identified as potential dispersal areas for street drinking, so the proposal will now include wider areas within the Tredworth Ward. Barton Street (from Barton lights to India Road) is already included under the City Centre DPPO; however, the side streets and other spaces for dispersal were not included but have now been identified as areas experiencing nuisance street drinking. Feedback from the consultation will determine whether a DPPO is appropriate and this will be brought back to Licensing and Enforcement Committee in September 2013 for a final decision.

6.0 Forward work plan and Conclusions

6.1 The table below outlines our proposed work plan for Full Licensing and Enforcement Committee meetings over the next 3 years. As the years goes on, additional matters may need to be brought to Members attention or further requests may be presented for decision. However, the items below illustrate expected matters that are scheduled for consideration Committee dates are in **bold** and shaded grey.

| LICENSING AND ENFORCEMENT COMMITTEE | POLICY ITEM |
|--|---|
| June 2013 | Late Night Levy Report update for Gloucester City Hackney Carriage and Private Hire Policy Final report on Review of Taxi Rank Provision Quarterly Licensing Update for Members |
| <i>July 2013</i> | <i>Consult on Designated Public Place Order in Barton and Tredworth Ward</i> |
| September 2013 | Designated Public Place Order in Barton and Tredworth Ward Update on proposed Taxi Tariff (to take effect December 1st 2013) Quarterly Licensing Update for Members |
| <i>October 2013</i> | <i>Consult on Taxi Meter Tariff over 14 days Taxi and Private Hire Fees Review Assessment, Inform Chair of L and E Committee of proposals to Taxi fees,</i> |
| <i>November 2013</i> | <i>Consult on Taxi and Private Hire fees over 28 days</i> |
| December 2013 | Licensing Act 2003 Statement of principles Update Committee on Taxi Meter Tariff set (following consultation) Update report on Taxi fee status OR Report to consider objection on fees (fees to take effect 1st April 2014) Quarterly Licensing Update for Members |
| March 2014 | Sex Establishment Policy Review Quarterly Licensing Update for Members |
| <i>May 2014</i> | <i>Members Training</i> |
| June 2014 | Sex Establishment Policy Review (to take effect July 2014) Quarterly Licensing Update for Members |

| | |
|-------------------------------|--|
| September 2014 | Update on proposed Taxi Tariff (to take effect December 1st 2014) Quarterly Licensing Update for Members |
| <i>October 2014</i> | <i>Consult on Taxi Meter Tariff over 14 days Taxi and Private Hire Fees Review Assessment, Inform Chair of L and E Committee of proposals to Taxi fees,</i> |
| <i>November 2014</i> | <i>Consult on Taxi and Private Hire fees over 28 days</i> |
| December 2014 | Update Committee on Taxi Meter Tariff set Update report on Taxi fee status OR Report to consider objection on fees (fees to take effect 1st April 2015) Quarterly Licensing Update for Members |
| March 2015 | Review of Advertising Board and Tables and Chairs Policy Quarterly Licensing Update for Members |
| <i>May 2015</i> | <i>Members Training</i> |
| June 2015 | Review of Private Hire and Hackney Carriage Policy Quarterly Licensing Update for Members |
| <i>July & August 2015</i> | <i>Consult on Gambling Act Statement of Principles over 12 weeks</i> |
| September 2015 | Update on proposed Taxi Tariff (to take effect December 1st 2015) Gambling Act Statement of principles for approval (to take effect Dec 2016) Quarterly Licensing Update for Members |
| <i>October 2015</i> | <i>Consult on Taxi Meter Tariff over 14 days Taxi and Private Hire Fees Review Assessment, Inform Chair of L and E Committee of proposals to Taxi fees,</i> |
| <i>November 2015</i> | <i>Consult on Taxi and Private Hire fees over 28 days</i> |
| December 2015 | Update Committee on Taxi Meter Tariff set Update report on Taxi fee status OR Report to consider objection on fees (fees to take effect 1st April 2016) Quarterly Licensing Update for Members |
| March 2016 | Street Trading Policy Review Quarterly Licensing Update for Members |
| <i>May 2016</i> | <i>Members Training</i> |
| June 2016 | Hackney Carriage and Private Hire Policy Final report on Review of Taxi Rank Provision Quarterly Licensing Update for Members |

6.2 At each quarterly Licensing and Enforcement Committee meeting, we will continue to update Members on any activities carried out in the last quarter, this will include a summary of what has happened in the team, including number of new Licences, any enforcement work carried out and details of any appeals or prosecutions held, the outcomes of those hearings and any further court cases pending.

7.0 Financial Implications

7.1 There are no financial implications attached to the recommendations in this report.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

8.1 There are none at this time.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

9.1 In Compliance with the Council's risk management strategy any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

10.0 People Impact Assessment (PIA):

10.1 There are no key decisions included in this report.

10.2 A separate PIA will be carried out for each Policy when it is brought before the Licensing and Enforcement Committee.

11.0 Other Corporate Implications

Community Safety

11.1 None

Sustainability

11.2 None

Staffing & Trade Union

11.3 None

Background Documents: None