



East Cambridgeshire District Council

Minutes of a Meeting of the Licensing Committee

Held at The Grange, Nutholt Lane, Ely, CB7 4EE at 10:00am
on Monday 8 April 2024

Present:

Cllr Christine Ambrose Smith
Cllr Charlotte Cane
Cllr Lavinia Edwards
Cllr Martin Goodearl
Cllr Keith Horgan (Vice-Chairman)
Cllr Julia Huffer (Chairman)
Cllr Mark Inskip
Cllr Alan Sharp (substitute for Cllr Kelli Pettitt)
Cllr John Trapp
Cllr Gareth Wilson

Officers:

Stewart Broome – Senior Licensing Officer
Liz Knox – Environmental Services Manager
Angela Tyrrell – Senior Legal Assistant
Hannah Walker – Trainee Democratic Services Officer

In attendance:

Jess Tobin - ICT Support Officer

24. Apologies and substitutions

Apologies for absence were received from Cllr Kelli Pettitt and Cllr Alison Whelan. Cllr Alan Sharp was attending as a substitute.

25. Declarations of interest

No declarations of interest were made.

26. Minutes

The Committee received the Minutes of the Licensing Committee meeting held on 14 February 2024.

It was resolved unanimously:

That the Minutes of the Licensing Committee meeting held on 14 February 2024 be approved.

27. Chair's announcements

There were no Chair's announcements.

28. Licensing Enforcement Policy

The Committee considered a report, Y189 previously circulated, that contained the updated proposed enforcement policy. The Senior Licensing Officer advised Members that the Council administered and enforced a range of legislation intended to protect public safety, local economies, and the environment from any adverse effects of the provision of licensable activities.

The following list included the relevant legislation to the Council's Licensing Authority:

The Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847

The Licensing Act 2003

The Gambling Act 2005

The Animal Welfare (Licensing of Activities involving Animals) (England) Regulations 2018

Scrap Metal Dealers Act 2013

The Senior Licensing Officer explained that many areas that the Licensing Authority oversee had specific policies, some as a result of a statutory requirement placed upon the Council, and others to provide a solid framework to assist all parties including Officers, Members, applicants, licence holders and members of the public.

The Council had an overarching enforcement protocol published in 2014, however the licensing enforcement policy was last updated in 2006 and was therefore in need of review.

The Senior Licensing Officer had drafted an updated and simplified licensing enforcement policy for Members consideration. The new policy covered all the same areas as the 2006 version however Appendix A and B had been removed from the proposed version as they were outdated. Many of the specific policies and guidance documents maintained by the Licensing Authority covered enforcement options that were applicable to the specific type of permission the document relates to. The Senior Licensing Officer added that even when the policy was out of date, there were individual policies that did have enforcement parts within them.

The Senior Licensing Officer concluded that there were no financial implications to the trade or public, a small amount of Officer time would be required to update the website and those costs would come out of the Licensing Department's budget. Members were recommended to adopt the proposed enforcement policy as attached in the Officer's report.

The Chair invited questions to be asked to the Senior Licensing Officer.

A Member queried why there was not a consultation on the proposed enforcement policy in comparison to other local authorities that had. The Senior Licensing Officer confirmed that the enforcement policy would specify how the Licensing Authority would treat people and was fact based, it would be used as a headline policy rather than a specific policy.

A Member asked a further query to request that the legislation referenced within the enforcement policy would reference the actual legislation such as the Equalities Act 2010 and the Data Protection Act 2018. The Senior Licensing Officer confirmed that they would be happy to draw reference to both sets of legislation throughout the enforcement policy.

Another Member asked whether the wording in paragraph 2.24 of the proposed enforcement policy should remove the word 'endeavour' to 'ensure' all parties are treated equally. The Senior Licensing Officer confirmed that the use of word endeavour was used to cover aspects which were out of the Licensing Authority's control. If the wording was changed to 'absolute' it could leave the Licensing Authority open to appeals on matters outside of their control.

A Member asked a further question as to whether the section on Regulation of Investigatory Powers Act 2000 (RIPA) within the proposed enforcement policy was fully compliant with the Council's RIPA policies, and why they were not just referenced in the proposed enforcement policy. The Senior Licensing Officer confirmed that the proposed enforcement policy was checked by the Council's Information and Legal Officers, and after subsequent changes they were happy with the policy. The Senior Licensing Officer acknowledged the risk of having two documents out of sync with each other potentially, however people would look at the specific licensing policy, and they were happy to include a reference to the Council's RIPA and CHIS policy taking precedence.

The Senior Licensing Officer confirmed that Appendix A and B from the Licensing enforcement policy from 2006 was included within the Officer's report on pages 24 and 27.

The Environmental Service Manager clarified to Members that another committee had brought updated enforcement policies which did not go out for consultation.

The Chair opened the debate. The Chair confirmed with Members that the specific legislation would be added throughout the proposed enforcement policy where it was referenced.

It was resolved (unanimously):

That the Enforcement Policy be adopted subject to amending section 2.24 to insert reference to the Equality Act 2010 and section 8.1 to clarify the hierarchy of the Council's RIPA and CHIS policies and to add in reference to the Data Protection legislation.

29. Animal Welfare – Fixed Penalty Notices

The Committee considered a report, Y190 previously circulated, that contained the consideration for the Council's Licensing Authority to use fixed penalty notices as a result of the new powers conveyed by The Animals (Penalty Notices) (England) Regulations 2023, and the accompanying Statutory Guidance which Officers must consider when using those powers.

The Senior Licensing Officer explained that the Animals (Penalty Notices) Act gained Royal Assent and became law in 2022, and as a result of a Government consultation it found that 85% of respondents supported the view that penalty notices could be a proportionate tool to ensure compliance with animal health and welfare regulations. To facilitate the implementation of fixed penalty notices, the Animals (Penalty Notices) (England) Regulations 2023 were introduced, and Statutory Guidance was released in December 2023 by the Department for Environment Food and Rural Affairs (Defra) to provide a framework for enforcement agencies to have regard to when issuing fixed penalty notices.

A Fixed Penalty Notice (FPN) cannot be used for all animal related offences, the 2023 Regulations contain a list of relevant offences that may be disposed of by way of a fixed penalty notice and the list also stated which authority may issue a notice for that offence. The offences listed below were the offences applicable to the Council.

Dangerous Wild Animals Act 1976

- (a) section 2(5) (keeping a dangerous wild animal without a licence) or (6) (contravention of or non-compliance with licence condition);
- (b) section 3(4) (obstructing or delaying inspection by local authority).

Animal Health Act 1981

- Failing to use a collar on a dog in a public place.

Animal Welfare Act 2006

- (a) section 9 (duty of a person responsible for animal to ensure welfare);
- (b) section 11 (transfer of animals by way of sale or prize to persons under 16);
- (c) section 13 (licensing or registration of activities involving animals).

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

- 7) Failing to provide assistance with taking samples from animals
- 19) Obstruction of an officer
- 20)(a) breaching a licence condition

The maximum fine level that could be imposed was £5,000 or the maximum the accused could be fined if summarily convicted for that offence. The Senior Licensing Officer explained what the FPN must contain in the prescribed information and what Officers should consider on whether to issue an FPN.

FPNs could be withdrawn at any time by the Licensing Authority, and the FPNs cannot be issued unless an Officer was satisfied beyond reasonable doubt that the person or body corporate had committed an offence, and the same evidential and public interest tests required for a prosecution must be met.

Councils were not permitted to prosecute for a failure to pay the FPN within 28 days but must consider whether formal prosecution for the offence was necessary and appropriate in such cases. The Senior Licensing Officer advised that if a FPN was issued the Council did not have powers to make them pay and Officers would need to bear that in mind. There was no right to appeal the issuing of a FPN.

The Senior Licensing Officer explained that the legislation would not require an authority to adopt the provisions of the Act before a FPN could be issued, the FPN would be an option for the person or corporate body to absolve their guilt of an offence without receiving a formal conviction. Officers consider that the use of FPNs could be helpful in dealing with low level infringements. The implementation of FPNs would take time and potential income raised from issuing FPNs would be cost neutral.

The Chair invited questions to be asked to the Senior Licensing Officer.

A Member queried what was the immediate response from the Licensing Authority if a report of animal welfare was received. The Senior Licensing Officer advised that the Licensing Authority had for last 2 years dealt with animal welfare prosecutions, the Animal Welfare Act 2006 allowed a local Authority/Police/RSPCA to respond to a report, if the Licensing Authority became aware of an issue, then they would look to take on and move animals onto better places. By implementing the use of FPNs it would act as another tool for the Licensing Authority, they would look at the reasoning behind an illegal activity or report and assess different avenues to find an appropriate conclusion for the committed offence. The FPN would act as a simple caution administered by the Licensing Authority, and it would not be a recorded offence, but it would add a financial impact to the wrongdoing. Officers would need to be satisfied beyond reasonable doubt that the person or body corporate committed the offence.

Another Member questioned whether the Licensing Authority should inform the public of the Regulations before a FPN was issued. The Senior Licensing Officer advised that each case was dealt with on its own merits, the FPN was a formal action and there would be a measured proportionate response. Guidance would be published on the Council's website to make people aware of the changes and Regulations.

A Member asked whether other authorities such as the Police and RSPCA have powers to issue a FPN as well and could it be referred to the Licensing Authority

to issue a FPN. The Senior Licensing Officer confirmed that the 2023 Regulations listed the relevant offences actioned by way of FPN and who can enforce it which was included in the Officer's report.

In response to a Member question, the Senior Licensing Officer confirmed that a FPN was a criminal offence, however failure to pay was not a criminal matter and not a civil matter either. If a FPN was not paid and another offence was committed a second time, then another FPN would not be appropriate and a different action would be taken.

A Member queried whether a second FPN could be issued but at a higher amount to save time in the Magistrates Court if it went to prosecution. The Senior Licensing Officer explained that all FPNs would be looked at case by case according to culpability and harm criteria. The Senior Licensing Officer added that they could deduct the costs of the investigation which included legal support and the issuing of the FPN. No costs beyond the issuing could be taken into account.

A further question from a Member queried what impact FPNs would have on the workload of the Licensing Authority. The Senior Licensing Officer advised that they did not believe it would have a substantial impact, but there would likely be potentially a small increase in workload. The Environmental Services Manager explained that from a manager's perspective the FPN would act as another tool for the Licensing Authority to deal with issues that arise, every single case would still have a prosecution file put together, and if a FPN was considered it could reduce the workload for Legal support and the Licensing Team.

In response to an additional question the Senior Licensing Officer confirmed that the amount of FPNs issued would be included in the annual fees review report.

A Member questioned how many FPNs would we expect to issue. The Senior Licensing Officer advised that the trades compliance level was very high and there were no issues currently with the existing licensing stock. They did not foresee it being a large number, but an FPN would act as a useful tool.

The Chair opened the debate. Members stated that they could see the benefits of the use of a FPN but stressed the importance of working with the Council's Comms Team to raise public awareness on the Council's website of the changes and 2023 Regulations.

It was resolved (unanimously):

- i. That the contents of the report be noted.
- ii. That officers be authorised to consider the use of fixed penalty notices when determining the appropriate level of enforcement action to be taken against any person/body corporate who they are satisfied has committed a relevant offence.

30. Senior Licensing Officer’s update

The Committee considered a verbal report containing the following updates from the Senior Licensing Officer:

- The Licensing Team were receiving unprecedented amount of work, they had been approached by a number of taxi companies to expand in the East and Southeast working specifically towards in special education needs contract area, they had been looking at options for their licences and to operate fleets in local area, whereby one application was currently being processed.
- Animal welfare sentencing was adjourned until May because there was no District Judge to hand out the sentence, the judgement would be reported to Members.
- The year end financials were submitted to the Finance team on time, all annual reports for gambling act returns, animal welfare returns, and licensing act returns had been provided to the relevant agencies.
- The Appeal against a Sub committee decision to revoke a premises licence for Londis was ongoing, a without prejudice offer was between parties and a consent order before the court to satisfy both parties. Once concluded it would be reported back Members.

A Member queried whether the Cambridgeshire & Peterborough Combined Authority (CPCA) would take on the role of taxi licensing. The Senior Licensing Officer confirmed that the Levelling-up and Regeneration Act 2023 included moving taxi licensing to upper tier councils which would be the CPCA. The LGA had consulted with organisations, and it was unanimous that Councils were against the proposal because it would take away local knowledge amongst other matters. The Senior Licensing Officer reassured Members that work would continue as normal for the foreseeable future.

31. Forward agenda plan

The Chair confirmed that the next Licensing Committee meeting was scheduled for 19 June and the Gambling Act 2005 policy consultation would be brought to the committee.

It was resolved:
That the Forward Agenda Plan’s be noted.

The meeting concluded at 11:06am

Chairman.....

Date.....