

Licensing Committee

Minutes of a meeting of the **Licensing Committee** held in the **Telcombe Room, Southover House, Southover Road, Lewes** on **Thursday, 28 July 2016** at 10.00am

Present:

Councillor M Chartier (Chair on election)
Councillors B Bovington, P Gander (Minutes 2 – 5), A Loraine and S Murray

Officers Present:

O Dixon, Solicitor
E Hele, Environmental Health Service Manager
J Norman, Committee Officer

Minutes

1 Election of Chair of this Meeting

Resolved:

- 1.1** That Councillor Chartier be elected Chair of the Licensing Committee for the duration of this meeting.

2 Minutes

The Minutes of the meeting held on 26 January 2016 were approved as a correct record and signed by the Chair.

3 Apologies for Absence

Apologies for absence had been received from Councillors S Adeniji, W Botting, S Gauntlett and I Linington.

4 Delegation of Street Trading Powers to Seaford Town Council

The Committee considered Report No 104/16 in respect of Seaford Town Council's request that street trading powers be delegated to it in relation to specified streets in Seaford.

Action

The Solicitor brought to the attention of the Committee Recommendation 2 (i) of the Report on page 6, and paragraph 2.4 on page 7 which he clarified should be amended as per the following changes in italics:

- “on whether to grant *the request* and on what terms, or *to refuse the request*; and”
- “Mindful of that future proposal, Seaford Town Council (‘STC’) have asked that the following streets *in Seaford* remain consent streets: Station Approach, Clinton Place, Sutton Road, Broad Street, Church Street, Church Lane, High Street, Place Lane, South Street, Saxon Lane, Marine Parade, The Esplanade, and all streets 50 metres inland from Marine Parade and the Esplanade.”

The Environmental Health Services Manager referred to page 11 of the Report in which the Seaford Town Clerk, James Corrigan, requested on behalf of Seaford Town Council (STC) that Lewes District Council (LDC) delegate the power to determine the number of Consent Licences to allocate and the issuing of said licenses to STC. STC had also requested the power to enforce, in close partnership with LDC, the control of the consent areas where transgressions occurred.

Paragraph 2.1 explained that street trading was generally unlawful unless licensed by a local authority. To control the location and type of street trading across the District, LDC had adopted the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982 (‘the 1982 Act’) which enabled it to designate any street within its area as a prohibited, licence or consent street.

Paragraph 2.2 further explained that since 2014 the entirety of LDC’s area had been a designated consent area, which made it unlawful for any street trading to take place across the District without the necessary consent, unless a relevant exclusion applied.

The Environmental Health Services Manager highlighted paragraph 2.3 which explained that designation of the entirety of LDC’s area as a consent area was now considered wider than necessary. Street trading tended to be concentrated in town centres and popular tourist areas and it would be proposed in a future report to the Licensing Committee that LDC’s consent area be narrowed to encompass these areas alone.

The Environmental Health Services Manager referred to paragraph 2.9 which detailed the 1982 Act. Owing to a drafting error in the report, he advised that the words “is conferred on district councils” appearing at the end of the first sentence should be deleted. Whilst a district council may, in relation to specific streets, delegate that power to the parish council in whose area those streets were located, ultimate responsibility for discharging the street trading function lay with the district council. He explained to the Committee that LDC would still maintain overall control of the function, but that everyday decisions would be delegated to STC.

EHSM

The Environmental Health Services Manager reported that the scope and duration of STC's street trading powers would be set out in a delegation agreement between LDC and STC. The Report recommended that Council authorise the Director of Service Delivery to draft such an agreement and to consult with STC over the final version prior to completion. The Environmental Health Services Manager highlighted, under paragraph 2.12, that LDC's Environmental Health Officers had the necessary professional expertise to provide STC staff training, which included how to exercise delegated street trading powers effectively.

Street trading licence fees should not exceed the costs of the procedures and formalities involved in administering applications. In view of this, the costs of enforcing the street trading regime against unlicensed operators would not be reflected in licence fees charged by a local authority. This requirement was equally applicable to STC, should it be given delegated powers to administer street trading across certain parts of Seaford, as highlighted in paragraph 3.1. The Environmental Health Service Manager explained to the Committee that LDC could not reclaim the cost, and as such the Report's Financial Appraisal was fair and appropriate keeping in mind that a majority of the fees should be cost neutral towards the total cost. He further explained that the approximate fee was £600 per annum.

The Environmental Health Services Manager highlighted that his department would work with colleagues in LDC's Legal department to arrange for the discharge of these functions by another local authority, namely STC. An arrangement such as this could only be authorised by a resolution of full Council, and would need to be qualified by reference to a delegation agreement entered into with the body carrying out the functions on behalf of the District Council.

The Environmental Health Services Manager informed the Committee that he had completed a risk assessment of devolving street trading powers to STC. No new risks were identified should the recommendations not be implemented, however the following risks were identified should the recommendations be implemented and he proposed to mitigate these risks in the following ways:

- The delegation agreement would limit STC's exercise of delegated powers to a defined period; make renewal subject to satisfactory performance; and put in place controls aimed at ensuring the powers were exercised lawfully and in accordance with LDC's current Street Trading Policy.
- Despite the training LDC would provide, there was a risk that STC might exercise delegated street trading powers incorrectly or otherwise unlawfully, giving rise to costs, damages or liabilities. To mitigate this risk, the delegation agreement would indemnify LDC against the financial effect of STC's improper exercise of delegated powers.

In response to a query from the Committee regarding whether street trading powers should be granted to STC, the Environmental Health Services

Manager confirmed that as long as LDC provided proper support to STC, he saw no viable reason as to why the request should not be presented to full Council for approval.

The Committee asked whether the delegation agreement should be fully drafted prior to full Council considering whether to grant STC's request for delegated street trading powers. The Solicitor said that he and the Environmental Health Service Manager would prepare a draft agreement based on the heads of terms set out at paragraph 2.11 of the report, for consideration by full Council. It would be in sufficient detail to enable Council to consider whether the proposed delegation contained adequate controls and safeguards for LDC. Once Council had approved the delegation agreement in principle, officers would consult STC over the detailed content and prepare a final version for execution by both parties.

Resolved:

- 4.1** That the request from Seaford Town Council that Lewes District Council delegate street trading powers to it in relation to specified streets in Seaford, as set out in paragraph 2.4 of Report No 104/16, be noted; and

Recommended:

- 4.2** That Licensing Committee recommend that full Council grant the request from Seaford Town Council that Lewes District Council delegate street trading powers to it in relation to specified streets in Seaford, as set out in paragraph 2.4 of Report No 104/16; and
- 4.3** That Licensing Committee recommend that full Council authorise the Director of Service Delivery to make all necessary arrangements to give effect to Recommendation 4.2, including the power to enter into a delegation agreement on behalf of Lewes District Council.

5 Date of Next Meeting

Resolved:

- 5.1** That the next meeting of the Licensing Committee be called as necessary.

The meeting ended at 10:25am.

M Chartier
Chair

CO

All to
note