



Surrey Heath Borough Council

Surrey Heath House
Knoll Road
Camberley
Surrey GU15 3HD
Telephone: (01276) 707100
Facsimile: (01276) 707177
DX: 32722 Camberley
Web Site: www.surreyheath.gov.uk

Department: Support Services

Service: Legal and Corporate Services

Please ask for: Miss M Grieve

Direct Tel: 01276 707335

E-Mail: michelle.grieve@surreyheath.gov.uk

25th May 2007

To: The Members of the **LICENSING COMMITTEE**
(Councillors Rodney Bates, Vivienne Chapman, Bill Chapman, Mike Drew,
David Hamilton, Craig Fennell, Surinder Gandhum, Liane Gibson, Paul Ilnicki,
Bruce Mansell, Stuart MacLeod, Wynne Price, Audrey Roxburgh, Bryan Ward and
David Whitcroft.)

Dear Councillor

A meeting of the **LICENSING COMMITTEE** will be held at Surrey Heath House on
Wednesday 6th June 2007 at 7.00pm. The agenda will be as set out below.

Please note that this meeting will be recorded.

Yours sincerely

BARRY R CATCHPOLE

Chief Executive

AGENDA

PART I
(public)

| | <u>Page No</u> |
|--|-----------------------|
| 1. APOLOGIES FOR ABSENCE | - |
| 2. MINUTES | - |
| To confirm and sign the minutes of the meetings held on 7 th March 2007 (copy circulated with the Council Agenda). | |
| 3. DECLARATIONS OF INTEREST | |
| Members are invited to declare any interests (personal and prejudicial) they may have with respect to matters which are to be considered at this meeting. Members who consider they may have an interest are invited to consult the Monitoring Officer or the Committee Services Officer prior to the meeting. | |
| 4. APPOINTMENT OF THE ADJUDICATION SUB-COMMITTEE | 1 |

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APPOINTMENT OF THE ADJUDICATION SUB-COMMITTEE

| | |
|-------------------|---------------------|
| Portfolio: | Regulatory Services |
| Ward(s) Affected: | n/a |

Purpose

To appoint the Adjudication Sub-Committee for the municipal year 2007/08.

Background

1. Under the Licensing Act 2003, the Council is required to appoint an Adjudication Sub-Committee each municipal year to consider licensing matters under the Licensing Act 2003.
2. In the municipal year 2006/07, the Council decided that the Sub-Committee would comprise any three members of the Licensing Committee.
3. The terms of reference for the Adjudication Sub-Committee are attached at Annex A.
4. Meetings of the Sub-Committee are arranged at fairly short notice to comply with the timescales fixed by legislation. All trained Members of the Licensing Committee will be approached as to their availability to attend particular meetings and members will be appointed to the Sub-Committee by the Head of Legal and Corporate Services or the Committee Services Manager under delegated powers. The membership of each Sub-Committee will, therefore, vary according to members' availability and the location of the premises concerned.

Proposal

5. It is proposed that the Adjudication Sub-Committee be established in 2007/08 and that it comprise three members of the Licensing Committee.

Resources Implications

6. There are no additional resource implications arising from this report.

Recommendation

7. The Committee is advised to RESOLVE that the Adjudication Sub-Committee be re-established for the municipal year 2007/08, comprise three members of the Licensing Committee and that its terms of reference be as set out at Annex A.

Background Papers: None

Author: Michelle Grieve 01276 707335
e-mail: michelle.grieve@surreyheath.gov.uk

Head of Service: Karen Whelan 01276 707315
Director of Support Services

TERMS OF REFERENCE OF THE ADJUDICATION SUB-COMMITTEE**Licensing Act 2003**

- To determine applications for the following when objections or adverse representations have been submitted:
 - (i) personal licence
 - (ii) premises licence
 - (iii) club premises certificate
 - (iv) provisional statement
 - (v) variation of a premises licence
 - (vi) variation of a club premises certificate
 - (vii) variation of a designated premises supervisor
 - (viii) transfer of a premises licence
 - (ix) an interim authority (to enable someone to act as a designated premises supervisor when this post is unexpectedly vacated)

- To determine applications for the review of premises licences or club premises certificates.

- To consider any other matters, which the sub-committee may be empowered to consider either by the Act of Regulations.

APPOINTMENT OF REPRESENTATIVES TO THE SURREY COUNTY DISTRICTS FILM LICENSING JOINT COMMITTEE

| | |
|-------------------|---------------------|
| Portfolio: | Regulatory Services |
| Ward(s) Affected: | n/a |

Purpose

To appoint the Council's representatives to the Surrey County Districts Film Licensing Joint Committee for the municipal year 2007/08.

Background

1. The Surrey County Districts Film Licensing Joint Committee considers film licensing functions under Section 1(2) of the Cinemas Act 1985.
2. The membership of the Joint Committee comprises two members from Surrey Heath Borough Council and two members from each of six other Surrey local authorities and it is serviced by the Democratic Services Department of Guildford Borough Council.

Current Position

3. In the 2006/07 municipal year, the Chairman (Cllr David Hamilton) and Vice-Chairman (Cllr Audrey Roxburgh) of the Licensing Committee represented the Council on the Joint Committee.
4. Councillors David Hamilton and Audrey Roxburgh have expressed an interest in continuing to represent the Council on the Joint Committee.

Resources Implications

5. There are no additional resource implications arising from this report.

Recommendation

6. The Committee is advised to RESOLVE the appointment of two representatives on the Surrey County Districts Film Licensing Joint Committee for the municipal year 2007/08.

Background Papers: None

Author: Michelle Grieve 01276 707335
e-mail: michelle.grieve@surreyheath.gov.uk

Head of Service: Karen Whelan 01276 707315
Director of Support Services

GAMBLING ACT 2005 - DELEGATION OF FUNCTIONS

| | |
|-------------------|---------------------|
| Portfolio: | Regulatory Services |
| Ward(s) Affected: | None |

Purpose

To consider delegating to officers a number of the licensing functions under the Gambling Act 2005, to appoint authorised officers and to approve a change to the Terms Of Reference of the Adjudication Sub-Committee.

Background

1. Under the Gambling Act the Council will have to exercise the following functions in relation to gambling:
 - license premises for gambling activities
 - consider notices given for the temporary use of premises for gambling
 - grant permits for gaming and gaming machines in clubs and miners' welfare institutes
 - regulate gaming and gaming machines in alcohol licensed premises
 - grant permits to family entertainment centres for the use of certain lower state gaming machines
 - grant permits for prize gaming
 - consider occasional use notices for betting at tracks and
 - register small societies' lotteries.
2. Section 154 of the Act provides that all decisions relating to premises licences are delegated to the Licensing Committee except:
 - a resolution not to issue casino licences which must be taken by the whole authority
 - functions in relation to the three year licensing policy which must be taken by the whole authority
 - setting fees (to the extent that the licensing authority has delegated powers in relation to fees).
3. Decisions delegated to the Licensing Committee may be further delegated to sub-committees or officers.
4. The table attached at Annex A summarises the lowest level of delegation that is permitted under the Gambling Act 2005.
5. Applications and reviews where representations have been received and, where permissible, not withdrawn, must be determined by the Licensing Committee or a Sub-Committee. Those decisions that may be delegated to officers relate to matters where the decision will be a formality and the grant of a licence, permit etc. will only be dependent upon statutory requirements being satisfied.

6. Under the Licensing Act 2003 the decision as to whether representations are relevant and admissible has been delegated to officers. Taking decisions in relation to this function usually involves applying or interpreting criteria set out in the licensing legislation. The one exception is determining the meaning of vicinity which is one of the requirements for an “interested party”. This is recognised by most local authorities to be between 50 metres and 100 metres. However, each case has to be agreed on its merits and this Council has agreed that up to 200 metres is acceptable. This distance may be further extended in exceptional circumstances and the benefit of the doubt is usually given to the person making the representations. However it should be noted that a decision taken by a Sub-Committee could be challenged on the basis that representations that were not relevant (ie not made by a person living or having a business within the vicinity of the premises) had been taken into account.
7. Under the Gambling Act 2005 an interested party is defined as a person who, in the opinion of the Licensing Authority:
 - a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;
 - b) has business interests that might be affected by the authorised activities; or
 - c) represent persons who satisfy a) or b).
8. The term “affected by” is harder to define than “vicinity” and accordingly it would not be practical to set policy guidelines in relation to this definition. Each case will therefore have to be determined on its merits and will probably be a matter of opinion rather than a legal interpretation.
9. A decision not to treat a person as an interested party can only be challenged by way of a Judicial Review but if a person is treated as an interested party and the applicant feel that this is an incorrect decision, the determination of the Sub-Committee could be challenged in a Magistrates’ Court.
10. The decision as to whether representations made under the Gambling Act 2005 are relevant could be delegated to officers but this matter could also be determined by a Sub-Committee. It should however be pointed out that if this function was delegated to a Sub-Committee, that Sub-Committee could only determine the relevance of the representations and could not hear the application itself. The determination of the application would have to be undertaken by a Sub-Committee comprising different members.

Proposal

11. It is recommended that those functions which are capable of being undertaken by officers as listed in the table and also the decision as to whether representations are relevant should be delegated to the Head and Assistant Head of Legal and Corporate Services and the Licensing Manager.
12. If agreed the terms of reference should also be approved.

Options

13. All licensing functions could be undertaken by the Licensing Committee and the Sub-Committee but this would necessitate in holding meetings to consider matters which would be purely formal.

Resource Implications

14. In the absence of the delegation of any functions to officers, additional meetings will be necessary which could incur additional costs to the Council.

Recommendation

15. The Committee is advised to RECOMMEND that
- (i) functions exercised under the Gambling Act 2005 be delegated to officers as follows:

| FUNCTION | OFFICER |
|--|--|
| Delegations not subject to prior consultation | |
| Gambling Act 2005 | |
| To act as an authorised officer of the Council for the purposes of the Gambling Act 2005 together with any associated regulations. | Licensing Manager or Licensing Officer. |
| Under the Gambling Act 2005 (a) to determine applications for the following provided that no representations are received or all representations have been withdrawn: <ul style="list-style-type: none">• premises licence• variation to a licence• provisional statement (b) to determine applications for the transfer of a licence provided that no representations are received from the Gambling Commission. (c) to determine applications for club gaming/club machine permits provided that no objections are made or all objections have been withdrawn. (d) to determine the following: <ul style="list-style-type: none">• whether a representation is admissible;• applications for other permits• cancellation of licensed premises gaming machine permits | Head of Legal and Corporate Services, Assistant Head of Legal and Corporate Services and Licensing Manager |

| | |
|--|--|
| <ul style="list-style-type: none"> • consideration of temporary use notices • whether an application for review is valid | |
| To institute proceedings in relation to any infringements of the sections of the Gambling Act 2005 as specified in section 346 of that Act. | Head of Legal and Corporate Services and any solicitor employed by the Council |

- (ii) the terms of reference of the Adjudication Sub-Committee be amended to include details as set out at Annex B; and
- (iii) the terms of reference of the Licensing Committee be amended to include the responsibilities of the Gambling Act 2005.

Background Papers: None

Author: Alan Charman 01276 707383
e-mail: alan.charman@surreyheath.gov.uk

Head of Service: Karen Whelan 01276 707315
Director of Support Services

**SUMMARY OF LICENSING AUTHORITY DELEGATIONS PERMITTED
UNDER THE GAMBLING ACT**

| Matter to be dealt with | Full Council | Sub-Committee of Licensing Committee | Officers |
|---|---------------------|--|---|
| Final approval of three year licensing policy | X | | |
| Policy not to permit casinos | X | | |
| Fee setting (when appropriate) | | | X |
| Application for premises licences | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn |
| Application for a variation to a licence | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn |
| Application for a transfer of a licence | | Where representations have been received from the Commission | Where no representations received from the Commission |
| Application for a provisional statement | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn |
| Review of a premises licence | | X | |
| Application for club gaming/club machine permits | | Where objections have been made (and not withdrawn) | Where no objections made/objections have been withdrawn |
| Cancellation of club gaming/club machine permits | | X | |
| Applications for other permits | | | X |
| Cancellation of licensed premises gaming machines permits | | | X |
| Consideration of temporary use notice | | | X |
| Decision to give a counter notice to a temporary use notice | | X | |

A separate consultation on the arrangements for the granting of permits in Scotland will be undertaken by the Scottish Executive in due course.

X indicates at the lowest level to which decisions can be delegated

**DELEGATIONS TO BE INCLUDED IN THE TERMS OF REFERENCE OF THE
ADJUDICATION SUB-COMMITTEE****Gambling Act 2005**

- To determine applications for the following where representations have been received and not withdrawn:
 - (i) premises licence
 - (ii) variation to a premises licence
 - (iii) provisional statement
 - (iv) review of a premises licence
- To determine applications for the transfer of a licence where representations have been received by the Gambling Commission.
- To determine applications for club gaming/club machine permits where objections have been made and not withdrawn.
- To cancel club gaming / club machine permits
- To determine the issue of a counter notice to a temporary use notice.
- To consider any other matters, which the sub-committee may be empowered to consider either by the Act or Regulations.

STREET COLLECTION POLICY

| | |
|-------------------|---------------------|
| Portfolio | Regulatory Services |
| Ward(s) Affected: | n/a |

Purpose

To consider making special provision in relation to street collections in The Mall and The Atrium when completed.

Background

1. Street collections are only permitted in the Borough if organisers of the collection meet certain criteria and hold a street collection licence granted by the Council.
2. This also applies to collections undertaken in The Mall and The Atrium when constructed.
3. Licences are issued by the Licensing Section in accordance with a street collection policy that has been adopted by the Council. Guidance notes are attached at Annex A.

Current Position

4. An application was recently made by The Mall for a licence to hold a street collection within Main Square over a seven day period. Similar collections were being held in 22 other shopping centres owned by the company and the collection was being organised by the owners of Main Square in aid of charities that support Frimley Park Hospital, Portesbery School and the Make a Wish Foundation.
5. The policy of the Council, apart from three exceptions, is not to issue more than one licence to any organisation in a calendar year or to allow collections to take place over more than one day. The three exceptions agreed by the Licensing Committee relate to the Royal British Legion (three days and two hours on Remembrance Sunday), the Rotary Club of Camberley (up to three days) and the Camberley and Frimley Lions (up to three days).
6. Having regard to the special circumstances attached to this application, and following consultations with the Chairman and Vice-Chairman of the Licensing Committee, the collection which took place from Monday 28th May 2007 to Sunday 3rd June 2007 was approved by the Chief Executive, after consultation with the Chairman of the Licensing Committee under urgent action powers.
7. Street collection licences issued in respect of Main Square are only valid if the collection is approved by the Main Square management. The Main Square management therefore retain ultimate control over whether street collections can take place in Main Square.
8. When considering this application it was felt that it was appropriate to have regard to town centre partnership working arrangements.

9. In the circumstances it was felt that in order to promote partnership working any further applications made by the Main Square management in relation to collections taking place within The Mall should be determined on its merits. In addition it was felt that a similar situation would apply to The Atrium which is yet to be completed.

Proposal

10. To allow flexibility it is proposed that, if additional street collections are required by the management of The Mall and The Atrium, that each case be considered on its merits. The issue of licences for these collections to be determined by officers following consultation with the Chairman and Vice-Chairman of the Licensing Committee.

Options

11. The current street collection policy could be maintained without amendment.

Resource Implications

12. There are no resource implications for the Council.

Recommendation

13. The Committee is advised to RECOMMEND that the following paragraph 4a be included in Chapter 12 of the Scheme of Delegation of Functions to Officers.

| FUNCTION | OFFICER |
|---|--|
| Delegations subject to consultation | |
| The determination of applications for additional street collections in the town centre shopping arcades that are promoted by the management companies. | Head of Legal and Corporate Services and Licensing Manager, after consultation with the Chairman and Vice-Chairman of the Licensing Committee |

Background Papers: None

Author: Alan Charman 01276 707383
e-mail: alan.charman@surreyheath.gov.uk

Head of Service: Karen Whelan 01276 707315
Director of Support Services

SURREY HEATH BOROUGH COUNCIL

STREET COLLECTIONS LICENCES - GUIDANCE NOTES

Background

1. It is illegal in this country to hold a Street Collection (to collect money or sell articles for the benefit of charitable or other purposes) without obtaining a Street Collection Licence (SCL) from the Council if that collection is to be held 'in a street or public place'. For this purpose it has been established that a 'public place' is a 'place where the public has access'. A shop doorway, when that shop is open for trading is a 'public place', because the public passes through the door(s). **No other licence will do. A Pedlars Licence, issued by the Police cannot be used for this purpose. It is often assumed that collections can be held in shop doorways or car parks do not need an SCL because they are being held on 'privately owned land'. This is not true, as the legislation does not, in fact mention the ownership of the land or treat collections on 'privately owned land' in any way as "exempt" from the obligation to be licensed.**
2. Local authorities alone issue SCLs under **Section 5 of the Police, Factories, etc. (Miscellaneous Provisions Act 1916, as amended by the Local Government Act 1972 and Schedule 29 of that Act.**
3. The Council has issued Regulations under these Statutory powers (**See copy attached**) These are laid down by central Government and are largely the same for all authorities.

Street Collections Licensing in Surrey Heath

4. Surrey Heath is unique among Surrey Authorities in that, as a matter of long-term policy, decided at Member level (currently Executive) the issue of SCLs is subject to a 'quota' system. This means that the Borough, for this purpose, is geographically divided into 14 areas and the SCLs into seven categories. The 14 areas are:

| | |
|------------------------------------|-------------------------------------|
| Inner Camberley (inc. Town Centre) | Frimley |
| Outer Camberley | Heatherside |
| Frimley Green | Deepcut & Blackdown |
| Mytchett | Inner Bagshot (inc. Village Centre) |
| Lightwater | Outer Bagshot (inc. Longacres) |
| Chobham | Windlesham |
| Bisley | West End |

5. There are seven categories of Licence which are currently defined as follows:-

Category 1 For collections on behalf of **national organisations, including local branches of national organisations. (For total numbers, see para 6. below)**

Category 2 For collections on behalf of **local organisations. (For total numbers, see para. 6. below).**

- Category 3** For collections associated with carnivals, bonfires, walks, Christmas etc (For total numbers see para. 6 below).
- Category 4** For collection on behalf of Mayor's Charity (One Licence, valid for one day only and including the whole Borough)
- Category 5** For collections held for fund-raising events in the Main Square, Camberley only (6 Licences per annum valid for Main Square only)
- Category 6** 'Transient' Licences, to provide for events such as sponsored walks, bike rides or where a licence is only required for a few hours (6 Licences per annum for any area(s) of the Borough).
- Category 7** Special Licence for British Legion Poppy Day; to cover Saturday of Poppy Day, the Thursday and Friday before and 2 hours on Remembrance Sunday). This Licence covers whole Borough.

6. The **annual** numbers in Categories 4, 5, 6 and 7 are shown above. Council has determined that the **annual** numbers in Categories 1,2 and 3, shall be limited in each nominal area of the Borough, as follows. **It should be noted that in these three categories, a Licence can cover a selection of the areas or the whole Borough. Such a Licence is deemed to 'take' one 'Licence' from each notional area it covers. Therefore, a 'whole Borough' Licence would reduce the available total in each area included, by one:-**

| <u>Area</u> | <u>Category 1</u> | <u>Category 2</u> | <u>Category 3</u> |
|----------------------|--------------------------|--------------------------|--------------------------|
| Inner Camberley | 13 | 6 | 8 |
| Outer Camberley | 13 | 6 | 8 |
| Inner Bagshot | 9 | 5 | 5 |
| Outer Bagshot | 9 | 5 | 5 |
| Frimley | 9 | 5 | 5 |
| Frimley Green | 9 | 5 | 5 |
| Heatherside | 9 | 5 | 5 |
| Chobham | 9 | 5 | 5 |
| Deepcut/Blackdown | 7 | 4 | 4 |
| Mytchett | 7 | 4 | 4 |
| Lightwater | 7 | 4 | 4 |
| Windlesham | 7 | 4 | 4 |
| West End | 7 | 4 | 4 |
| Bisley | 7 | 4 | 4 |
| <u>Totals</u> | 122 | 66 | 70 |

7. In addition, the Council (Environment Committee 10 September 1998) agreed that:-
- a) (Category 3, Christmas) SCLs issued to the **Rotary Club of Camberley** and to the **Camberley and Frimley Lions** may be of up to three days duration, including Sundays, but collections held under these two Licences shall not be held in precisely the same places in the Borough at the same time;

- b) In all cases, with the exception of the Rotary Club of Camberley and the Lions, no two charities shall be allowed to collect in the same notional area of the Borough at the same time.