

**Committee:** LICENSING COMMITTEE  
**Date:** 9 March 2005  
**Agenda Item No:** 4  
**Title:** POWERS OF DISTRICT COUNCIL TO CONTROL STREET TRADING WITHIN ITS DISTRICT  
**Author:** Michael Perry (01799) 510416

### **Summary**

- 1 This report is to inform Members of the powers of District Councils to control street trading within its District and to ask Members to consider whether they wish to propose to Full Council that such controls should be applied to all or any part of the District.

### **Background**

- 2 The Local Government (Miscellaneous Provisions) Act, 1982 empowers District Councils to control street trading within their district. The provisions of the Act are adoptive, that is to say that the Council would need to resolve to adopt Schedule 4 of the Act in order for controls to be applied.
- 3 In the event that the Council do adopt controls streets within the District may be designated as consent streets, licensed streets or prohibited streets. As suggested by the names a form of permission would be required from the Council to trade in either consent or licensed streets. Street trading would not be permitted in streets which are designated prohibited streets. If a street is not designated within one of these three categories then street trading may take place without permission from the Council. The controls would not apply to any market held by virtue of a grant (including a presumed grant) or acquired or established by virtue of any enactment or order.
- 4 The Act contains a procedure for the designation of streets. Notice of intention to pass such a resolution must be published in a local newspaper and must also be served upon the Chief Officer of Police and the Highways Authority responsible for the street. Where the market is held on the public highway the consent of the Highway Authority would be required if it is intended to designate a street as a licensed street. At least 28 days after publication of the notice must be allowed for representations to be made. The Council must then consider any such representations before it can pass the resolution. If the resolution is passed a further notice must be published in a local newspaper at least 28 days before the designation becomes effective.

- 5 Neither consents nor licences may be granted to persons under 17 years of age. However there are material differences between street trading consents and street trading licences.

Consents	Licences
1. Grant is discretionary	1. Can only be refused on statutory grounds
2. Can impose such conditions as are "reasonably necessary"	2. Conditions shall specify days and times of trade and the type of article the holder can trade in. May specify the place from which the holder can trade, size and type of stall, may also require the stall to bear the name of the licensee and restrict litter.
3. Can be for up to 12 months but can be revoked at any time	3. Valid for 12 months (but shorter period can be specified). Can only be revoked on statutory grounds
4. No right of appeal against refusal, revocation or conditions	4. Right of appeal to magistrates against most refusals, revocations and grants on terms other than those applied for
	5. The resolution designating a street a licence street may stipulate a minimum number of days upon which licensees are to trade
	6. The form of application must contain certain minimum statutory information

- 6 Street trading consents appear to have been designed for itinerant traders and licences for regular traders from the same spot. However, many authorities who seek to control street trading have chosen to designate streets as consent streets rather than licence streets because of the greater degree of flexibility and control which consents permit and because there is no right of appeal with regard to a street trading consent.
- 7 The absence of a right of appeal suggests that the street trading consent regime is not compatible with the Human Rights Act 1998. Article 6 of the Schedule to the Act provides that 'in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' The Act does give a defence for public authorities if they are acting in a way required by law. However, as the Act is adoptive and not prescriptive there is no such requirement. It is considered that the right of appeal in respect of licences would mean that such control is compliant with the Human Rights Act.
- 8 At present there are three markets operating within the district, namely Great Dunmow, Saffron Walden and Thaxted. Records show that all three markets were established by grant many years ago. If these markets are still carried out pursuant to the grants then they are not susceptible to control under the

LG(MP)A 1982. However the charter for all three markets require the same to be held at "the manor". Enquiries would need to be made to establish whether the current sites of the markets are within the boundaries of the respective manors. There appears to be no record of a charter for Saffron Walden market for Saturdays (although depending on the length of time the market has been established there a grant may be presumed). Thaxted market was initially prescriptive (established by long usage) and later authorised by a charter in 1315. This market ceased to operate in about 1813 and it appears that it was not revived until 1989 (this needs to be confirmed). If the site of this market is still within the manor then the long period of non-user would not extinguish the right to hold the same. However if the site of the market is outside the manor it would not be authorised by the charter and if it is correct that it was not established at its present location before 1989 prescriptive rights would not exist. If Members are minded to recommend that the Council adopt street trading control and would wish to extend this to the existing markets further detailed research would be necessary to ascertain whether these are being conducted in accordance with their charters or prescription.

- 9 In considering the recommendations that follow Members need to be aware of an ancient law which prohibits the holding of a rival market within  $6\frac{2}{3}$  galloping horse miles of another established market. The Council has received complaints regarding a farmers market operating in the district on the basis of this law.

**RECOMMENDED:-**

- a. Members determine whether they wish to recommend that the Council adopts the provisions of Sch. 4 Local Government (Miscellaneous Provisions) Act 1982.
- b. If Members decide to make such a recommendation to determine whether street trading should be controlled by consent streets, licence streets or a combination of both.
- c. Having determined the nature of control (if any) to be applied that officers be asked to prepare a report recommending streets within the district where street trading would be considered permissible with either consents or licences with the intention that all other streets in the district be designated prohibited streets

Background Papers: Websites [www.history.ac.uk](http://www.history.ac.uk)  
[www.dunmow.co.uk](http://www.dunmow.co.uk)

**Committee:** LICENSING COMMITTEE  
**Date:** 9 MARCH 2005  
**Agenda Item No:** 5  
**Title:** UPDATE ON THE LICENSING ACT 2003  
**Author:** Michael Perry (01799) 510416

### **Summary**

- 1 This report is to bring Members up-to-date with developments and proposals under the aforementioned Act and to inform Members of the projected income from the Licensing function.

### **Background**

- 2 The run-up to the first stage of local authorities assuming responsibility for licensing was something of a rush. The first appointed date of 7 February, 2005 was specified by a statutory instrument dated 7 July, 2004. Notwithstanding this the Government was dilatory in the extreme in publishing regulations under the Act which were essential to enable the system to function. The regulations were not laid until 13 January, 2005 and were not available for a few days thereafter. Republication was necessary due to the number of misprints contained in the Regulations. Due to an error a provision was omitted from the draft Regulations which clearly should have been retained necessitating amendment Regulations within a few days! The forms were not published on the Department of Culture, Media and Sports Website until Saturday, 5 February, two days before the first appointed date when applications for conversion of licences could be made. Notwithstanding this the Licensing Team have worked hard to ensure that packs of application forms were available as soon as possible and to date in excess of 60 packs have been issued. Additionally, application forms can be accessed via the Council's website although as these need to be in PDF format it is not at present possible for the form to be completed and submitted on line.
- 3 At the time of preparation of this report (14 days after the first appointed date) only two applications have been received. These are from a couple who have applied for personal licences in respect of a public house that they manage. Persons wishing to take advantage of grandfather rights under the traditional provisions must apply for their licences to be converted before 7 August, 2005. Those that fail to do so will not be able to trade once the second appointed date have arrived unless they have formally applied for and obtained a local authority licence between 7 August, 2005 and the second appointed date whenever that may be.

- 4 In the first instance applications are likely to be received only in respect of clubs seeking to convert under grandfather rights, premises providing regulated entertainment but not supplying alcohol, late night refreshment premises not supplying alcohol and personal licences. Applications for licences for premises supplying alcohol will not be made in the first instance as such applications must name a designated premises supervisor who must be a personal licence holder.
  
- 5 Whilst the low number of applications received to date has enabled officers to make sure that the necessary documentation and procedures are in place nevertheless there is concern that the flood of applications anticipated at the outset may not materialise until towards the end of the six-month transitional period. Members will be given a verbal update as to the level of applications received but unless a steady trickle has come on stream by the date of the meeting officers will need to carry out some selective marketing to persuade licensees not to leave their applications until the last minute.
  
- 6 Members will be aware that initially it was intended to run Licensing using Ocella software which was used for licensing vehicles and drivers. During the development process, however, doubts arose as to whether Ocella could deliver the functions required for the efficient management of the liquor licensing function. As a consequence officers investigated possible alternative software systems and have now acquired a software package called Lalpac. This is a fully integrated system which keeps track of applications and flags up key dates. The cost of the system is £5,775 per annum. Officers are also investigating a browser package which would enable licensing details to be viewed by relevant authorities, applicants and the public on line and also to enable applications for licences to be made on line. The browser would cost an additional £2,495. The system is superior to Ocella in respect of vehicle and driver licensing and all data has been migrated to Lalpac so that the Council's licensing functions are all run on the same system. The Licensing Team and two members of legal services have been trained to use the software and have worked extremely hard to migrate the data from Ocella to Lalpac.
  
- 7 Members will recall the consultation exercise with regard to the draft regulations and the proposed fee structure. Generally local authorities across the country objected to what was perceived to be an inadequate fee structure. Many authorities felt that they would be unable to carry out their functions under the Act without recourse to additional financing from the general fund. The Government has taken these comments on board and the fees orders as published are at a significantly higher level for premises licences than those which were consulted upon. In each case the premises are banded accordingly to their rateable values as follows -

<b>NON- DOMESTIC</b>	<b>BAND A</b>	<b>BAND B</b>	<b>BAND C</b>	<b>BAND D</b>	<b>BAND E</b>
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RATEABLE VALUE					
	£0- £4,300	£4,301- £33,000	£33,001- £87,0000	£87,001 – £125,000	£125,001 & OVER

The comparison of the fees as proposed and those prescribed by the regulations for applications and variations are as follows -

BAND	PROPOSED	ACTUAL
A	£80	£100
B	£150	£190
C	£250	£315
D	£350	£450
E	£500	£635

The regulations also provide for an annual fee. This is not a renewal fee and the licence will not lapse in the event that the fee is not paid but the Council may recover the same as a debt through the County Courts. These are also significantly higher than those proposed. Again the comparison is as follows -

BAND	PROPOSED	ACTUAL
A	£40	£70
B	£125	£180
C	£175	£295
D	£200	£320
E	£225	£350

Where the premises are primarily for the sale or supply of alcohol and fall within Band D the applications and annual fees are doubled. Where such premises fall within Band E the application and annual fees are trebled. Although usually the full licence fee would be payable on an application for a variation, where an application for a variation is made at the same time as an application for a licence under grandfather rights a reduced fee scale applies as follows -

BAND	REDUCED FEE SCALE
A	£20
B	£60
C	£80
D	£100
E	£120

Additional charges are made for premises that cater for more than 5,000 people. The fee for a temporary event notice has been set at £21 and the fee

for a personal licence at £37. These fees are as suggested in the consultation document.

- 8 Officers have tried to analyse the likely income from premises licences within the district. This has proved difficult as a number of premises are described in the list of licensed premises supplied to the Council by the police in such a way as not to identify them in the non-domestic rating list. These will clearly produce additional income when they apply and can be identified on the list. Only one-licensed premises in the district would appear eligible to pay an enhanced fee under band D and none under band E although they may dispute this liability. So far as rating bands can be ascertained the potential income is analysed below -

	<b>BAND A</b>	<b>BAND B</b>	<b>BAND C</b>	<b>BAND D</b>	<b>BAND E</b>	<b>TOTAL</b>
<b>Number of Premises</b>	40	191	17	5	7	260
<b>Anticipated income in the transitional period</b>	£4000	£36290	£5355	£2250 + £450	£4445	£52340 + £450
<b>Anticipated annual income thereafter</b>	£2800	£34380	£5015	£1600 + £320	£2450	£46245 + £320

- 9 It is not possible to forecast with any degree of accuracy what the income from personal licences would be. Firstly, it is not known how many personal licence holders there are likely to be in respect of each premises. Secondly applications for personal licences are not made to the authority where the applicant works or carries on trade but to the authority for the district in which the applicant lives. In round figures there are 300 licensed premises in the district. Some of these are clubs who will not require a designated premises supervisor (and hence a personal licence holder) but an average of one personal licence per premises would deliver an income of £11,100 in year one. As the licence lasts for 10 years and there is no annual fee this income must be regarded as a 'one off' windfall. Whilst there will be applicants for personal licences on an on-going basis this will merely reflect the number of people living in the district who wish to enter the trade and such income is unlikely to be significant.

RECOMMENDED that Members note this report.

Background Papers: None

**Committee:** Licensing Committee  
**Date:** 9 March 2005  
**Agenda Item No:** 6  
**Title:** Proposed Amendments to Conditions of Licence  
**Author:** Michael Perry (01799) 510416

### **Summary**

- 1 Following the Committee's resolution on the 12 January approving an increase in the tariff for hackney carriage fares, it is believed that a number of hackney carriage drivers in the District may not wish to charge the new tariff but will wish to retain the existing fare structure. The Council's conditions of licence state:-

"9(a) The vehicle shall be fitted with a taximeter visibly recording the passenger fare payable in conformity with such table of fares as may from time to time be approved by the Council".

This would mean that the meter would not show the fare being charged by drivers who chose not to adopt the revised tariff and a calculation would be necessary at the end of the journey to ascertain what the fare should be. This report is to suggest a possible amendment to the conditions to avoid this confusion.

### **Background**

- 2 The Local Government (Miscellaneous Provisions) Act 1976 does not require hackney carriages to be fitted with a taximeter. However, if a taximeter is fitted, it must be accurate. Section 68 of the Act empowers both the police and authorised officers of the Council to inspect any taximeter and if not satisfied as to the accuracy of the taximeter, the vehicle may be suspended from use. However by condition Uttlesford District Council do require vehicles to be fitted with taximeters.
- 3 There has been some debate as to whether the requirement for a meter to be accurate means that the meter needs to display the fare as set out in the Council's table of fares or (if lower) the fare which the driver proposes to charge. The matter was considered by the court in the Case of Arle –v- Liverpool City Council ex parte Curzon Limited. In that case there were two principles under consideration. The first was whether it would be lawful for a hackney carriage driver to charge less than the fare shown on the meter. The second was with regard to the calibration of the meter.



- 4 On the first issue the court determined that there was nothing in the Act which prevented a hackney carriage driver charging less than the fare shown on the meter. The Council's table of fares is therefore a maximum and does not necessarily set the rate.
- 5 In the light of the judge's ruling on point one, the second issue was conceded by the Council. The judge's comments on the second point are therefore not binding precedent but are nevertheless highly persuasive. The judge indicated that he understood why the concession had been made by the Council. He said, "what the passenger wants to know is what he has to pay. The driver is only entitled to charge what is displayed on his meter. If the driver is only going to charge, say half the rate allowed in the table of fares, then half of that rate is what the passenger would expect to see on the meter".
- 6 The judge's comments do have an attractive logic. Recalibration of taximeters is an expense to the trade and those who do not wish to take advantage of the increased tariff are understandably reluctant to incur this expense particularly when the result would be a meter reading which does not reflect the fare which the passenger will be charged. If the Council's licensing conditions were to be amended to permit taximeters to display an alternative fare which does not exceed the Council's table of fares, this would assist those drivers who do not wish to charge the higher tariff and would leave the public clear as to the fare which they were expected to pay in each case.

#### RECOMMENDED

that Members approve an amendment to condition 9(a) of the Council's Hackney Carriage Vehicle Licence Conditions of Licence as follows:

"9(a) The vehicle shall be fitted with a taximeter visibly recording the taxi fare payable either in conformity with such table of fares as may from time to time be approved by the Council or such other fare tariff as the driver proposes should be charged provided that in no case shall the fare charged exceed that which would have been applicable under such table of fares".

Background Papers: none