

Notice of Meeting

Licensing Committee

Date: Tuesday, 06 May 2014

Time: 17:30

Venue: Conference Room 1, (Beech Hurst), Beech Hurst, Weyhill Road,
Andover, Hampshire, SP10 3AJ

For further information or enquiries please contact:

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Legal and Democratic Service

Test Valley Borough Council,
Beech Hurst, Weyhill Road,
Andover, Hampshire,
SP10 3AJ

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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

PUBLIC PARTICIPATION SCHEME

If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.

Membership of Licensing Committee

MEMBER

Councillor A Hope
Councillor J Anderdon
Councillor I Andersen
Councillor A Beesley
Councillor A Brook
Councillor J Budzynski
Councillor M Cooper
Councillor B Few Brown
Councillor A Finlay
Councillor K Hamilton
Councillor A Johnston
Councillor P Lashbrook
Councillor N Long
Councillor I Richards
Councillor A Tupper

Chairman
Vice Chairman

WARD

Over Wallop
Chilworth, Nursling &
Rownhams
St.Mary's
Valley Park
Alamein
Winton
Tadburn
Amport
Chilworth, Nursling &
Rownhams
Harroway
Romsey Extra
Penton Bellinger
St.Mary's
Abbey
North Baddesley

Licensing Committee

Tuesday, 06 May 2014

AGENDA

The order of these items may change as a result of members
of the public wishing to speak

- 1 Apologies
- 2 Public Participation
- 3 Declarations of Interest
- 4 Urgent Items
- 5 Minutes of the meeting held on 16 January 2014
- 6 Minutes of the Licensing Sub-Committee held on 15 April 2014
- 7 **Sex Establishment Licensing Policy and Procedures** 5 - 15

This report proposes a revision of the current policy for determining sex establishment licence applications.
- 8 **Licensed Driver Medical Policy** 16 - 19

This report recommends a minor revision to the wording of the policy relating to the licensing of hackney carriage and private hire vehicles.

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ITEM 7 Sex Establishment Licensing Policy and Procedures

Report of the Head of Administration (Portfolio: Corporate)

Recommended to Cabinet:

- 1. That the fee for the grant/transfer/renewal of a sex establishment licence be set at £1460 where objections are received and the application is determined by the Licensing Committee and at £399 where no objections are received and the application is determined by the Head of Administration.**

Recommended to Council:

- 2. That the delegations to the Head of Administration are amended as set out in italics in Annex 2 to the report so that applications for the grant/transfer/renewal of a sex establishment licence are determined by the Head of Administration in cases where no objections have been received.**
- 3. That the Council not set a limit on the number of sex establishments that may be licensed in the Borough and that the Council continue to consider applications on the merits of each individual case.**

SUMMARY:

- The Council is responsible for licensing sex establishments and currently licenses one sex shop and one sexual entertainment venue.
- The Council has received a request to revise its current policy and procedures regarding determination of applications so that uncontested applications do not need to be determined by the Licensing Committee.
- The request also suggests that the Council should set a numerical limit upon the number of licensed premises.

1 Introduction

- 1.1** The Council adopted with effect from 1st June 1989 Schedule 2 of the Local Government (Miscellaneous Provisions) Act 1982 which meant that it was able to license premises to be used as a Sex Shop or Sex Cinema. This provision was readopted on 1 April 2011 when the Council adopted an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 extending the existing legislation used to license a Sex Shop or Sex Cinema to also include Sexual Entertainment Venues. There is currently no delegated power for sex establishment licence applications to be determined by officers so all applications must come before this Committee for determination.

2 Background

- 2.1 Applicants for a sex establishment licence are required to display a public notice at the premises and in addition, publish a notice in a local newspaper advising that an application has been submitted and inviting written objections. Only objections received within 28 days of the date of the notice may be considered by the Council. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
- 2.2 The Council currently licenses one sex shop at 2 The Broadway, Andover and one sexual entertainment venue at 43 London Street, Andover. Both licences have been renewed in recent months and in both cases no objections were received. The owner of the sex shop, Mr J Spencer, has submitted a request (see Annex 1 to this report) asking that the scheme of delegation be revised so that in cases where no objections are received, applications are determined by officers without the need for the matter to go before the Licensing Committee. The request further asks that the Council consider imposing a numerical limit on the number of sex establishments it will license.

3 Corporate Objectives and Priorities

- 3.1 None; the licensing of sex establishments is a statutory function of the Council and thus does not relate directly to any of the corporate objectives or priorities.

4 Consultations/Communications

- 4.1 No specific consultations have been conducted on this matter. Officers have consulted colleagues in other local authorities and in the majority of cases their procedures reflect the recommendations in this report.

5 Options

- 5.1 In relation to the determination of applications, the options are either to continue as at present – with all applications being determined by the Licensing Committee – or adopt a scheme of delegation such that applications for the grant/renewal/transfer of applications where no objections are received, will be determined by the Head of Administration.
- 5.2 In relation to the policy of setting a numerical limit, the options are either to continue as at present – with no such limit and each application being judged on its own merits – or adopt a numerical limit which once reached would preclude the licensing of any further premises.

6 Option Appraisal

- 6.1 Although the Council adopted the necessary legislation to license sex establishments in 1989, it did not receive its first application until 2005. The present policy of all applications being determined by this Committee is the same as that first adopted back in 1989 and in the view of officers would benefit from a review. As mentioned in paragraph 4.1 above,

the majority of local authorities – both those locally e.g. Southampton and Rushmoor and those further afield e.g. Cheltenham and Sedgemoor – have a scheme of delegation whereby non-contentious applications are determined by officers and applications that have attracted objections are determined by a Committee. Such a policy would bring the Council in line with many other local authorities and mean that the determination of sex establishment licences would be on the same basis as applications submitted under the Licensing Act and Gambling Act. It would also speed up the decision making process and remove the need for the Committee to meet with the associated savings in both officer and member time. Such a change will require a revision to the current scheme of delegation to the Head of Administration and this is set out in Annex 2 to this report.

- 6.2 The request from Mr Spencer for the Council to consider imposing a numerical limit on the number of premises it will license suggests that such a policy will restrict further premises from opening when the economic climate improves. It is suggested that this policy has worked in other towns and prevents unlicensed sex shops from opening. When the Council received its first such application back in 2005 this Committee was advised that the legislation allowed the Council to set a maximum number of premises, the practical implication being that once a maximum is reached then the Council can refuse any further licence applications and the applicant is unable to appeal against this decision. As a result the Committee convened a Panel to consider this specific matter.
- 6.3 Whilst there are some benefits to fixing a maximum number of premises that should be licensed, the Panel was concerned that by introducing such a figure this may lead to an increase in applications by potential applicants wishing to obtain a licence before the limit was reached. It was felt that market forces would influence the actual number of applications received and a limit was thus unnecessary. It was also noted that a sex shop licence would be needed for any premises in the Borough operating a mail order business. By imposing a limit, the Council could prevent such a business from being established. The Council does have policies encouraging the establishment of small businesses within the Borough and so the adoption of a numerical limit would conflict with this. The Panel felt that this was a further reason for not imposing a limit upon the number of premises to be licensed. It is the view of officers that all of these comments remain currently valid and there has been no material change in circumstances to warrant the adoption of a limit.
- 6.4 In determining applications for Sex Shop and Sex Cinema licences the Council has adopted a policy that it will consider the appropriateness of the location of the premises. In determining what is appropriate, it is normal to consider what other premises are in the vicinity of the proposed premises and the approach set out in Annex 4 attached to this report is used in deciding whether or not a licence should be granted. This list is not to be regarded as definitive and is provided to assist the Committee in determining applications.

As an example, if there were a school or church in the vicinity of the road in which the licensed premises is located or an adjacent road then it is generally accepted that this would provide the Council with sufficient grounds for refusing the application.

- 6.5 For determining Sexual Entertainment Venue licence applications the Council has adopted a policy statement that “Test Valley Borough Council will treat each case on its own merits but is unlikely to approve applications for a Sexual Entertainment Venue in areas that are predominantly residential or close to ‘sensitive premises’ such as schools, places of religious worship or places of education and learning”. In essence this is the same approach as that for Sex Shops and Sex Cinemas as set out in paragraph 6.4 above. Irrespective of the type of premises for which a licence is being sought, it is felt that these policies are more appropriate as they allow for applications to be judged on their own merits.

7 Resource Implications

- 7.1 The current fee for the grant, renewal or transfer of a sex establishment licence is £1460. An analysis of how this fee has been calculated is attached as Annex 3 to this report. As mentioned in paragraph 6.1 above, if non-contentious applications are determined by officers there will be a saving in that it will not be necessary to convene a meeting of this Committee. Thus those matters related to the determination of an application by the Committee should be removed from the fee calculation as the fee must be set only at a level which is sufficient to cover the authority’s costs; the Council must not make a profit from such fees. This will mean that the fee for the grant/transfer/renewal of a sex establishment licence will reduce to £399 where no objections are received and the application is determined by the Head of Administration.

8 Legal Implications

- 8.1 There are no direct legal implications as a result of the proposed recommendations. By not setting a maximum number of sex establishments that it is prepared to license, the Council will be unable to automatically refuse any applications. However, the process of determining each application should ensure that inappropriately located premises are not licensed.

9 Equality Issues

- 9.1 A revised Equalities Impact Assessment has not been undertaken as the proposed changes do not impact upon the original Assessment.

10 Other Issues

- 10.1 Community Safety – none.
- 10.2 Environmental Health/Sustainability Issues – none.
- 10.3 Property Issues – none.

- 10.4 Wards/Communities Affected – potentially the whole Borough but most likely Andover and Romsey town centres.

11 Conclusion

- 11.1 The policy and procedures for determining sex establishment licences have been in place for some time. A revision to allow non-contentious applications to be delegated to officers would save time and resources bringing the Council into line with other authorities. Setting a maximum number of licensed premises is considered inappropriate as it could prevent businesses from being established and ultimately other factors are likely to determine the number of applications received.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Report to Licensing Committee 28 th February 2006			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	Four		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	6 May 2014

ANNEX 1

06 NOV 2013

Erotica Belle limited
120 Surrey Road
Poole
Dorset
BH12 1HJ

30 Oct. 13

Michael White
Licensing Manager
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire
SP10 3AJ

Delegation of Powers in Lieu of Objections Local Government Miscellaneous Act 1982

Dear Mr White,

I would like to request that the Licensing Committee grant delegated powers to their officers in lieu of objections to the above Act.

This would bring Test Valley in line with other local authorities in the area and would benefit the council by:

- Reducing the time taken for the decision making process.
- Removing the need for the Licensing Committee to meet and the costs associated with the Licensing Committee.
- Reducing the Legal Services costs.
- Reducing Licensing Officers time and costs.

The benefits to the retailer are:

- Reduced time to action the variation.
- Reduced legal costs.
- Reduced time in compulsory representation at a committee meeting.

Could I also request that the Council use their powers to restrict the number of Sex Establishments and/or Sexual Entertainment venues within the Test Valley?

A clear definition and the restriction would restrict the opening of more Sex Establishments when the economic climate improves i.e. 1 licensed sex shop and 1 licensed entertainment venue.

This has worked for policy in other towns and prevents unlicensed sex shops opening.

Please inform me of the licensing committee's decision?

Yours sincerely

Jonathan Spencer
Director
Erotica Belle Limited

Delegation to Head of Administration

- (1) To administer the Hypnotism Act 1952 including the institution of proceedings for breaches of the Act and Section 12 of the Local Government (Miscellaneous Provisions) Act 1982.
- (2) To issue licences under S.2 of the House-to-House Collections Act, 1939, as amended after suitable attempts at liaison and after making such enquiries as may be necessary.
- (3) To allocate street collections.
- (4) To issue, suspend, revoke or refuse hackney carriage and private hire licences under the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 and to issue notices exempting private hire vehicles from displaying the private hire vehicle plate under the provision of Section 75(3) of the Act.
- (5) Issue of Licences in respect of Money Lenders and Pawn Brokers (subject to periodic reports to the Licensing Committee on Licences issued).
- (6) To convene meetings of working parties, panels and other meetings in which members are involved.
- (7) Following consultation with the Leader, to approve the attendance of Members at conferences and meetings including the payment of travelling and subsistence allowances.
- (8) To determine all applications and decide all other matters in relation to the licensing functions set out in the Licensing Act 2003 and any amending legislation save for those applications and matters expressly excluded from delegation to officers by that legislation.
- (9) To determine applications made pursuant to the Licensing Act 2003 and any amending legislation where the holding of a hearing has been dispensed with in accordance with Regulations made thereunder.
- (10) To reject representations under the Licensing Act 2003 which he considers to be vexatious, frivolous or repetitious.
- (11) To determine all applications and decide all other matters in relation to the licensing functions set out in the Gambling Act 2005 and any amending legislation save for those applications and matters expressly excluded from delegation to officers by that legislation.
- (12) To determine applications made pursuant to the Gambling Act 2005 and any amending legislation where the holding of a hearing has been dispensed with in accordance with Regulations made thereunder.
- (13) To reject representations under the Gambling Act 2005 which he considers to be vexatious, frivolous or repetitious
- (14) To determine applications for Licensed Premises Gaming Machine permits
- (15) To cancel or vary Licensed Premises Gaming Machine permits
- (16) To determine applications for Club Gaming Permits and Club Machine Permits
- (17) To determine applications for Prize Gaming Permits
- (18) To determine applications for Small Lottery Registration
- (19) To revoke a Small Lottery Registration

- (20) To remove automatic entitlement to gaming and/or to two gaming machines on alcohol licensed premises
- (21) To grant, with or without conditions, or refuse applications for a licence to place tables and chairs on the highway in accordance with the Highways Act 1980 including the suspension of such licences
- (22) To amend the scheme for the Licensing of Tables and Chairs on the highway save for any significant amendments which shall be referred to the Cabinet
- (23) To establish an Independent Review Panel for a period of four years to review Members Allowances and to pay consultancy fees to the Chairman of the Panel.
- (24) To make recommendations under the Licensing Act 2003 as to the restriction of admission of children to non-classified films, or a particular classified film, save always to his discretion to refer a film to a licensing sub-committee for determination of the appropriate recommendation.
- (25) To serve Closure Notices under S19 of the Criminal Justice and Police Act 2001 in respect of premises used for the unlicensed sale of alcohol and to take action for the enforcement, cancellation and termination of such notices pursuant to S19-28 of that Act
- (26) To determine all applications and decide all other matters in relation to the licensing functions set out in the Scrap Metal Dealers Act 2013 and any amending legislation save for the hearing of representations in cases involving the refusal, revocation or variation of a licence.
- (27) To determine applications for sex establishment licences save for where objections to the grant, transfer or renewal of a licence have been received.*
- (28) That the holders of the following posts be authorised to enter land or premises and to carry out any act included in the legislation and subordinate legislation made thereunder and any amendments thereto set out in the:

Local Government (Miscellaneous Provisions) Acts 1976 & 1982
 Town Police Clauses Acts 1847 & 1889
 Public Health Acts 1875 & 1936
 House to House Collections Act 1939
 Hypnotism Act 1952
 Police, Factories Etc. (Miscellaneous Provisions) Act 1916
 Licensing Act 2003
 Gambling Act 2005
 Health Act 2006 – Smoke free provisions PART 1 Chapter 1 (in so far as they relate to fixed penalty notices and associated matters pertaining to the smoke free requirements)
 Scrap Metal Dealers Act 2013

<u>Post No</u>	<u>Designation</u>
LD07	Licensing Manager
LD29	Licensing Officer

Test Valley Borough Council – fee for Sex Establishment licence as at January 2014

Stage	Officer	Time (hours)	Cost - Grant/ Transfer/Renewal ¹	Cost - Variation ²
Initial discussion/contact with applicant	Licensing Manager	2	£66	£66
Site visit	Licensing Manager	2	£66	-
Public consultation	Licensing Manager	3	£99	-
Consultation analysis	Licensing Manager	1	£33	-
Basic application management i.e. entering into computer system	Licensing Manager	2	£66	£66
Research and preparation of Committee report	Licensing Manager	3	£99	-
Licensing Committee meeting (preparing room, etc.)	Premises management staff	1	£220	-
Member travelling	Licensing Committee members	Average cost	£190	-
Officer attendance at Licensing Committee meeting	Licensing Manager	1	£33	-
	Solicitor	1	£90	-
	Committee Officer	1	£30	-
Pre-meeting work e.g. agenda preparation and checking	Licensing Manager	1	£33	-
	Solicitor	2	£180	-
	Committee Officer	3	£90	-
Post meeting work i.e. administration connected with grant or refusal	Licensing Manager	1	£33	£33
TOTAL			£1328	£165
Add 10% for contingencies e.g. any unforeseen additional work			£132	£17
GRAND TOTAL			£1460	£182

¹ These types of application must be advertised by the applicant and may thus attract public objections/comments which will be taken into account when the application is determined by the Licensing Committee

² This type of application is not subject to any public notice or advertising requirement and will not attract public comments/objections. This type of application is intended to reflect changes in a licence already issued and will most likely be used for changes to trading hours or minor structural alterations to the premises

Local Government (Miscellaneous Provisions) Act 1982

**GUIDELINES IN RELATION TO APPLICATIONS FOR SEX
ESTABLISHMENTS
WITHIN THE BOROUGH OF TEST VALLEY**

Applications for a licensed sex establishment will be considered on the merits of each individual case. However, the Council is aware of the sensitivity of such applications and will only grant permission after considering the location of the proposed premises in relation to the following:

- (i) a place of religious worship / education;
- (ii) a pre-school facility /school;
- (iii) a higher education campus;
- (iv) any residential accommodation;
- (v) an enclosed shopping mall, arcade or centre;
- (vi) a market;
- (vii) a public building open to the general public;
- (viii) a community meeting place;
- (ix) a community leisure facility;
- (x) a “Gateway” to an identifiable ‘locality’;
- (xi) a location where children may be at risk but not previously referred to in (i)—(x) above; or
- (xii) a conservation area within the meaning of the Town and Country Planning Acts.

The location of the proposed premises in the vicinity of any of the above will not necessarily preclude a licence from being issued. The above is for guidance only.

ITEM 8 Licensed Driver Medical Policy

Report of the Head of Administration (Portfolio: Corporate)

Recommended:

That the current policy regarding the requirement for licensed hackney carriage and private hire vehicle drivers to have a medical is amended in line with this report.

SUMMARY:

- The authority licenses hackney carriage and private hire vehicle drivers.
- Following a recent audit it is necessary to revise the policy regarding the requirement for drivers to have a medical so that it reflects how medicals are requested.

1 Introduction

1.1 The Head of Administration has delegated powers to issue, suspend, revoke or refuse hackney carriage or private hire vehicle licences under the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. It is necessary to make a minor change to part of the policy relating to the issue of driver licences and member approval of these changes is required as they constitute changes to policy that fall outside of the delegated powers of the Head of Administration

2 Background

2.1 The Borough Council licenses hackney carriages (taxis) and private hire vehicles (minicabs) as well as the drivers of these vehicles and in the case of private hire vehicles, the operators of those vehicles. The current procedures for the issuing of these licences have been in place for a number of years and were last subject to a substantial revision in 2006 to take account of changing demands, to increase efficiency and to address potential deficiencies in the issue of driver's licences.

2.2 One of the changes made in 2006 was the introduction of a requirement for drivers to meet DVLA Group 2 medical requirements. This required drivers to submit a medical upon initial application and then again when they reached the ages of 45, 50, 55, 60 and 65. Beyond 65 they are required to submit an annual medical. DVLA Group 2 requirements are those applied to lorry, bus and coach drivers and are the standard recommended by the Department for Transport in their guidance to local authorities. Thus the standard is applied not just within Hampshire but also the rest of the country.

3 Corporate Objectives and Priorities

- 3.1 The licensing of hackney carriage vehicles, drivers and operators is a statutory requirement and as such does not directly relate to any of the authority's corporate objectives and priorities.

4 Consultations/Communications

- 4.1 The taxi trade has not been consulted on this change as the proposed change will merely revise the current policy to reflect what currently happens. The change is recommended following dialogue between the Legal and Democratic Service and the Internal Audit Team of the Finance Service.

5 Options and Option Appraisal

- 5.1 This authority (along with all others in Hampshire) has adopted a policy that it will follow the DVLA Group 2 medical requirements in respect of licensed private hire and hackney carriage drivers. Those requirements are that a driver should undergo a medical upon initial application, then again when aged 45, 50, 55, 60 and then annually once they reach the age of 65. A recent internal audit report criticised the Licensing Team for not following this policy rigidly in that e.g. if a driver reached one of these milestone ages in March but their licence renewal was not due until September then officers were waiting until the renewal was due before asking for a medical.
- 5.2 The authority's policy is worded as follows: *The Council requires a new applicant for either a Hackney Carriage or Private Hire driver's licence to show proof of satisfactory medical fitness. Once licensed, the Council will continue to ask for proof of fitness at specified ages, or at any other reasonable time. Generally speaking, medicals must be produced on first application, and then at the age of 45, 50, 55, 60 until 65. After this age medicals will be required annually.* It is the view of the Licensing Team that the wording of the policy specifically the phrases "or at any other reasonable time" and "generally speaking" allows a degree of flexibility in how the policy is applied.
- 5.3 When first introduced the policy was applied rigidly but this meant that potentially a driver could receive two communications from the authority within months of one another, once when their licence needed to be renewed and then again when they needed to provide a new medical report. As this was unhelpful for both the driver and the authority a degree of flexibility was applied to the policy such that requests for medicals would where possible be sent at the same time as licence renewal paperwork.
- 5.4 Whilst the Head of Legal and Democratic (Legal Services Manager) understands why this approach is advantageous for administrative reasons, he recommends that the policy be reworded to reflect current practice. Therefore it is suggested that the policy be revised such that it will be worded as in paragraph 5.2 above except for penultimate sentence which will read as follows: *Generally speaking, medicals must be produced on first application,*

and then when a licence is renewed if the driver will within the term of that licence reach the age of 45, 50, 55, 60 or 65.

6 Resource Implications

6.1 There are no direct resource implications as a result of the recommendation.

7 Legal Implications

7.1 There are no direct legal implications relating to the recommendation.

8 Equality Issues

8.1 An Equalities Impact Assessment has previously been undertaken and a further assessment is not needed because the issues covered have previously been considered by this Committee and the proposed change does not constitute a significant change in policy.

9 Other Issues

9.1 Community Safety – none.

9.2 Environmental Health/Sustainability Issues – none.

9.3 Property Issues – none.

9.4 Wards/Communities Affected – none specifically but potentially the whole Borough.

10 Conclusion

10.1 The rationale behind the licensing regimes that cover hackney carriages and private hire vehicles is that as an important part of the public transport network of this country a service should be provided to the public that is safe, accessible and seen to be so. The current regimes work well in ensuring that operators, vehicles and drivers are properly licensed and the requirement for drivers to provide a medical report at certain intervals is an important part of this. Following an internal audit undertaken last year it is necessary to alter the wording of the policy regarding provision of medical reports so that the policy reflects current practice.

Background Papers (Local Government Act 1972 Section 100D)

Report to Licensing Committee 16 November 2006

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	Nil		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	6 May 2014