

Licensing Committee

Tuesday, 17 September 2013

7.30pm

Present:

Cllr John Loughlin (Chair)
Cllr Richard Smith (Vice-Chair)

Cllrs: Valerie Ashenden
Gurdip Ram Bungar
Harold Craske
Jane Cribbon
Greta Goatley
Lyn Milner
Leslie Pearton
Derek Shelbrooke
Makhan Singh
Michael Wenban

Sarah Kilkie	Assistant Director (Communities)
Christina Hills	Senior Licensing Officer
Sue Hill	Committee & Elections Manager
Emily Lane-Blackwell	Licensing Officer

1. Apologies

Apologies for absence were received from Cllrs Leslie Hills and William Lambert for whom Cllrs Michael Wenban and Derek Shelbrooke attended as substitutes. Councillor Bryan Sweetland also tendered his apologies.

2. Minutes

The Minutes of the meeting of 6 March 2013 were signed by the Chair.

3. Declarations of Interest

No declarations of interest were made.

4. Scrap Metal Dealers Act 2013

The Assistant Director (Communities) advised the Committee that the Scrap Metal Dealers Act 2013 and the majority of its measures were to be implemented with effect from 1 October 2013. Enforcement provisions within the Act will commence on 1 December 2013. The Act repeals the Scrap Metal Dealers Act 1964 (currently administered by the Council) and Part 1 of the Vehicles (Crime) Act 2001 (currently administered by Kent County Council) and creates a revised regulatory regime for scrap metal recycling and vehicle dismantling industries in England and Wales.

Key Features of the Act include:-

- Requirement for a Site Licence – for all sites where a licensee carries on a business as a scrap metal dealer. This licence allows the licensee to transport scrap metal to and from those sites (yard) from any local authority area (there are currently only two sites known and working within the Borough);
- Requirement for a Collector's Licence – personal to the person applying for a licence and restricted to allow collection of scrap metal in the issuing local authority area only. A separate licence has to be obtained for each local authority area in which the person operates (there are only five itinerant traders known and working within the Borough);
- Local authorities having the power to refuse or revoke a licence – this would only be possible via a meeting of the Licensing Panel to consider such a route and would also be open to an appeals process;
- Widening the definition of a scrap metal dealer to include motor salvage operators (there are only seven motor salvage operations known and working within the Borough);
- The application of a fee for each type of licence – these fees would be set locally by each local authority on a cost recovery only basis. The fees proposed to be imposed within Gravesham would be:-
 - Site Licence grant - £475;
 - Site Licence renewal - £425;
 - Collectors licence, grant or renewal - £275;
 - Variation – collector to site licence - £200;
 - Variation – site to collectors licence - £60;
 - Variation - minor administrative, such as change of address - £30;
 - Change of site manager - £100.

Each licence covers a three year period.

Members noted that the Licensing Committee was being requested to consider recommendations that would, in some part, be subject to the approval of Council. The Committee endorsed the level of the fees it was suggested be implemented from the commencement of the new regime on 1 October 2013.

Recommended to Council that

- (1) the powers and duties under the Scrap Metal Dealers Act 2013 be delegated to the Licensing Committee;
- (2) the scale of fees endorsed by Licensing Committee and as set out in the preamble to these Minutes be approved.

Resolved that

- (3) dependent on recommendation (1) above, the powers and duties under the Scrap Metal Dealers Act 2013 (including fee setting) be further delegated to the Assistant Director (Communities) effective from 1 October 2013, but that this delegation be limited as follows:-
- a. any application lodged under the Scrap Metal Dealers Act 2013 or any Regulations or Order made thereunder, will be submitted to the Licensing Committee for decision where it appears to the Assistant Director (Communities) appropriate for the applicant to have the opportunity of presenting his case orally;
 - b. any case where the Assistant Director (Communities) has concluded that a licence or permit should be refused, or revoked, shall be submitted to the Licensing Committee for decision. All powers of prosecution and Court litigation are reserved to the Assistant Director (Governance and Law);
 - c. any decision made by the Assistant Director (Communities) in relation to the setting of any fees under this Act must be in conjunction with the Assistant Director (Finance).

5. Review of Statement of Licensing Policy under the Licensing Act 2013

Section 5 of the Licensing Act 2003 (as amended by the Police Reform and Social Responsibility Act 2011) requires a licensing authority to prepare and publish a statement of its licensing policy every five years. The current Statement of Licensing Policy, that expires on 6 January 2014, had provided a stable and flexible background to the Council's consideration of licensing applications particularly in relation to the four licensing objectives:-

- prevention of crime and disorder;
- public safety;
- prevention of public nuisance; and
- protection of children from harm.

Key changes in legislation over the past 12 months that had been incorporated into the new Consultation Draft were set out in paragraph 1.7 of the report. The changes included:-

- Changes to the Temporary Events Notices (TENS) regime;
- Removal of the vicinity test – this would now allow anyone from anywhere in the country to object to a licensing application;
- Reduction in the burden of proof – now licencing authorities can make decisions which are appropriate rather than necessary;
- Live Music Act 2012 which removes the licensing requirements for amplified live music and unamplified live music but subject to limitations;
It also removes the licensing requirement for entertainment facilities.
- Licensing Authority and Health bodies are now Responsible Authorities able to comment and make representations on licence applications and variations.

The format of the Policy had been adapted to provide a core document supported by a number of appendices. These appendices could be amended without the need for widespread consultation where the changes were mandatory.

The revised Policy will be subject to consultation process for a period of 12 weeks from 23 September until 14 December 2013. The results will be considered by Licensing Committee in December and then by Council in March 2014.

Resolved that the Draft Statement of Licensing Policy be approved for public consultation.

6. Re-balancing the Licensing Act 2003

The Committee was briefed on Government proposals to re-balance the Licensing Act 2003 by reducing red tape and de-regulating certain licence requirements. The changes will be implemented by the spring of 2014.

In a ministerial statement the Government confirmed it will not be introducing a minimum alcohol unit price nor will it be introducing a ban on multi-buy promotions. It has however stated it will ban sales of alcohol where the costs falls below the level of alcohol plus value added tax e.g. it will no longer be legal to sell a can of ordinary strength lager for less than about 40p. This will come into effect no later than spring 2014.

In addition there will be a number of changes to the licensing regime and the Government intends to consult on the possibility of abolishing personal licences altogether.

Members expressed concern over the consequence of the proposed changes, in particular the reduction in income (as set out in paragraph 3 of the report) from personal licences and the fact that without the possibility of revocation of their licence some people may fail to conduct their business in a proper manner.

The Committee noted that officers will keep a watching brief on developments in this area; respond to any relevant documents and update the Committee as information becomes available.

7. Implications of the R (Hemming and Others) v Westminster City Council judgement in the High Court relating to Sexual Entertainment Venues and Sex Establishments licensing

Members were informed about the Hemming Judgement insofar as it affects the setting of licence fees for sexual entertainment venues and sex establishments.

A challenge against the fees set by Westminster Council for such licences (over £29,000) had hinged upon the assessment of whether the fee being charged was proportionate as laid out in The Provision of Services Regulations 2009. Westminster was ordered to recalculate their fees and to refund any overpayment received since 2009. The recalculation eventually reduced the fee to £2,667.

Having considered the approach already taken at Gravesham, Members were reassured and confident that all fees had been set so as to only cover the cost of administering Gravesham's sex establishment licensing schemes and that the Council would not be

subject to such a challenge. To ensure that fees were kept under annual review and determination it was proposed that the Assistant Director (Communities) be given delegated authority to determine the level of fees payable within the Borough as part of a general delegation for sex establishments and sexual entertainment venues licensing.

Resolved that

- (1) Licensing Committee delegate powers and duties (including fee setting) in relation to the licensing of sexual entertainment venues and sex establishments to the Assistant Director (Communities) with the limitation that:-
 - a. any application lodged will be submitted to the Committee for decision where it appears to the Assistant Director (Communities) appropriate for the applicant to have the opportunity of presenting his case orally;
 - b. any case where the Assistant Director (Communities) has concluded that a licence or permit should be refused, or revoked, shall be submitted to the Committee for decision. All powers of prosecution and Court litigation are reserved to the Assistant Director (Governance and Law);
 - c. any decision made by the Assistant Director (Communities) in relation to the setting of any fees under this legislation must be in conjunction with the Assistant Director (Finance).

8. Minutes of Licensing Panel

The Minutes of the Licensing Panel held on 15 March 2013 and 25 April 2013 were noted.

Close of meeting

The meeting ended at 8.40 pm.