



## LICENSING COMMITTEE AGENDA

**Friday, 12 February 2016 at 10.30 am in the Bridges Room - Civic Centre**

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From the Chief Executive, Jane Robinson

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Item Business

1. **Apologies for absence**

2. **Minutes** (Pages 1 - 6)

The Committee is asked to agree the minutes of the last meeting held on 14 September 2015.

3. **North East Strategic Licensing Group Update** (Pages 7 - 8)

Report of the Strategic Director, Corporate Services and Governance

4. **Appeals and Prosecution - Licensing Act** (Pages 9 - 10)

Report of the Strategic Director, Corporate Services and Governance

5. **Appeals and Prosecutions - Gambling Act** (Pages 11 - 12)

Report of the Strategic Director, Corporate Services and Governance

6. **Licences and Certificates issued under the Licensing Act** (Pages 13 - 14)

Report of the Strategic Director, Communities and Environment

7. **Hearings and reviews before sub committees** (Pages 15 - 18)

Report of the Strategic Director, Communities and Environment

8. **Other applications processed 02.09.2015 to 31.12.2015** (Pages 19 - 20)

Report of the Strategic Director, Communities and Environment

9. **Appeals Avoidance Training** (Pages 21 - 26)

Presentation by Tim Briton

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## LICENSING COMMITTEE

14 September 2015

**PRESENT:** Councillors K Dodds (Chair), C Bradley, M Brain, A Thompson, N Weatherley

### LC01 Apologies for Absence

Apologies for absence were received from Councillors B Dick, B Oliphant, P Maughan, B Goldsworthy and P Ronan

### LC02 Constitution

RESOLVED - That the Constitution of the Committee for the municipal year 2015 – 2016 be noted.

### LC03 Minutes

RESOLVED - That the minutes of the meeting held on 6 February be approved as a correct record.

### LC04 Licences and Certificates issued under the Licensing Act 2003

The following number of Licence and Certificates have been issued under delegated powers between 24 January 2015 and 1 September 2015.

<b>Premises Licences and Club Premises Certificates</b>	
New Premises Licences	18
Premises Licence Variations	97
Premises Licences Transfers	21
New Club Premises Certificates	0
Club Premises Certificate variations	0
<b>Total</b>	<b>136</b>

<b>Personal Licences</b>	
New Personal Licences	74
Personal Licence changes of address	39
<b>Total</b>	<b>113</b>

<b>Temporary Event Notices</b>	
Temporary Event Notices given	25
Counter Notices Services	0
<b>TOTAL</b>	<b>25</b>

RESOLVED - That the information be noted.

#### **LC05 Other Applications and Notifications processed under the Licensing Act 2003**

The following number of applications and notifications have been processed between 24 January 2015 and 1 September 2015.

<b>Type of Application/Notification</b>	
Temporary Event Notices given	25
Designated Premises Supervisor Variations	59
Premises Licence Holder Transfers	21
Amendment applications (eg change of name, change of address etc)	43
Notifications of Interest	14

RESOLVED - That the information be noted.

#### **LC06 Licenses, notifications, registrations and permits processed under the Gambling Act 2005**

The Committee is asked to note the following Licences and Certificates which have been issued under delegated powers between 24 January 2015 and 1 September 2015.

<b>Type of Licence</b>	
Bingo Premises Licence	0
Betting Premises Licence	4
Adult Gaming	0
Family Entertainment Centre Premises Licence	0

<b>Type of Notification</b>	
Notice of intention of alcohol licensed premises to make gaming machines available for use	0

RESOLVED - That the information be noted.

#### **LC07 Hearings and Reviews under the Gambling Act 2005 / Appeals and Prosecutions under the Gambling Act 2005**

There were no hearings, reviews, appeals or prosecutions to report.

RESOLVED - That the information be noted.

## LC08 Hearings and Reviews under the Licensing Act 2003

The following hearing and reviews were held between 24 January 2015 and 1 September 2015.

<b>New Applications and Variations</b>	<b>Application</b>	<b>Representations</b>	<b>Decision</b>
<b>7 April 2015</b>  313 High Street Gateshead	Trading Standards, review Suathayini Ambikaibalan – transfer of license and variation to nominate Designated Premises Supervisor	LSCB Director of Public Health Licensing Authority Northumbria Police Kathiravel Ushanathan (Premises License Holder / DPS)	Revoke Licence, refuse transfer and variation
<b>25 August 2015</b>  195 High Street	Sajaad Ali – transfer of licence and variation to nominate Designated Premises Supervisor	Northumbria Police	Refuse transfer and variation

RESOLVED - That the information be noted.

## LC09 Appeals and Prosecutions under the Licensing Act 2003

The Committee was presented with the following appeals and prosecutions.

### Appeals of Committee Decisions

<b>Appellant</b>	<b>Court</b>	<b>Date</b>	<b>Court's decision</b>
N/A			

### Prosecutions

<b>Defendant</b>	<b>Court</b>	<b>Date</b>	<b>Offence</b>	<b>Description</b>	<b>Result</b>
Mahmood Ahmed	Gateshead Magistrates Court	23 June 2015	Section 146(1) Licensing Act 2003	Sale of Alcohol to a child – Discount Wine Centre, 253 Shields Road, Pelaw	Guilty - £628 fine, £250 costs, £62 Victim surcharge

RESOLVED – That the information be noted.

## **LC10 Update on Case Law and Legislation**

The Committee received a report to update on recent case law affecting the interpretation and application of the Licensing Act 2003 and Gambling Act 2005; and incoming legislation that will affect licensed premises.

In respect of the Licensing Act 2003, from 1 January 2016 the maximum number of temporary events that can be held in any particular premise in one year will increase from 12 to 15.

Guidance is awaited from the Home Office in respect of the Community Ancillary Sellers Notices that will come into effect from 1 October 2015. CANs will enable prescribed bodies such as community organisations or bed and breakfasts to sell alcohol without the need to obtain a premises licence.

There were no specific judgements in respect of licensing matters to bring to the Committee's attention since the last report.

RESOLVED - that the information in the report is noted

## **LC11 North East Strategic Licensing Group Update**

The Committee received a report to inform them of the recent activity of the North East Strategic Licensing Group in relation to licensing matters.

A training event took place jointly with the Gambling Commission on 3 March 2015 which was attended by approximately 50 people; and looked in particular at the Commission's guidance which is in the process of being updated, and access to gambling by children and young people.

The majority of North East Authorities have been in the process of reviewing and updating their Statements of Licensing Policy and work is being undertaken to draw together examples of good practice from around the region.

A training event is taking place in the Council Chamber on 19 October 2015 where a brief presentation will set out some of policy examples. Presentations will also be delivered by leading licensing lawyers John Coen of Weightmans LLP and Charles Holland of Trinity Chambers. Councillors are welcome to attend.

Tim Briton has been appointed as National Lead Licensing Officer for Lawyers in Local Government. This enhances the representation of the North East Strategic Licensing Group and in particular Gateshead, with the Local Government Association Licensing Policy Forum and Public Health and Licensing Network.

RESOLVED - that the information in the report is noted

## **LC12 Gambling Statement of Principles 2016 – 2019. Gambling Act 2005**

The Committee were advised that the Council is currently in the process of drafting a new statement of principles for 2016 to 2019. This is a requirement every 3 years.

The draft consultation sets out the policy that Gateshead Licensing Authority will apply when making decisions about gambling in the Borough and both applicants and those that currently hold authorisations under the Gambling Act 2015 are expected to have regard to it.

The Statement of Principles is relevant to all those involved directly with the gambling industry as well as interested parties including, local partnership groups, residents' associations, faith groups and youth organisations.

Although the draft document is aimed mainly at industry, including those that operate arcades, betting shops, bingo halls pubs and clubs, it is also really important that the final statement accurately reflects the views of all those who have an involvement with, or interest in, gambling in Gateshead.

There have not been any significant amendments in terms of the Gambling Act, the Statement of Principles does have to be looked at every 3 years, on this occasion it has coincided with the Licensing Act which has required much more amendments.

The Gambling Policy has not been amended as such, although certain approaches have been updated to bring the principles in line with the Gambling Commission guidance.

The Council does not have an awful lot of problems in relation to premises and gambling, the cases are very much one off. This doesn't mean however, that the issue should not be kept a close eye on. Officers are trying to look at area profiles for gambling, although the figures are not as significant as for the Licensing Act. Development Control has recently just refused an application for a new betting shop in Gateshead.

RESOLVED - that the information in the report is noted

## **LC13 Licensing Policy Update, Licensing Act 2003**

Local Authorities are required to update their Statement of Licensing Policy every 5 years. Gateshead is required to have its revised policy for 2016 to 2021 in place by the end of 2015.

The draft consultation sets out the policy that Gateshead Licensing Authority will apply when making decisions about the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment, and both applicants and license holders are expected to have regard to it.

Gateshead Council is seeking views of councillors, relevant officers and are working with neighbouring authorities. The policy will take into account the 4 licensing

objectives and the sub-committee will have regard to Home Office Guidance and our Policy when making decisions in regards to licenses.

Applicants will also be expected to have regard to the Act, Home Office Guidance and Gateshead Council's policy.

In terms of the proposed changes to the policy, it is shorter with less guidance and more strategy. It identifies the new role for public health and also refers to "Local Licensing Guidance". At this stage it sets out the framework for Local Guidance to fit around.

Public Health will produce the Local Licensing Guidance and will bring this to a future meeting of this committee.

There will be local problems to address and there will be intelligence led decisions around crime and disorder. The Local Government Declaration on Alcohol will be embodied into the policy.

The Policy addresses the types of activity which heighten concerns. Alcohol delivery is one area of particular concern. Takeaways who are licensed to sell hot food after 11pm, petrol stations are now selling more alcohol and pubs with outside areas.

The policy supports the Minimum Unit Pricing, control of super strength products and promotions aimed at young people. The policy will include a model pool of conditions but these will be tailored to individual circumstances.

RESOLVED - that the information in the report is noted.

**TITLE OF REPORT: North East Strategic Licensing Group Update**

**REPORT OF: Mike Barker, Strategic Director Corporate Resources & Governance**

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### **Purpose of the Report**

1. To inform the Committee of the recent activity of the North East Strategic Licensing Group in relation to licensing matters.
2. A training event took place in the Council Chamber on 19 October 2015 where Tim Briton gave a presentation of examples of good practice from around the North East. Presentations will also be delivered by leading licensing lawyers John Coen of Weightmans LLP and Charles Holland of Trinity Chambers. The event was attended by approximately 60 people.
3. Also, Elaine Rudman and Tim Briton had input into the Local Government Association's fee setting guidance which was issued on 15 December 2015 which will be relevant to the Licensing Act 2003 if the Government fulfils its aim of transferring fee setting responsibility under the Act to local authorities, as is the case with most other regulatory frameworks.

### **Recommendations**

5. The Committee Members are asked to note the content of this Report.

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**CONTACT:** Tim Briton extension 2460

**PLAN REF:**

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**TITLE OF REPORT** - **Appeals and Prosecutions**

**REPORT OF** - **Mike Barker, Strategic Director, Corporate Resources & Governance**

The Committee is requested to consider the attached report on licensing related appeals and prosecutions.

#### Appeals of Committee Decisions

Appellant	Court	Date	Court's decision
Stonegate Pub Company Ltd – re The Bridle Path, Whickham	Gateshead Magistrates' Court	Directions hearing 8 February 2016	Pending

#### Prosecutions

Defendant	Court	Date	Offence	Description	Result
Mohammed Shafiq	Gateshead Magistrates' Court	1 October 2015	S.146(1) Licensing Act 2003	Sold 4 cans of lager to a person under 18 on 11/12/2014 at Ravensworth Food Store	Guilty - £400 fine, £100 costs, £40 victim surcharge

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**TITLE OF REPORT** - **Appeals and Prosecutions**

**REPORT OF** - **Mike Barker, Strategic Director, Corporate Resources & Governance**

The Committee is requested to consider the attached report on gambling related appeals and prosecutions.

#### Appeals of Committee Decisions

Appellant	Court	Date	Court's decision
n/a			

#### Prosecutions

Defendant	Court	Date	Offence	Description	Result
Garry Poppleton	Gateshead Magistrates' Court	16 November 2015	Sections 258 and 259 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence; and facilitated an unlawful lottery by printing tickets in the name of Fiddlers Three Football Club	Guilty; confiscation order made by Newcastle Crown Court on 30 November 2015 in the sum of £50,548.69 being the benefit of criminal conduct, but the Court deciding that the defendant does not have a criminal lifestyle
David Poppleton	n/a	n/a	Sections 258 and 259 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence; and	Caution

				facilitated an unlawful lottery by printing tickets in the name of Fiddlers Three Football Club	
Gary Coote	n/a	n/a	Sections 258 and 259 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence; and facilitated an unlawful lottery by advertising a lottery in the name of Fiddlers Three Football Club	Caution
Joan Coote	n/a	n/a	Sections 258 and 259 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence; and facilitated an unlawful lottery by advertising a lottery in the name of Fiddlers Three Football Club	Caution
John Robert Dalglish	n/a	n/a	Section 258 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence	Caution
William Simpson	n/a	n/a	Section 258 of the Gambling Act 2005	Between 1st September 2012 and 31st January 2015, unlawfully promoted a lottery in the name of Fiddlers Three Football Club without an operating licence	Caution

**TITLE OF REPORT** - **Licences and Certificates issued under the Licensing Act 2003**

**REPORT OF** - **Mike Barker, Strategic Director, Corporate Services & Governance**

The Committee is requested to consider the attached report on Licences and Certificates which have been issued under delegated powers between 2 September 2015 and 31 December 2015.

**Premises Licences and Club Premises Certificates**

New Premises Licences	8
Premises Licence Variations	29
Premises Licence Transfers	10
New Club Premises Certificates	0
Club Premises Certificate Variations	0
<b>TOTAL</b>	<b>47</b>

**Personal Licences**

New Personal Licences	38
Personal Licence changes of address	16
<b>TOTAL</b>	<b>54</b>

**Temporary Event Notices**

Temporary Event Notices given	72
Counter Notices served	1
<b>TOTAL</b>	<b>73</b>

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**TITLE OF REPORT** - **Hearings and reviews before sub-committees**

**REPORT OF** - **Mike Barker, Strategic Director, Corporate Services & Governance**

The Committee is requested to consider the attached report on sub-committee hearings between 2 September 2015 and 31 December 2015.

Premises	Applicant	Date	Representations	Decision
Grey Nags Head, 219 High Street	Admiral Taverns Piccadilly Ltd- to vary the premises licence	21 September 2015	A local resident	Mediated day of committee (Conditions agreed)
Unit 5, Derwent Court, Earlsway	Amazon EU SARL	29 October 2015	Northumbria Police	Mediated day before committee (Conditions agreed)
Sabashay Stores Ltd	Trading Standards- review	5 November 2015	Local Safeguarding Children Board Northumbria Police	To impose a condition that the designated premises supervisor must satisfactory complete a Level 2 Award for a personal licence holder
Ravensworth Food Market, 3 Ravensworth Road, Birtley	Trading Standards - review	23 November 2015	Local Safeguarding Children Board Director of Public Health Trading Standards	Mediated day of Committee (Conditions agreed)

			Health and Safety Northumbria Police	
Vino 4 U Ltd, Unit 3 Earls Park North	Vino 4 U Ltd- application for a new premises licence	23 November 2015	Local Safeguarding Children Board  Director of Public Health  Trading Standards  Health & Safety  Northumbria Police	Mediated day of committee (Conditions agreed)
Bridle Path, 101 Front Street, Whickham	A local resident- review	8 December 2015	Local residents  Licensing  Northumbria Police	To impose conditions:  No patrons shall be allowed to leave the premises while in possession of any drinking vessel or open glass bottle or can, whether empty or containing any beverage; and  No patrons shall be allowed to consume any drink purchased or supplied from the premises outside the premises; and  No furniture shall remain or be placed in the area between the front of the premises and Front Street; and  The smoking area to the rear of the premises shown marked on

				the accompanying plan is to close to customers at 22.45 hours
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**TITLE OF REPORT - Other applications and notifications processed under the Licensing Act 2003**  
**REPORT OF - Paul Dowling, Strategic Director, Communities and Environment**

The following number of applications and notifications have been processed between 2 September 2015 and 31 December 2015.

<b>Type of Application/Notification</b>	
Temporary Event Notices given	<b>72</b>
Designated Premises Supervisor Variations	<b>22</b>
Premises Licence Holder Transfers	<b>10</b>
Amendment applications (eg change of name, change of address etc)	<b>8</b>
Notifications of Interest	<b>0</b>

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## Licensing Committee 12 February 2016

Tim Briton  
Corporate Services & Governance

### How not to lose appeals

Get the decision right the first time.

## How not to lose appeals

- Get the procedure right from the outset (officers)
- Make sure the procedure is fair (officers)
- Have regard to all relevant evidence, and set out what weight you have attached (Members)
- Fully and clearly set out the reasons for your decision (both)

## How not to lose appeals

- Why are decisions appealed?
  - Someone will be aggrieved by the decision
  - May be the applicant / licence holder, a responsible authority or an interested party
- Why does someone feel aggrieved?
  - Don't accept that they've done anything wrong
  - Don't think what they've done merits the sanction imposed
  - Don't think what they had to say was properly considered
  - Don't understand why the decision was reached; or
  - Think that the Council got the law wrong

## How not to lose appeals

- Avoiding perceptions of impartiality or bias
  - Members cannot represent a party at a hearing and then also take part in the decision making
  - Any Member who has a conflict of interest should not be in the room when a hearing is taking place
  - Members should avoid expressing personal opinions prior to a decision being reached
  - Members should not be bound by a party whip to vote one way or the other

## How not to lose appeals

- When making a decision, what should you take into account?
  - Legislation
  - Case law
  - Home Office guidance
  - The Council's own policy; and
  - The individual facts

## How not to lose appeals

- Policy is where Councils can set out a strategic approach
- What causes concern in Gateshead?
- The policy should give you your starting point – from which you only deviate if the individual circumstances justify it
- On appeal, the Magistrates must stand in the Council's shoes and apply the policy (unless the individual circumstances justify deviation)

## How not to lose appeals

- Individual circumstances -
  - Give the parties an opportunity to have their say; listen to it, and consider it
  - Burden of proof - balance of probabilities
  - What is likely to happen in the future if you allow someone to have (or keep) a licence?
  - Be aware of the Thwaites case –
    - if a resident is complaining about crime or disorder, what do the police say? If the police have not made a representation, you should take that into account
    - But, you don't have to grant a licence then wait for crime or disorder to occur - if crime or disorder is reasonably foreseeable, you can refuse the licence before the problems happen

## How not to lose appeals

- You can ask for more information –  
Hearings Regulations
  - The notice of hearing shall be accompanied by information regarding any particular points on which the authority considers that it will want clarification at the hearing from a party
  - Members may ask any question of any party or other person appearing at the hearing
  - An Authority may adjourn a hearing where it considers this to be necessary for its consideration of any representations or notice made by a party

## How not to lose appeals

- Notice of decision
  - Important to make the right decision, just as important to be seen to make the right decision
  - Hope & Glory : the clearer the reasoning is in a notice of decision, the harder it will be for the Courts to overturn
  - Justices' Clerks' Society guidance
    - licensing appeals are often very complex
    - the outcome can have a significant impact on all parties
      - the appeal hearing is a fresh hearing on the merits
      - the licensing authority's decision is to be overturned only if it is wrong
      - the burden of satisfying the court that it is wrong lies on the appellant; and
      - the decision, being that of the democratically elected licensing authority, is only to be overturned if it is wrong

## How not to lose appeals

- Summary
  - The primary approach on appeal will be to attack the Council rather than to defend the appellant's conduct
  - Show that procedure has been followed
  - Show that the facts have been evaluated
  - Only attach weight to the material particulars – the things that make a difference to your decision
  - What is likely to happen in the future if you allow the licensable activities to proceed / continue?

## How not to lose appeals

- Case study (notice of decision)
- Questions?