

Licensing Committee

Grand Jury Room, Town Hall
7 October 2009 at 6.00pm

The Licensing Committee deals with licensing applications for public entertainments, hackney carriages and private hire vehicles, sex establishments, gaming and lotteries, door registration scheme and other appeals.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk.

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

Access

There is wheelchair access to the Town Hall from West Stockwell Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call, and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets are located on the second floor of the Town Hall, access via the lift. A vending machine selling hot and cold drinks is located on the ground floor.

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
7 October 2009 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Christopher Garnett.
Councillors John Bouckley, Helen Chuah, Nick Cope,
Wyn Foster, Mike Hogg, Margaret Kimberley, Michael Lilley,
Philip Oxford, Ann Quarrie and Laura Sykes.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should

indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 5

To confirm as a correct record the minutes of the meeting held on 20 May, 22 July and 31 July 2009.

7. Statement of Gambling Policy - Review

6

See report by the Head of Environmental and Protective Services.

8. Scheme of Delegation - Review

7 - 12

See report by the Head of Environmental and Protective Services.

LICENSING COMMITTEE
20 MAY 2009

Present :- Councillors John Bouckley, Helen Chuah,
Barrie Cook, Nick Cope, Wyn Foster,
Christopher Garnett, Mike Hogg,
Margaret Kimberley, Michael Lilley, Philip Oxford,
Ann Quarrie and Laura Sykes

1. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman for the ensuing Municipal Year.

2. Appointment of Deputy Chairman

RESOLVED that Councillor Garnett be appointed Deputy Chairman for the ensuing Municipal Year.

LICENSING COMMITTEE

22 JULY 2009

Present: - Councillor Cook (Chairman)
Councillors Bouckley, Chuah, Cope, Foster, Garnett,
Hogg, Lilley, Quarrie and Sykes

3. Minutes

The minutes of the meeting held on 11 March 2009 were confirmed as a correct record.

4. Penalty Points Scheme

The Monitoring Officer submitted a report providing the Licensing Committee with an update on the legality of the Penalty Point Scheme following the concerns raised at the last meeting of the Committee on 11 March 2009. These concerns related to the legal status of the scheme and whether it introduced any element or possibility of double jeopardy or double punishment for the licence holder in respect of any offences committed.

Having considered all the evidence available the Monitoring Officer concluded that the Penalty Point Scheme was legally sound and was an appropriate method of determining whether a driver was a fit and proper person throughout the life of their licence. Penalty point schemes were used by many licensing authorities to manage driver/operator behaviour. It was acknowledged that there was potential for a driver to receive a conviction and separately penalty points on his driver's/operator's licence and therefore there may be perceived to be an element of double punishment. However, the primary and underlying duty of the authority was to ensure the safety of the travelling public and this took priority over all other considerations. Any driver who was unhappy with the penalty point scheme could appeal their conditions of licence to the Magistrates' Court. The Scheme was in line with the guidance in the Department of Transport's Best Practise Guide which stated that "the aim of local authority licensing of the taxi and PHV trades is to protect the public" and "well directed enforcement activity by the licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades".

RESOLVED that the Monitoring Officer's conclusion that the Penalty Point Scheme was legally sound and was an appropriate method of determining whether a driver was a fit and proper person throughout the life of their licence be noted.

Councillors Garnett and Sykes declared their personal interests, pursuant to the provisions of the Meetings General Procedure Rule 7(3), in the following item in so far as they related to their role as Parish Councillors.

Councillors Chuah, Cook and Hogg declared their personal interests, pursuant to the provisions of the Meetings Genral Procedure Rule 7(3), in the following item in so far as it related to their roles as trustees of St. Anne's Community Centre.

Councillor Cope expressed a personal interest, pursuant to the provisions of the Meetings General Procedure Rule 7(3), in the following item as until recently he was employed by the Home Office.

5. Response to Home Office Consultation document Safe. Sensible. Social. Selling Alcohol Responsibly

The Head of Environmental and Protective Services submitted a report detailing the proposed response to the Home Office consultation document seeking views on a new code of practice for alcohol retailers entitled “Safe. Sensible. Social. Selling Alcohol Responsibly”. The Committee expressed its concern regarding Question 17 and the proposal to enable licensing authorities to add discretionary conditions to groups of two or more premises where it believed that this was necessary and proportionate to address issues such as nuisance and disorder. The Committee was concerned that this would preclude it being able to deal with a single premises and requested that the response be amended to stress that the Committee wished to have the power to call for a review of a premises licence on the same terms as was granted under the Gambling Act 2005. The Committee added that with the minor amendments they fully support the Licensing Manager’s comments.

RESOLVED that

(i) The Head of Legal Services and the Licensing Manager be requested to amend the response at Question 17 to reflect the Committee’s wish that it be granted the power to call for the review of a single premises licence and that the response, as amended, be submitted to the Home Office.

(ii) The Licensing Manager and his team be thanked for their work in preparing this response.

6. Response to the Department for Transport Consultation on Best Practice Guidance for Taxi & Private Hire Licensing.

The Committee considered a report by the Head of Environmental and Protective Services detailing the proposed response to the Department for Transport’s consultation document on the revised Best Practice Guidance for Taxi and Private Hire Vehicle Licensing.

The Licensing Manager highlighted that under the proposed new guidance, drivers would need to satisfy the requirements of a Group 2 medical fitness examination. At the current time drivers only had to comply with Group 1 fitness requirements which were far less stringent and there was concern that a number of existing licensed drivers may not be able to comply. The Licensing Manager expressed his concern over the increased work load that the proposed guidance would be likely to create.

In response to questions the Licensing Manager outlined the situation with regard to the licensing of stretch limousines. Members were concerned about the requirements and safety of some stretch limousines and their drivers particularly having regard to their increasing popularity. The Licensing Manager explained that stretch limousines must either be licensed as a private hire vehicle (PHV) or with the Traffic Commissioners as a public service vehicle (PSV). If it was licensed as a PHV it could only be licensed for a maximum of 8 passengers and he expressed his concern that there is a hard core of stretched limousine operators that operate unlicensed vehicles and also a growing number of ‘novelty’ vehicles such as ex army vehicles or ex fire engines being used for events such as ‘prom’ nights, where neither the

driver or vehicle were licensed and therefore were not subject to any vetting procedure with regards to safety or suitability.

The Licensing Manager advised that many of these novelty vehicles would not fall into either a PHV or PSV regime because of their construction or use and that the Council was only able to take enforcement action against vehicles that it licensed. The Licensing Team had tried in the past to work with the Police and VOSA to inspect the safety of these vehicles and drivers but this had not been possible due to a lack of resources at various times.

RESOLVED that the response as outlined in the report be approved for submission to the Department of Transport.

7. Licensing Committee – Allocation of Dates

The Head of Environmental and Protective Services submitted a report seeking the Committee's views on the method of allocation of Councillors to the Licensing Act 2003 Sub-Committees. The report set out the background on this matter and explained that the number of Licensing Sub-Committee meetings being held had levelled out since the Act was first introduced and as a result not all members had had the chance to sit on a Sub-Committee hearing last year. Amendments to the rota had been made at the end of the last municipal year to address this problem but concern had been expressed by some members with regard to this practise. The report outlined the three proposed methods for the allocation of members to Sub-Committee meetings and the problems inherent with each one.

RESOLVED that option one, the allocation of members to the Sub-Committee on a rota basis, be agreed.

LICENSING COMMITTEE
31 JULY 2009

Present :- Councillor Barrie Cook (Chairman)
Councillors John Bouckley, Christopher Garnett,
Michael Lilley and Laura Sykes

The Cabinet/Panel resolved under Section 100A(4) of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972.

8. Hackney Carriage/Private Hire Appeal

The Committee considered a report by the Head of Environmental and Protective Services on an appeal against the Licensing Manager's decision to issue a hackney carriage/private hire vehicle driver with a formal warning in relation to his future conduct. The Licensing Manager, the complainant, the appellant and his representative attended and presented their cases.

RESOLVED that having read and listened to the evidence presented, the Committee noted from the appellant that whilst he did not remember the incident, he was driving his cab on the day, he was in the area, no-one else drove his cab and the plate number was his.

The appellant stated in his interview with a Licensing Enforcement Officer that he no longer loses his temper but blows kisses instead.

The complainant gave evidence that was credible and sufficiently detailed to identify the events and the driver.

Whilst the Committee heard from Bob Russell, MP on behalf of the appellant concerning Penalty Point 39, it disregarded this in favour of a complaint from a member of the public and noted Penalty Point 34 and Driver Conduct 1iv. On the balance of probability therefore the appeal be dismissed.




Licensing Committee

Item

7

7 October 2009

Report of	Head of Environmental and Protective Services	Author	Simon Harvey
Title	Gambling Policy		 282701
Wards affected	All wards		

This report concerns the review of the Council's Statement of Gambling Policy

1. Decision Required

- 1.1 To note the timetable for the consultation programme on the review of the Council's Statement of Gambling Policy.

2. Reasons for Decision

- 2.1 The Gambling Act 2005 requires the Council, as Licensing Authority, to have consulted on a review of its three year Statement of Gambling Policy and to have any revisions to that policy agreed and in place by 31 January 2010.

3. Alternative Options

- 3.1 There are no alternative options available that will enable the Council to adequately and fully discharge its functions in relation to the Act.

4. Proposals and Consultation

- 4.1 A copy of the Statement of Gambling Policy has been circulated for information to members of the Committee only and is available to view on the Council's website. Please retain the policy for future reference as the matter will be reported to the Committee again in November 2009.
- 4.2 The draft revised policy will be the subject of extensive consultation as prescribed by the Gambling Act 2005. A copy of the draft revised policy will also be placed on the Council's website.
- 4.3 The consultation period will run until the beginning of November. At the conclusion of the consultation period the statement will be reviewed in the light of any comments that have been received and opinion sought from Counsel concerning the legality of any proposed changes. The matter will then be reported to the Licensing Committee at its meeting on 25 November before being referred to full Council on 10 December for final approval prior to its publication by 31 January 2010.

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.



Licensing Committee

Item

8

7 October 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Scheme of Delegation to the Committee and to Officers		
Wards affected	Not applicable		

This report concerns the scheme of delegation to the Licensing Committee and from the Committee to the Head of Environmental and Protective Services

1. Decision Required

- 1.1 To approve the scheme of delegation from the Licensing Committee to the Head of Environmental and Protective Services.

2. Reasons for Decision

- 2.1 The approval of the scheme of delegation is required to bring into effect the obligations placed upon the Council under the Licensing Act 2003 and the Gambling Act 2005.

3. Alternative Options

- 3.1 There are no alternative options available that will enable the Council to adequately and fully discharge its licensing functions.

4. Supporting Information

- 4.1 The Scheme of Delegation has been reviewed to remove the following matters

- Amusement with prize machines
- Betting Gaming and Lotteries
- Cinemas and Theatres
- Late Night Refreshments
- Minibuses
- Public Entertainments (including registered doorstaff)
- Sports Entertainment
- Stage Plays

- 4.2 These matters are now covered by other legislation. The opportunity has also been taken to simplify the delegation scheme in relation to licensing and gambling by delegating all those functions other than those delegated to the Sub-Committee, to the Head of Environmental and Protective Services. These matters had previously been included in the scheme but changes have been made to simplify the layout to make it easier to interpret.

5. Proposals

- 5.1 The proposed scheme of delegation from the Licensing Committee to the Head of Environmental and Protective Services is shown at Appendix 1.
- 5.2 The scheme of delegation from the Council to the Licensing Committee is shown for information at Appendix 2.

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.

SCHEME OF DELEGATION TO OFFICERS BY THE LICENSING COMMITTEE

Delegated to the Head of Environmental and Protective Services

1. Determination of applications and issue of licences, permits, registrations and certificates where no objections have been received in respect of:-
 - Animal Boarding Establishments
 - Caravan Sites
 - Dangerous Wild Animals
 - Deratting and Deratting Exemptions
 - Dog Breeding Establishments
 - Food Exports
 - Food Hawkers
 - Food Premises
 - Game Dealers
 - Hackney Carriage and Private Hire Vehicles drivers and operators
 - House to House and Street Collections
 - Knackers Yards
 - Moneylenders
 - Motor Cycle Scramble Track Practices and Events over Public Footpaths
 - Pawnbrokers
 - Pet Shops
 - Pleasure Boats and Boatmen
 - Premises and persons involved in acupuncture, tattooing, ear piercing and electrolysis
 - Rag and Bone Dealers
 - Riding Establishments
 - Scrap Metal Dealers
 - Sex Shops
 - Zoos
2. Revocation or suspension of licences, permits, registrations, certificates.
3. Approval of individual identification signs for display on taxis and private hire vehicles, after consultation with the Chairman of the Licensing Committee.
4. To determine applications for permission to place advertisements on hackney carriages and private hire vehicles.
5. Determination of motor salvage operators' licences.
6. All functions under the Licensing Act 2003 with the exception of those delegated to the Licensing Sub-Committee.
7. All functions under the Gambling Act 2005 with the exception of those delegated to the Licensing Sub-Committee.

Colchester Borough Council

SCHEME OF DELEGATION TO PLANNING COMMITTEE, LICENSING COMMITTEE, ACCOUNTS AND REGULATORY COMMITTEE, APPOINTMENTS COMMITTEE AND LOCAL DEVELOPMENT FRAMEWORK COMMITTEE

The Council has delegated its planning functions to the Planning Committee and its licensing functions to the Licensing Committee and its Statement of Accounts to the Accounts and Regulatory Committee, its appointment of certain officers to the Appointments Committee and the discharge of certain of its functions in relation to the Local Development Framework to the Local Development Framework Committee.

Planning Committee

1. Authority to act on behalf of the Council on:
 - (a) The Council's town and country planning and development control functions as detailed in Part A of Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended);
 - (b) Determination of all applications for planning permission, listed building consent and associated matters;
 - (c) Authorisation of all enforcement actions under town and country planning and allied legislation;
 - (d) The making of orders for the creation, diversion and extinguishment of public rights of way, authority to confirm unopposed orders for the same and authority to decide not to confirm an order, authorisation of enforcement and other actions in relation to the protection of public rights, prevention of obstructions or damage to the highway and any other matters as may from time to time require determination by the Committee.

Licensing Committee

1. Authority to determine on behalf of the Council:
 - (a) The Council's licensing and registration functions as detailed in Part B of Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended);
 - (b) To hear and determine licensing applications and appeals including applications for hackney carriages and private hire vehicles and drivers; and sex establishments and any other licensing matters as may from time to time require determination by the Committee;
 - (c) All licensing functions pursuant to the Licensing Act 2003.

Gambling Sub-Committees

- (2) Authority to determine on behalf of the Licensing Committee in relation to Gambling Act 2005 matters.

Matter to be dealt with	Delegated to the Licensing Sub-Committee
Determination of an application for a premises licence	Where representations have been received and not withdrawn
Determination of an application for the variation of a premises licence	Where representations have been received and not withdrawn
Determination of an application for the transfer of a premises licence	Where representations have been received and not withdrawn
Application for a provisional statement	Where representations have been received and not withdrawn
Determination of an application club gaming/club machine permits	Where objections are made and not withdrawn
Cancellation of club gaming/ club machine permits	In all cases
Decision to give a counter notice to a temporary use notice	In all cases

Accounts and Regulatory Committee

1. Authority to determine on behalf of the Council:
 - (a) To consider and approve the Council's Statement of Accounts in accordance with the Accounts and Audit Regulations.
 - (b) As part of the Council's governance arrangements, to consider the findings of the annual review of the Council's internal control arrangements (including a review of the effectiveness of the system of internal audit) and approve the Statement of Annual Governance in accordance with the Accounts and Audit Regulations.
 - (c) To consider the Annual Audit and Inspection Letter in accordance with the Accounts and Audit Regulations.
 - (d) To hear and determine all appeals by employees relating to dismissal following the Council's Disciplinary Procedures.
2. To make recommendations to the Council on:
 - (a) The Council's functions relating to elections contained in paragraphs 3, 4, 5, 11 and 15 of Part D of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended);
 - (b) The Council's functions relating to name and status of areas and individuals contained in Part E of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended);

- (d) All gambling functions pursuant to the Gambling Act 2005.

Licensing Sub-Committees

- (1) Authority to determine on behalf of the Licensing Committee in relation to Licensing Act 2003 matters

Matter to be dealt with	Delegated to the Licensing Sub-Committee
Personal Licences	
Determination of an application for a personal licence	Where a Police objection notice is received
Determination of an application for the renewal of a personal licence	Where an objection is received from the Police
Revocation of licence where convictions come to light after grant	Where a Police objection notice is received
Determination of an application to vary a designated premises supervisor	Where a notice is received from the Police
Premises Licences and Club Premises Certificates	
Determination of an application for a premises licence/club premises certificate	Where representations have been made
Determination of an application for a provisional statement	Where representations have been made
Determination of an application to vary a premises licence/club premises certificate	Where representations have been made
Determination of an application for the transfer of a premises licence	Where a notice is received from the Police
Consideration of Police objection made to an interim authority notice	Where a notice is received from the Police
Determination of an application to review a premises licence/ club premises certificate	Where relevant representations have been made
Review following a Closure Order	Where relevant representations have been made
Temporary Event Notices	
Decision to give a counter notice to a temporary event notice	Where an objection is received from the Police

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk