

Crawley Borough Council

Governance Committee

Supplementary Agenda

Tuesday, 13 June 2023



Chief Executive

7 Revisions to the Constitution: Licensing Committee Functions

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To consider report HCS/062 / LDS/204 of the Head of Community Services/Head of Governance, People & Performance.

NOTE: The Chair has agreed that, although this report and information was not available for at least five clear days before the meeting, there are special circumstances justifying its urgent consideration.



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Crawley Borough Council

Report to Licensing Committee

12 June 2023

Report to Governance Committee

13 June 2023

Revisions to the Constitution: Licensing Committee Functions

Report of the Head of Community Services and the Head of Governance, People & Performance – HCS/062 / LDS/204

1. Purpose

- 1.1 Following an audit carried out by the Southern Internal Audit Partnership in the Hackney Carriage and Private Hire application process, which is due to conclude shortly, it was identified that an anomalous function is listed within Section 9 of the Council's Constitution (Licensing Committee Functions) that conflicts with current practice.
- 1.2 Upon examination by officers, it has also been identified that there are several other functions delegated to the Licensing Committee which require minor amendments, or sub-delegation to the Head of Community Services, to ensure there are no unnecessary delays in the determination of cases and associated decisions which would normally be delegated to officers, unless representations (objections) have been received.

2. Recommendations

Licensing Committee:

- 2.1 That the Licensing Committee provides its views on the proposed revisions to the Licensing Committee Functions (as per Appendix A).

Governance Committee:

- 2.2 That the Governance Committee, having considered the views of the Licensing Committee, recommends to the Full Council that it amends the Licensing Committee Functions (as per Appendix A).

3. Reasons for the Recommendations

- 3.1 The Southern Audit Partnership has been undertaking an audit of the new driver application process within the Licensing Service and an anomaly was identified within the Licensing Committee Functions which conflicts with decisions that have been delegated to the Head of Community Services in relation to fees and charges where no objections have been received.
- 3.2 The Licensing Committee is required to make decisions on fees and charges when objections have been received. If objections are not received, this is delegated to the Head of Community Services in consultation with the Chair of the Licensing Committee.

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- 3.3 Function A (below) has created an unintended conflict which means that all decisions relating to fees and charges for licensing functions are required to be made at Licensing Committee regardless of the receipt of objections.

A) Review of fees and charges, including the annual review, in respect of functions of the Licensing Committee in order to recover the cost of the service as allowed by statute or where statutory provisions do not apply, by the limits set out in the Budget Strategy.

- 3.4 This has caused some confusion as to when and how a legal decision could be made to increase fees and charges outside of the Budget set at Full Council. The recommendation is to remove function A to retain current practice and to ensure the efficient adjustment of fees and charges can be made without requiring the Licensing Committee to convene each time.
- 3.5 Upon further review of the Constitution, it has been identified that minor amendments are required to ensure that the Licensing Committee is only constituted to make determinations on other application types listed in Appendix A where objections have been received, as those application types where no representations (objections) are delegated to the Head of Community Services, unless they feel the Committee is better placed to make the decision.
- 3.6 It is recommended that other functions listed within the Constitution and highlighted in Appendix A are removed as they are matters which do not relate to licensing, are purely administrative functions or that changes to legislation has meant they no longer require the Committee to consider cases in the same way, for example, pavement licensing.

4. Background Papers

- 4.1 Appendix A – Proposed Amendments to the Licensing Committee Functions
- 4.2 Appendix B – current Licensing Committee Functions (Section 9 of the Council's Constitution)

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PROPOSED AMENDMENTS TO THE LICENSING COMMITTEE FUNCTIONS

DECISIONS WHICH WILL BE TAKEN BY THE LICENSING COMMITTEE

All of the responsibilities of the Licensing Committee (detailed in Paragraph 2) are delegated to the Head of Community Services* except the following which are reserved to the Committee:

Function	Proposed action (i.e. delete, amend, add)	Reason for amendment
a) Review of fees and charges, including the annual review, in respect of functions of the Licensing Committee in order to recover the cost of the service as allowed by statute or where statutory provisions do not apply, by the limits set out in the Budget Strategy.	Delete	To reflect current practice whereby the review or fees and charges are included in the annual Budget and Council Tax report which is considered by Cabinet and approved by the Full Council.
b) Approval of fares for Hackney Carriages.	Retain	
c) Power to review and set fees for Private Hire vehicles, Private Hire Operators and Hackney Carriage vehicles (licences) where objections have been received and not withdrawn.	Retain	
d) Approval of all policy related documents regarding Hackney Carriages and Private Hire Vehicles.	Retain	
e) Approval of the Health and Safety Service Plan.	Delete	Delegated to Head of Community Services as this is a business-as-usual function.
f) Approval of the Food Service Plan.	Delete	Delegated to Head of Community Services as this as this is a business-as-usual function with the FSA largely dictating the content, and who externally audits this.
g) Power to issue licences authorising the use of land as a caravan site ("site licences").	Retain	
h) Power to license the use of moveable dwellings and campsites.	Retain	

Function	Proposed action (i.e. delete, amend, add)	Reason for amendment
i) Power to register pool promoters.	Amend	Would create unreasonable delays in determination. <i>Power to register pool promoters where objections have been received.</i>
j) Power to grant track betting licences and inter-track betting schemes.	Retain	
k) Power to grant permits in respect of premises with amusement machines.	Amend	Would create unreasonable delays in determination. There is also an automatic right to some classes of machines in certain settings and circumstances. <i>Power to grant permits in respect of premises with amusement machines where objections have been received.</i>
l) Power to register societies wishing to promote lotteries.	Amend	Would create unreasonable delays in determination. <i>Power to register societies wishing to promote lotteries where objections have been received</i>
m) Power to keep list of persons entitled to sell non-medicinal poisons.	Delete	This is an administrative function.
n) Power to licence all activities under the Animal animal trainers and exhibitors.	Delete	Delegated to the Head of Community Services within the context of the Animal Activities Licensing Regime
o) Power to grant permission for the provision of services, amenities, recreation and refreshment facilities on highways and related powers.	Delete	Delegated to the Head of Community Services as this is covered within the Street Trading Policy
p) Duty to publish notice in respect to propose the grant of permission under Section 115E of the Highways Act 1980.	Remove	Delegate to the Head of Community Services as the Pavement Licensing regime now covers

Function	Proposed action (i.e. delete, amend, add)	Reason for amendment
		this and could prevent application being determined.
q) Power to set fees for scrap metal dealer sites and mobile collector licences.	Delete	To reflect current practice whereby the review or fees and charges are included in the annual Budget and Council Tax report which is considered by Cabinet and approved by the Full Council.
r) Power to transfer enforcement functions to another enforcement authority under the Smoke-Free (Premises and Enforcement) Regulations 2006.	Retain	
s) Power to consider and license/refuse to license sex establishments in accordance with the Council's policy where objections have been received	Add	Not currently listed as a function.
t) Determination of licences under the Zoo Licensing Act 1981 where objections have been received.	Add	Not currently listed as a function.
u) Determination of applications for licences under the Dangerous Wild Animals Act 1976 where objections have been received.	Add	Not currently listed as a function.
v) Power to license performances of hypnotism where objections have been received.	Add	Not currently listed as a function.
w) Power to license pleasure boats and pleasure vessels where objections have been received.	Add	Not currently listed as a function.

* NB:

- *The Head of Community Services may further delegate these matters as they see fit.*
- *The Head of Community Services may decline to exercise any of the above functions in a particular case and must then refer the matter promptly to the Committee for consideration.*

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LICENSING COMMITTEE (15 Members)

1. PURPOSE

To discharge the functions of the Council as a Licensing Authority (with the exception of any functions which are reserved for the Full Council) relating to Hackney Carriages, Private Hire Vehicles, public safety, animal welfare, market and street trading, sex establishments, scrap metal dealing and other miscellaneous licensing and registration functions.

There is a split in the delegation of licensing functions between the Head of Community Services and the Licensing Committee. More information on the functions delegated to the relevant Head of Service and those functions reserved for the Licensing Committee can be found in this section and the Council Officer Responsibilities and Decision Making section of this Constitution.

Functions of the Council as a Licensing Authority under the Licensing Act 2003 and the Gambling Act 2005 have been delegated to the Licensing Sub-Committee (Hearings).

2. RESPONSIBILITIES OF THE LICENSING COMMITTEE

To discharge those functions relating to Licensing and registration as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and Schedule 2 Paragraph 4 and as may be amended.

To exercise the powers and functions of the Council as a Local Licensing Authority that in law must not be the responsibility of the Cabinet which relate to Hackney Carriages, Private Hire Vehicles, public safety, animal welfare, market and street trading, sex establishments, scrap metal dealing and other miscellaneous licensing and registration functions.

All issues relating to Hackney Carriages and Private Hire Vehicles (including approval of policy documents) are solely the responsibility of the Licensing Committee.

To discharge those functions relating to health and safety under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged, but not in the Council's capacity as an employer.

To discharge those functions relating to:

- Food safety under any "relevant statutory provision".
- Environmental Protection Act 1990.
- Anti-Social Behaviour, Crime and Policing Act 2015.
- Any associated legislation.

3. DECISIONS WHICH WILL BE TAKEN BY THE LICENSING COMMITTEE

All of the responsibilities of the Licensing Committee (detailed in Paragraph 2) are delegated to the Head of Community Services* except the following which are reserved to the Committee:

- a) Review of fees and charges, including the annual review, in respect of functions of the Licensing Committee in order to recover the cost of the service as allowed by statute or where statutory provisions do not apply, by the limits set out in the Budget Strategy.
- b) Approval of fares for Hackney Carriages.
- c) Power to review and set fees for Private Hire vehicles, Private Hire Operators and Hackney Carriage vehicles (licences) where objections have been received and not withdrawn.
- d) Approval of all policy related documents regarding Hackney Carriages and Private Hire Vehicles.
- e) Approval of the Health and Safety Service Plan.
- f) Approval of the Food Service Plan.
- g) Power to issue licences authorising the use of land as a caravan site ("site licences").
- h) Power to license the use of moveable dwellings and campsites.
- i) Power to register pool promoters.
- j) Power to grant track betting licences and inter-track betting schemes.
- k) Power to grant permits in respect of premises with amusement machines.
- l) Power to register societies wishing to promote lotteries.
- m) Power to keep list of persons entitled to sell non-medicinal poisons.
- n) Power to register animal trainers and exhibitors.
- o) Power to grant permission for the provision of services, amenities, recreation and refreshment facilities on highways and related powers.
- p) Duty to publish notice in respect to propose the grant of permission under Section 115E of the Highways Act 1980.
- q) Power to set fees for scrap metal dealer sites and mobile collector licences.
- r) Power to transfer enforcement functions to another enforcement authority under the Smoke-Free (Premises and Enforcement) Regulations 2006.

* NB:

- *The Head of Community Services may further delegate these matters as they see fit.*
- *The Head of Community Services may decline to exercise any of the above functions in a particular case and must then refer the matter promptly to the Committee for consideration.*

4. DOCUMENTS RELATED TO THE LICENSING COMMITTEE

- Council Officer Responsibilities and Decision Making.