

**MINUTES OF A MEETING OF THE
LICENSING AND APPEALS COMMITTEE
HELD ON 27 JUNE 2018 FROM 7.00 PM TO 9.35 PM**

Committee Members Present

Councillors: Rachel Burgess, Lindsay Ferris, John Halsall, John Jarvis, Abdul Loyes, Barrie Patman, Malcolm Richards, Rachelle Shepherd-DuBey, Chris Smith, Bill Soane and Oliver Whittle

Officers Present

Luciane Bowker, Democratic & Electoral Services Specialist
Laura Driscoll, Principal Officer, Public Protection Partnership
Julia O'Brien, Licensing Team Manager
Neil Allen, Legal Advisor to the Committee

1. ELECTION OF CHAIRMAN

Councillor Barrie Patman was elected Chairman of the Licensing and Appeals Committee for the 2018/19 municipal year.

2. APPOINTMENT OF VICE-CHAIRMAN

Councillor Bill Soane was appointed Vice-Chairman of the Licensing and Appeals Committee for the 2018/19 municipal year.

3. APOLOGIES

Apologies for absence were submitted from Councillors Chris Bowring, Mike Haines and Emma Hobbs.

4. MINUTES OF PREVIOUS MEETING

The Minutes of the meeting of the Committee held on 21 March 2018 were confirmed as a correct record and signed by the Chairman.

5. DECLARATION OF INTEREST

Councillor John Halsall stated that he had no pecuniary interest in any event or license, except indirectly through one of the clubs for which he was a member or for one of the landowners who let their land.

He declared a personal interest in relation to the Cumulative Impact Assessment and stated that he had been a resident in Remenham for almost forty years and previously Henley. He had been a Henley Royal Regatta competitor. He was a member of Henley Royal Regatta, Henley Rowing Club, Leander and Upper Thames Rowing Club, for whom he had been the licensee, the event's organiser and one of the founder members. He rowed practically every day from Upper Thames. He had coached for Leander and Upper Thames. He had umpired for most events on the reach. He was the Chairman of Remenham Parish Council, a member of the Remenham Farm Residents Association and the neighbour of Remenham Farm. He was or had been friends with all the landowners and many of the licensees.

Councillor Halsall left the room during the discussion of item 9.

6. PUBLIC QUESTION TIME

There were no public questions.

7. MEMBER QUESTION TIME

There were no Member questions.

8. CRITERIA POLICY FOR LICENSED VEHICLES

The Committee considered the Criteria Policy for Licensed Vehicles report which was set out in agenda pages 13-52.

Laura Driscoll, Principal Officer, Public Protection Partnership introduced the report and stated that the report contained the criteria proposal and the results of the consultation.

Laura Driscoll stated that the proposal included dimensions for wheelchair accessibility, as per the Committee's request. The dimensions were based on guidelines issued in the Republic of Ireland.

During the discussion of the item the following comments were made:

- In response to a question Julia O'Brien, Licensing Team Leader stated that West Berkshire did have a wheelchair accessibility policy. All vehicles in their fleet were wheelchair compliant, apart from 4 vehicles which had a swivel seat and had a protected plate;
- Councillor Ferris asked if there was a list of models that the drivers could use as a guide to buy their vehicles. He was also interested to know if the assessments that had been carried out had been undertaken under this guidelines which had not yet been approved;
- Laura Driscoll stated that the issue was that models varied depending on which year they were produced and the commercial model. She stated that measurements were a more reliable method and she expected that anyone looking to purchase a vehicle would be able to use it;
- Julia O'Brien confirmed that the assessments had been carried out against the current policy;
- Julia O'Brien informed that most of the fleet had now been checked by the RAC (on behalf of the Licensing Authority), 75 vehicles had been checked with 5 still outstanding. The result was that 45% of the cars that were checked were compliant;
- Councillor Soane asked what would happen if a driver purchased a vehicle in accordance to this guidelines and then subsequently the government issued a different policy;
- Councillor Richards pointed out that the government usually allowed for a period of around two years so that people could adjust to the new policy;
- Councillor Shepherd-DuBey suggested that training should be given to drivers in relation to Special Educational Needs (SEN) students, especially those involved in school transport. Julia O'Brien stated that such training was already in place and that all drivers undertook disability awareness training;
- Councillor Richards stated that it was necessary to include within the guidelines the recommended ramp gradient;
- Councillor Burgess asked if consideration in relation to the financial impact on current drivers had been taken into account;
- Laura Driscoll stated that it was for the Committee to decide how this new policy would apply to current vehicles. She recommended that a significant amount of time be allowed for drivers to comply so that drivers did not incur in an immediate financial burden;

- Councillor Halsall felt uneasy expressing an opinion in this matter which involved an environmental impact and the livelihood of drivers. He proposed that a working group be set up to look at this issue in more detail;
- Councillor Ferris stated that he was not sure the figures were correct or not, but it was a starting point. He believed that it was a good idea to set up a working group and that a representative from the trade should be invited to take part;
- In response to a question Julia O'Brien stated that the main issue with deferring a decision was that drivers would still not be certain which vehicles they should buy;
- Laura Driscoll stated that one option was to ask that all vehicles be purposefully built, however this option would be unpopular because such cars were more expensive;
- Councillor Richards suggested adding the measurements as an appendix to the policy in order to facilitate changes as and when necessary;
- Members stated that in drawing up the policy, consideration in relation to the environment should be given;
- Councillor Halsall stated that in his personal experience the sizes and technology of wheelchairs had changed considerably in recent years; therefore he was concerned with adding measurements to the policy.

Members were in favour of deferring the decision and to create a working group to look at the proposed policy in more details. It was agreed that existing licences would be extended until a new policy was adopted.

RESOLVED That:

- 1) A working group will be formed to discuss the proposed Criteria Policy for Licensed Vehicles;
- 2) The working group will include elected Members, Licensing Officers, Environment Officers and a representative from the trade;
- 3) The working group's recommendations will be brought back for the Committee's consideration at its September meeting.

9. REVIEW OF STATEMENT OF LICENSING POLICY

The Committee considered the Review of Statement of Licensing Policy report which was set out in agenda pages 53-100.

Julia O'Brien, Licensing Team Manager stated that the Council was required to review its Statement of Licensing Policy (SLP) every five years. The SLP outlined the general approach of the licensing authority when making decisions under the Licensing Act 2003, the policy could be reviewed and revised by the authority at any time. The current Wokingham SLP must undergo a review and be re-published by the end of September 2018.

Julia O'Brien stated that a consultation had taken place and the comments received were attached to the report, as well as the Officer's analysis of the comments.

Some of the consultees had asked the Chairman for permission to speak at the meeting, in view of the high level of interest the Chairman agreed to allow them to make a statement to the Committee.

The speakers were called in the order in which the requests were received.

Sue Dowling addressed the Committee and these were some of the main points put forward by her:

- The suggestion of the CIP was not clear during the consultation process;
- There was not a high concentration of licences in the Remenham area, with only six licensed premises which authorised daily licensable activities;
- There needed to be evidence to support consultation as stated in the House of Commons briefing paper which was circulated to the Committee;
- The evidence should be strong enough to stand up to scrutiny; it should include statistics on anti-social behaviour for example;
- It had not been possible to draft a response as there had not been any evidence put forward;
- The Henley Regatta had a good track record;
- Due to the lack of evidence it was inappropriate to introduce a CIP;
- None of the responsible authorities were in favour of the introduction of a CIP;
- The statistics provided by Thames Valley Police showed that crime and disorder in the area were decreasing and not increasing;
- The limited licences amounted to approximately 20 days a year.

Councillor Whittle asked Sue Dowling what impact the CIP would have on the Henley Regatta. Sue Dowling stated that she was not in a position to respond, however there could be a financial implication and a detrimental effect to Henley. She stated that the licences brought life to the town, attracting visitors, investment and infrastructure.

In response to a question the Chairman confirmed that there would be further opportunity to discuss the other elements of the SLP, this meeting was considering the CIP element of it only.

James Rankin addressed the Committee and these were some of the main points put forward by him:

- He was concerned that Councillor Halsall had taken part in discussions in relation to CIP at previous meetings as he clearly had a connection with Remenham. He was seeking to ascertain that Councillor Halsall would not take part in the discussion of the item as this may raise the perception of bias;
- Evidence should have been provided before the consultation took place; it was not good enough to just decide that it may be a good idea to introduce a CIP and go out to consultation;
- The legislation introducing Cumulative Impact Assessments (CIA) was introduced in April 2018 and set out very strict criteria to justify CIAs;
- The proper procedures had not been followed with respect to the consultation;
- The email which was sent out on 9 May 2018 setting out the consultation contained insufficient or no information; it also incorrectly referred to CIP rather than CIA;
- CIA had replaced CIP and there was a significant difference which was not just the name, but it represented important reforms of the way in which cumulative impact measures may be adopted by licensing authorities;
- There had been fatal failures in the process which undermined the process;
- The consultation period was not long enough and the relevant people such as local residents, licence holders and businesses had not been consulted;

- The consultation needed to include a map clearly indicating the area, it was not sufficient to just say Remenham;
- The consultation should have included information in relation to which types of licensable activities were being questioned;
- There were weak grounds for CIP in Remenham, this was something that happened in larger cities;
- Thames Valley Police had made no response to the consultation;
- The issue of overcrowding which had been raised three years ago had now been resolved;
- Issues with current licences could be challenged through hearings and cumulative impact could be taken into account.

In response to a question James Rankin stated that he represented The Copas Partnership who had been operating events in Henley for approximately 40 years.

Michael Dudley addressed the Committee and these were some of the main points put forward by him:

- 18 months ago he stood in a Sub-Committee hearing in relation to Henley Swim and was told that cumulative impact could not be taken into account because Wokingham did not have a CIP. This advice was given by the Legal advisor to the Panel;
- He was seeking reassurance that in future hearings the cumulative impact would be taken into account;
- He stated that he did not have a problem with the current licences, but he was looking into the future and potential new licences;
- The adoption of a CIP would not affect the current licences, it would not be retrospective;
- Although there were only 20 days of events, there was the setting up and taking down days which should also be considered;
- The Henley Regatta attracted approximately 100.000 people and the Rewind Festival around 40.000 people and most people travelled by car creating public nuisance and safety concerns;
- This level of activity was a public nuisance;
- The main access to the area was through Remenham Lane or Remenham Church Lane, which were totally unsuited to such volumes of traffic;
- There were no trains or buses and there was a major problem with traffic;
- He believed that traffic was a licensing issue, if licences were not issued there would not be a problem with traffic;
- He pointed out that the high volume of traffic created a health and safety concern, with emergency vehicles not being able to attend promptly to emergencies.

In response to a comment the Chairman explained that cumulative impact polices were designed to deal areas in which events happened concurrently.

Anthony West addressed the Committee and these were some of the main points put forward by him:

- He concurred with all the points raised by Michael Dudley;
- He emphasized that although there were only 20 days of events, this did not account for the setting up and taking down time. The Henley Regatta for example, started

setting in April and only finished in August, therefore amounting to a cumulative impact effect;

- The residents of the parish of Remenham had been suffering public nuisance for a number of years;
- He believed the CIP should be adopted to consider future applications.

Councillor Halsall explained that he had not previously declared an interest because the Committee had not previously been required to make a decision in relation to the adoption of a CIP.

Councillor Halsall circulated a paper containing his statement which he then read out to the Committee, and these were some of the main points put forward by him:

- The allegation that the process was not followed correctly could be disputed;
- The legislation permitted the adoption of a CIP in rural areas and the responses that indicated the contrary were incorrect;
- All licensing determinations should be considered on case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be;
- The authority's decision should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve;
- The purpose of incorporating Cumulative Impact Assessments (CIA) (as they are now called) in the Act itself is purely to improve transparency and to ensure that the policy is based on evidence. The Act simply sets out a statutory process by which a CIA should be introduced, but it does not raise the bar as to when it would be appropriate to do so. Nor does the new legislation say anything about when or where it might be appropriate to introduce a CIA;
- This Committee has significant evidence upon which to base the introduction of a CIA in Remenham;
- It is up to the Committee to consider the whole of the evidence before reaching a decision;
- There is no law or policy that dictates that CIAs cannot be introduced in rural areas, nor that they can only relate to premises with permanent licences;
- In deciding whether to consult upon and then ultimately publish a CIA, the licensing authority has to look at the area that it has in mind and decide whether it is appropriate to limit the number or types of new licences that it might grant in that area in the future. As part of the cumulative impact it would consider any evidence that is part of that impact, including any relevant existing licences that are contributing to the impact;
- The introduction of a CIA is intended to bring balance between the introduction of new businesses and the interest of existing residents;
- The CIA would redress the balance from permissively allowing every new licence that came along to be granted, adding to the cumulative impact to a situation where every new applicant would have to demonstrate that they would not add to the saturated situation that currently exists;
- It is true that cumulative impact can always be raised as an issue in any application, even in the absence of a policy such as a CIA. But the difference with the introduction of a policy is that the burden of proof switches to the applicant to show that they will not add to cumulative impact, rather than, as currently being upon residents to prove that the new application will add to cumulative impact;

- The representations indicate that the “current system is working”. It might be said to be working for new applicants, but it most certainly is not working for the residents and constituents of Remenham;
- The cumulative impact that is suffered in Remenham as a result of the concentration of licences is overwhelming, it is an exceptional situation in a rural area.

Councillor Halsall left the room and the Committee carried out a discussion.

During the discussion of the item the following comments were made:

- Neil Allen, Legal advisor the Committee advised the Committee that a decision was required as to whether to carry on with an assessment on the possibility of drafting CIA or not;
- Neil Allen stated that If the Committee were to decide to carry on with the assessment, all the various points that were raised would be carefully taken into account with Legal professional advice; this would then be submitted to the Committee again at a later date;
- Councillor Shepherd-DuBey was concerned with the claim that the consultation had not been adequate. Neil Allen stated that he could not at this stage comment on it;
- Councillor Richards asked how long it would take if the process had to be re-started with another consultation. Neil Allen stated that there was no set period of time;
- Councillor Richards asked if, cumulative impact could be considered at hearings if the CIP was not adopted. Neil Allen stated that new legislation had been issued in April and any lawyer present at a hearing would be able to advise;
- In response to a question Neill Allen confirmed that a CIA would not affect existing licences but it could affect new licences;
- Councillor Ferris stated that he understood the issues raised by the Remenham residents and he believed that something needed to done to contain the problem. However, he was concerned that the consultation may not have been carried out properly and may have to be undertaken again;
- Councillor Shepherd-DuBey was interested to know if the consultation had been done under the new or old legislation. Laura Driscoll stated that she was not certain and would have to refer back to her notes. In response to a question Laura Driscoll stated that she had not consulted with Legal before setting up the consultation;
- Councillor Loyes asked if there were any time constraints in making a decision. Neil Allen stated that the SLP had to be re-published by September, however the consideration as to whether to adopt a CIP or not could be undertaken at any time.

After much debate the Chairman stated that there were three possible alternatives:

- To decide that there is not enough evidence to move forward towards drafting a CIA;
- To decide that there is enough evidence to move forward towards drafting a CIA but the process needs straightening out; or
- To decide that more evidence is needed in order to decide whether to move forward or not and defer the decision.

The Chairman urged the Committee to consider the implication of their decision. He pointed out that it was important to make sure that all processes were followed correctly and that the Legal assistance that was required would be costly. It was imperative to avoid a situation where the Council may be putting itself at risk of expensive legal challenges.

Neill Allen stated that although the SLP had to be revised every five years, it could be reviewed at any time by the Local Authority.

Councillor Whittle pointed out that the recommendation in the report was specifically in relation to CIA to Remenham. Laura Driscoll stated that there no significant proposed changes to the SLP. She stated that the CIA could be split from the SLP in a future report.

In response to a question Neil Allen stated that CIAs had to relate to a specific area.

Councillor Ferris stated that he felt that there was insufficient information available to allow for a decision to be made at this point in time.

Councillor Shepherd-DuBey urged the Licensing department to engage with the Legal department before bringing back a paper to the Committee.

Councillor Smith believed that there was enough evidence to proceed with the drafting of a CIA. However, upon being put to the vote the majority voted to defer the decision to the next meeting, with more robust information being requested.

RESOLVED That: The consideration of the drafting of a Cumulative Impact Assessment for the Remenham area be deferred to the next meeting of the Committee.

10. REVIEW OF STATEMENT OF GAMBLING PRINCIPLES

The Committee considered the Review of Statement of Gambling Principles which was set out in agenda pages 101-106

Laura Driscoll explained that there was a legal requirement to review the Local Authority Gambling Statement every three years. The present statement was published to take effect from the end of January 2016, therefore it was time to undertake a review in order to have it re-published to take effect by the end of January 2019.

Laura Driscoll stated that there were no significant changes from the previous policy. The results from the consultation were listed in the report and the comments were fair.

Laura Driscoll stated that the final version of the Statement would be brought back to the Committee in September, prior to it being referred to Council for approval in November.

In response to a question Laura Driscoll stated that there were around 10 gambling premises in the Borough.

RESOLVED That the Committee endorses the proposed amendments contained in the report.

11. SUB-COMMITTEE PROCEDURE

The Committee considered the Sub-Committee Procedure report which was set out in agenda pages 117-122.

Laura Driscoll proposed to change paragraph 1.1 of the procedure to three working days, and Members were in agreement to change it.

During the discussion of the item the following comments were made:

- Councillor Halsall disagreed with the proposal that the Sub-Committee be selected by Democratic Services, he believed that there should be a rotation system;
- Luciane Bowker, Democratic and Electoral Services Specialist explained the selection process was based on:
 - Members availability to attend hearings during the day
 - Avoidance of conflict of interest
 - Attendance to training
 - Cross-party representation
- Members noted that on certain occasions it was also important to consider continuity;
- Going forward, Luciane Bowker offered to send an email to all Members of the Licensing and Appeals Committee and select on a first come first serve basis (bearing in mind any conflict of interest). Members were in agreement with this.

Luciane Bowker pointed out that the proposed procedure excluded the time limitation for representations. Laura Driscoll confirmed that she had had legal advice on this issue, and she had been advised that it was better not to have a time limit. It would be at the Chairman's discretion to keep the time equally fair to both parties. Members were in favour of this.

RESOLVED That:

- 1) The Committee approves the information and Procedure document subject to the following amendments:
 - a) When a Sub-Committee meeting is required, Democratic Services will notify all Members of the Licensing and Appeals Committee via email and select the Panel on a first come first serve basis (provided that the other legal requirements are met)
 - b) Paragraph 1.1 will be amended to read: *"The applicant will normally be required to attend the meeting in person. They will be entitled to be represented by a solicitor or counsel or by any other individual provided that the name of any such person is given to Democratic Services three clear working days in advance of the hearing."*

12. LICENSING COMMITTEE FORWARD PLAN

The Committee considered the forward plan for the 2018/19 municipal year.

Laura Driscoll referred to the list of forthcoming items listed in the report. She stated that the Fees and Charges would be amalgamated between the three authorities who formed the Public Protection Partnership (PPP), this would be discussed at the September meeting.

Members asked that the Fees and Charges report include benchmarking with authorities outside of PPP.

Laura Driscoll informed that training sessions would be available at the three authorities, the dates would be confirmed shortly.

Councillor Whittle asked that Licensing Officers consulted with Wokingham Town Council and Woodley Town Council in relation to Street Trading.

Councillor Halsall asked that a list of Wokingham's licensing policies be circulated to the Committee.

In response to a question Laura Driscoll stated that she intended to produce a briefing note on Pet Shops, with an update containing the new government legislation in relation to animal licensing.

Laura Driscoll explained that in order to enable the Statement of Licensing Policy to be submitted to Council in November, it was necessary to change the date of the next meeting to a week earlier. Members agreed to change the date of the next meeting to 4 September 2018.

RESOLVED That:

- 1) The Committee noted the forward plan report;
- 2) The date of the next meeting be changed to 4 September 2018.