

Gloucester City Council

Meeting:	Licensing and Enforcement Committee	Date:	10th December 2013
Subject:	Members Update for Licensing and Enforcement Committee		
Report Of:	Gill Ragon, Public Protection Manager		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
	For Information		
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 10th September a full Licensing and Enforcement Committee was held to consider the following items:

- **Scrap Metal Dealers Act 2013**

This new Act took effect from 1st October 2013 and repealed the former legislation governing scrap metal dealers and motor salvage operators. Previously, scrap metal dealers were only required to register for free with the local authority whilst obtaining a waste collectors licence from the Environment Agency. Motor Salvage Operators however, were required to obtain a licence costing £70 to carry out those activities. Following a nationwide rise in metal theft and recognition that the two activities are so similar in nature,

Government reviewed the regulatory controls and merged the two activities under one piece of legislation.

The delegated functions have been assigned between the Licensing and Enforcement Committee and Licensing Officers and this was approved by Full Council on 12th September 2013. Proposed fees are referred to Members of the Licensing and Enforcement Committee on 10th December 2013 for approval.

3.2 There have been no Licensing and Enforcement Sub-Committees held in the last quarter.

3.3 Southgate Street Taxi Rank Provision

The Licence team have assessed the demand and feasibility of providing a taxi rank in the vicinity of Southgate Street and this matter is now referred to the Licensing and Enforcement Committee for final decision on 10th December 2013.

3.4 Eastgate Street Closure on Weekends

The Nightsafe Group have successfully made progress towards the full pedestrianisation of Eastgate Street between 10pm and 5am on Friday and Saturday nights. Gloucestershire Highways have put in place a 6 month experimental order for the closure to commence from 1st December 2013, so the first weekend that saw these changes was 6th December. The Licensing Team will continue to liaise closely with the Nightsafe members and the taxi and private hire trade to ensure that any difficulties associated with collecting a dropping off passengers are resolved.

The Licensing Team have written to all Private Hire Operators to inform them about this closure so that they can ensure appropriate arrangements are made with their passengers upon collection. Operators have a duty to ensure that drivers and vehicles working in their fleet comply with legislation and Officers will be monitoring activities during these weekends to ensure that any illegal plying for hire is eliminated and that these drivers are not seen to be 'ranking up' or touting for custom.

3.5 Taxi Tariff

The current tariff card took effect in February 2012 and the rates were frozen during 2013. We recently published a proposed 3.2% increase to the taxi rates which was intended to take effect on 2nd December 2013. This brings the fares in line with the average for the Midlands and South West. However, we have received one objection from a Hackney Carriage driver who does not want any increase to take effect. This matter is now referred to the Licensing and Enforcement Committee for final decision on 10th December 2013.

3.6 Gating Orders

On 11th September 2013, Cabinet agreed to make a Gating Order for Organ's Alley which runs alongside Butlers nightclub Between Eastgate Street and Russell Street. The Licensing Team is currently proceeding with the procurement process and once a suitable contractor is accepted planning permission will be sought before the gate can be installed.

An existing gating order at Badgers Close, Abbeydale was recently reviewed to assess the impact of the order and its effectiveness through a consultation with the Police and local residents. Residents and the Police felt that the gates should remain as they have proved to be very effective, so the order will now remain in place at least until it is next reviewed in October 2014. Feedback was received from residents that the alleyway had become somewhat cluttered but this has now been cleared by the Council.

3.7 New Licensing Applications

Between 21st August 2013 and 21st November 2013 the Licensing Team have received a total of 480 licensing applications, this is 147 more than we received in the last quarter. From this total, 129 are new Licensing Act applications; the majority of these consisted of premises variations where 43 were received as well as 41 Temporary Event Notifications. This is similar to the amount of applications received in the previous quarter (we reported 115 applications including 45 TENs).

53% of all Licence applications received related to Private Hire and Taxi licensing. Last quarter we reported 52% which included 174 applications as opposed to 255 received this quarter. 27% related to applications under the Licensing Act 2003 (last quarter we reported 35%). This quarter has seen a high number of licensing applications with the team as we also received 10 street trading applications and 33 lottery applications in compared to 11 received last quarter. Seasonally, this is consistent with our expectations as we expect a higher number of lottery and temporary event applications as it comes closer to Christmas.

3.8 Pet shop Licensing

In September, the Licensing Team licensed a new pet shop in Gloucester City which operates from a residential property in Podsmead. The premises had a licence to sell up to 300 snakes (mainly Pythons) which includes adults and small hatchlings. Licensing Officers have liaised closely with Planning Officers and a local Veterinarian to ensure the accommodation is suitable and safe for the sale of such a high number of reptiles.

The same licence holder has recently requested a licence to house 2 dwarf African crocodiles and one Chinese alligator at the premises under the Dangerous Wild Animals Act. The crocodiles are not intended for sale but would require a licence to ensure they are kept safe from members of the public.

4.0 Court cases and other Enforcement Work

- 4.1 A Private Hire Driver was prosecuted on 21st October at Cheltenham Magistrates Court for Plying for Hire in December 2012. Undercover officers acted as customers on a test purchase operation jointly conducted with the Police and Mohammad Ismail PHD199 accepted their fare without pre-booking. The driver was fined £300, £30 victim surcharge and the Council was awarded £600 costs. He was also prosecuted by Gloucestershire Constabulary for driving with no insurance and received 6 penalty points on his DVLA driver's licence. This driver will be referred to the Licensing and Enforcement Committee for Members to determine the status of his Private Hire Driver's Licence.

Taxi and Private Hire Enforcement:

- 4.3 Over the last few months, Licensing and Enforcement Officers have monitored activities of licensed drivers and their vehicles. A number of drivers have been issued suspension notices requiring works to be made to their vehicles where defects have been found or door panels/plates are missing. The Licence team have also worked with Gloucestershire Constabulary to help pull over vehicles on the roadside.
- 4.4 During October, Licensing and Enforcement Officers convinced two licensed premises to close during their out of hour's visits. One takeaway was found open to customers at 2am without the necessary late night refreshment licence and the second was a club which was in breach of their licence conditions by not having door men in attendance on a very busy night.
- 4.5 The licence team continue to issue an appropriate number of totting up penalty points against drivers proprietors or operators through our internal enforcement procedures where breaches are found in contravention of the rule books. Where 12 or more points are issued, the Licence holder will be referred to the Licensing and Enforcement Sub-Committee for a disciplinary hearing. Some infringements can incur 12 points at one time, e.g. plying for hire.
- 4.6 The Licence Team continue to carry out spot checks to challenge illegal plying for hire activities. Further action is being taken against offenders and outcomes of any prosecutions taken will be published on our taxi and private hire newsletter in the future.

5.0 Legislative Updates

5.1 Personal Licences

The Home Office has recently consulted upon new proposals to abolish the need for Personal Licences altogether. Central Government feels that the current approach is not targeted as it requires all premises from the riskiest to the quietest to comply if they sell alcohol. Government's aim appears to be moving in

the direction of enabling licensing authorities to impose conditions on premises licences requiring strict training requirements of those selling alcohol instead. In addition, the proposals of this consultation seek to strengthen legislation to allow the Police to object against Designated Premises Supervisors (DPS) on the crime prevention objective in general, rather than only in exceptional circumstances whilst allowing Licensing authorities to require criminal records checks with any new application to vary a DPS.

Currently, all Personal Licence holders have to have a criminal record declaration on application and their licence lasts up to ten years. The majority of personal licence holders will be due to renew their licences in 2015, so the result of this consultation document may change the need for this, if it is decided to eradicate personal licences altogether.

The Consultation ran until 7th November 2013 and the document can be found on: <https://www.gov.uk/government/consultations/personal-alcohol-licences-enabling-targeted-local-alternatives>

5.2 High Court decision on appeal against Licensing Committee decision:

A recent High Court decision in November 2013 has confirmed that a magistrates' court on appeal from the decision of a Licensing Committee must take that decision into account and must only reverse it if it is satisfied that it is wrong. The case involved a nightclub in Westminster; Westminster's Licensing Committee on a review application brought by the Police imposed a number of conditions and the operator appealed against three.

The Appeal was refused by the magistrates' court but then challenged by way of judicial review. The High Court dismissed the application.

Interestingly, the High Court did not interfere even though on two of the three conditions the Licensing Committee did not give any reasons. The High Court supported the Judge who effectively supplied his own reasons and commented that the conditions were 'proportionate' and that a realistic alternative would have been to revoke the premises licence. It is now suspected that operators may have to rely more on wholly unreasonable decisions possibly combined with a period of problem free trading to persuade the Magistrates' Court that the original decision 'is' now wrong.

5.3 Case including Cumulative Impact Areas and the grant of an off-licence: (*Sainsbury's Supermarkets Limited v Leicester City Council*)

A magistrates' court has allowed an appeal by Sainsbury's against a refusal of a premises licence in a cumulative impact area. This case demonstrates the critical importance of giving individual consideration to the merits of applications and appeals, even when an application is contrary to a directly applicable cumulative impact policy.

In this case, the premises fell in the cumulative impact area, which had been designated by Leicester City Council expressly to create a presumption against off-licence applications, so as to tackle the issue of street drinking in the city centre.

Sainsbury's argued that the issue had been addressed through licence reviews and dealing directly with street drinkers, and that its proposal would not add to any impact which remained. It offered a suite of conditions to deter street drinkers. The council's case was that its progress ought not to be threatened by yet further licensed premises, even by a well-run operator such as Sainsbury's. The court held that Sainsbury's is a reputable and responsible organisation which can provide effective training, systems and support to a high level in the pursuit of good practice. It also noted that higher strength alcohol consumed by street drinkers, which Sainsbury's would not sell, was being purchased outside the cumulative impact area. It stated: "Whilst we fully understand and approve the implementation of the cumulative impact zone, we are strongly persuaded that this application will have no adverse effect on the objectives of the CIZ, the licensing policy and the overall situation in the area."

The Court also heard an extended argument on costs. Sainsbury's argued that the council had behaved unreasonably:

- (a) at the point of decision by failing to understand its own policy (by looking for exceptional circumstances when all that was necessary was a finding that the licence would not add to the impact), and by failing to grapple with the specific proposal before them or deliver proper reasons;
- (b) by failing to accept an offer made without prejudice save as to costs which contained all the conditions eventually imposed; and
- (c) by failing properly to appraise the evidence once served.

The council argued that it had given the case proper consideration at all times, and that it could not have agreed to overturn the decision of its own licensing sub-committee. The court decided to award costs to Sainsbury's in the sum of £44,000, which was the sum incurred since service of the without prejudice letter.

6.0 Future Work

6.1 Scrap Metal Dealers Act 2013:

In the New Year (2014), Members shall be updated on the progress of the licensing team with their determinations for Scrap Metal Dealers Applications. Once fees are approved and received from all applicants, the licensing Team will be able to inform Members how many were granted and/or refused.

It is planned to develop a policy for implementing this Act to ensure a clear and transparent application process is taken by Officers, in particular with regard to determining the suitability of applicants. This draft policy will be referred to members of the Licensing and Enforcement Committee in March 2014 for approval.

6.2 Taxi and Private hire Fees 2014:

The fees for Taxi and Private Hire Licensing were last changed in April 2010 where they were reduced by 5%. The Licensing Team have recently reviewed the current fees and charges and no increase is proposed for the current fees for year 2014/15. The fees will be published in January 2014 to incorporate a new fee for the process of considering exemptions for private hire vehicles from displaying plates and signage where they are conducting executive or chauffeur work, and any changes will be scheduled to take effect from 1st April 2014.

7.0 Forward work plan and Conclusions

7.1 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 ENFORCMENT COMMITTEE	POLICY ITEM
December 2013	Scrap Metal Dealers fees The display of Drivers Names on Badges Southgate Street vicinity Taxi Rank Assessment Update Committee on Taxi Meter Tariff set (following consultation) Update report on Taxi fee status 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</i> <i>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 Licensing 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
September 2016	Update on proposed Taxi Tariff (to take effect December 1st 2016) Quarterly Licensing Update for Members
<i>October 2016</i>	<i>Consult on Taxi Meter Tariff over 14 days</i> <i>Taxi and Private Hire Fees Review Assessment, Inform Chair of L and E Committee of proposals to Taxi fees,</i>
<i>November 2016</i>	<i>Consult on Taxi and Private Hire fees over 28 days</i>
December 2016	Update Committee on Taxi Meter Tariff set (following consultation) Update report on Taxi fee status OR Report to consider objection on Licensing fees (fees to take effect 1st April 2017) Quarterly Licensing Update for Members

7.2 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.

8.0 Financial Implications

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

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

9.0 Legal Implications

9.1 There are none at this time.

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

10.0 Risk & Opportunity Management Implications

10.1 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.

11.0 People Impact Assessment (PIA):

11.1 There are no key decisions included in this report.

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

12.0 Other Corporate Implications

Community Safety

12.1 None

Sustainability

12.2 None

Staffing & Trade Union

12.3 None

Background Documents: None