

# Licensing Committee

## Agenda

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**Date:** Friday, 19 December, 2008  
**Time:** 10.00 am  
**Venue:** West Committee Room, Municipal Buildings, Earle Street,  
Crewe CW1 2BJ

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1. **Appointment of Chairman**

To appoint a Chairman for the remainder of the Municipal year.

2. **Appointment of Vice Chairman**

To appoint a Vice-Chairman for the remainder of the Municipal year.

3. **Apologies for Absence**

4. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

5. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Note: In order for officers to undertake any background research it would be helpful if questions were submitted at least one working day before the meeting.

6. **Terms of Reference for the Licensing Committee**

A verbal update will be provided at the meeting.

7. **Creation of Licensing Sub-Committees** (Pages 1 - 4)

To consider the creation of Sub-Committees of the Licensing Committee and to establish the protocol for arranging meetings of the Sub-Committees.

8. **Delegation of Licensing Functions** (Pages 5 - 18)

To consider the delegation of certain licensing functions from the Licensing Committee to Licensing Sub-Committees and officers.

9. **Committee Procedure** (Pages 19 - 30)

To consider the procedure to be adopted at hearings of the Licensing Committee and Sub-Committees.

10. **Fees and Charges** (Pages 31 - 36)

To receive information on the fees and charges currently charged by Congleton, Macclesfield and Crewe Borough Councils in relation to licensing functions and to consider the proposed fees for Cheshire East.

11. **Schedule of Meetings for Remainder of the Municipal Year**

To determine a schedule of meetings for the remainder of the Municipal year.

## CHESHIRE EAST COUNCIL

### LICENSING COMMITTEE

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**Date of meeting:** 19 December 2008  
**Report of:** Kate Khan  
**Title:** Creation of Licensing Sub-Committees

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#### **1.0 Purpose of Report**

- 1.1 The purpose of the report is to formally create the Sub-Committees of the Licensing Committee and to establish the protocol for arranging meetings of the Sub-Committees.

#### **2.0 Decision Required**

- 2.1 The Licensing Committee is requested to confirm the creation of:
- 2.1.1 Sub-Committees of three Members drawn from the full Committee to deal with matters under the Licensing Act 2003 and the Gambling Act 2003; and
- 2.1.2 Sub-Committees of five Members (with a quorum of three) drawn from the full Committee (of which at least one shall, subject to availability, be the Chairman or Vice Chairman of the full Committee) are established on an ad hoc basis to deal with 'general' licensing matters.
- 2.2 The Licensing Committee is requested to determine a protocol for arranging meetings of the Sub-Committees which deals with the manner of selection of Members to sit on the Sub-Committee.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 Section 9 of the Licensing Act 2003 prescribes that a licensing committee may establish one or more sub-committees consisting of three members of the Committee. Section 10 of the Act allows the Licensing Committee to delegate functions to the Sub-Committee (or officers).

## **6.0 Risk Assessment**

- 6.1 There is a risk of legal challenge to decisions taken by the licensing authority if the Sub-Committees are not established in accordance with the relevant legislation.

## **7.0 Background and Options**

### **Background**

- 7.1 At its meeting on 9 December full Council resolved to create a Licensing Committee and that the Licensing Committee would then establish:
- 7.1.1 Sub-Committees of three members drawn from the full Committee to deal with Matters under the Licensing Act 2003 and the Gambling Act 2003; and
  - 7.1.2 Sub-Committees of five Members (with a quorum of three) drawn from the full Committee (of which at least one shall, subject to availability, be the Chairman or Vice Chairman of the full Committee) be established on an ad hoc basis to deal with 'general' licensing matters.
- 7.2 As set out above the Licensing Act 2003 provides that the Licensing Committee may establish one or more sub-committees consisting of three members of the full Committee. In addition, the Gambling Act 2005 specifically delegates the licensing functions in Part 8 of the Act to the Committee established under the Licensing Act 2003.
- 7.3 At its meeting on 9 December Council resolved to waive the requirement of political proportionality in relation to the sub-committee of five dealing with 'general' licensing matters such as the licensing of hackney carriage and private hire vehicles and drivers.
- 7.4 It is proposed, in accordance with the resolution of Council, that the membership of both the sub-committees referred to in 7.1 above be selected on an ad hoc basis. Due to the nature of work to be dealt with by the Sub-Committees and in light of the statutory timeframe for dealing with applications under the Licensing Act 2003, this arrangement is suggested in order to ensure flexibility and efficiency.
- 7.5 In order to assist with the practical operation of the sub-committees post 1 April 2009, the Committee is requested to consider the manner in which membership of the sub-committees is selected.
- 7.6 It is clear that in devolving the licensing of alcohol sales to local authorities from the Magistrates Court through the Licensing Act 2003, central government were keen to preserve the 'local knowledge' element of decision making, i.e. those individuals who form part of the decision making body have knowledge of the

area to which applications relate. Whilst no doubt all Members on the Licensing Committee have some knowledge of the whole of Cheshire East's area, it is suggested that 'specialist' knowledge exists in relation to the 'district' areas which Members currently represent. It is therefore suggested that in relation to a Premises Licence application, wherever possible one of the members of the Sub-Committee should be a Member who represents an area previously covered by the relevant preceding district council.

- 7.7 Subject to the above, it is suggested that membership of the Licensing Act sub-committee of three should be drawn on a rotational basis, subject to the availability of Members.
- 7.8 In relation to the 'general' sub-committee, Council have resolved that, subject to availability, at least one of the five members shall be the Chairman or Vice-Chairman of the full Committee. It is again suggested that it may be appropriate to apply the principle set out above in relation to local knowledge. Subject to these two points, it is suggested that the membership of the 'general' sub-committee be drawn on a rotational basis, subject to the availability of Members.

## **8.0 Overview of Day One, Year One and Term One Issues**

- 8.1 The requirement to have licensing sub-committees in place is a Day One requirement.

## **9.0 Reasons for Recommendation**

- 9.1 The recommendations are made to ensure that there are licensing sub-committees in place to ensure the provision of an efficient licensing service.

### ***For further information:***

Officer: Mrs K Khan, Solicitor  
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Email: k.khan@macclesfield.gov.uk

### ***Background Documents:***

None

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## CHESHIRE EAST COUNCIL

### LICENSING COMMITTEE

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**Date of meeting:** 19 December 2008  
**Report of:** Kate Khan  
**Title:** Delegation of Licensing Functions

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#### **1.0 Purpose of Report**

- 1.1 The purpose of the report is seek approval for the delegation of certain licensing functions from the Licensing Committee to Licensing Sub-Committees and officers.

#### **2.0 Decision Required**

- 2.1 The Licensing Committee is requested to make the delegations set out within Appendix 2 of the report subject to the proviso:
- 2.1.1 that officers have discretion to refer any issue to the Licensing Committee or Sub-Committee if the matter is significant or controversial in nature;
- 2.1.2 that Sub-Committees have discretion to refer matters to the full Licensing Committee if the item is significant or controversial in nature.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 prescribe that the functions set out within Appendix 1 are not to be the responsibility of the Executive. These Council functions have been delegated to the Licensing Committee by full Council; further delegation to sub-committees and officers is required in order to facilitate the efficient provision of a licensing service for Cheshire East. A clear scheme of delegation is required to ensure that all licensing decisions are made lawfully and the authority of sub-committees and officers is not open to legal challenge.

## **6.0 Risk Assessment**

- 6.1 There is a risk of legal challenge to decisions taken by the licensing authority if the scheme of delegation is not robust.

## **7.0 Background and Options**

### **Background**

- 7.1 At its meeting on 9<sup>th</sup> December, Council resolved to delegate to the Licensing Committee those licensing functions which are the responsibility of Council set out in Appendix 1. This delegation was made subject to the proviso that before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee.
- 7.2 Due to the volume of applications which will require determination from 1 April 2009, it would not be practicable for the full Licensing Committee to consider such matters. For this reason the Licensing Committee is requested to delegate the functions to sub-committees and officers in accordance with the scheme of delegation set out at Appendix 2.
- 7.3 The scheme of delegation within Appendix 2 draws on current practices within the three existing licensing authorities of Congleton, Crewe & Nantwich and Macclesfield Borough Councils.
- 7.4 It is suggested that the scheme would be subject to the proviso that officers would have discretion to refer any issue to the Licensing Committee or Sub-Committee if the matter was significant or controversial in nature. In addition Sub-Committees would have discretion to refer matters to the full Licensing Committee in similar circumstances.

## **8.0 Overview of Day One, Year One and Term One Issues**

- 8.1 The requirement to have a scheme of delegation in place is a Day One requirement.

## **9.0 Reasons for Recommendation**

- 9.1 The recommendations are made to ensure that there is a robust scheme of delegation to sub-committees and officers in place which will facilitate the provision of an efficient licensing service.



***For further information:***

Officer: Mrs K Khan, Solicitor  
Tel No: (01625) 504264  
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***Background Documents:***

None

**Licensing functions which are the responsibility of Council**

(as set out within Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000)

Power to license hackney carriages and private hire vehicles (including the power to set fees); (Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976)

Power to license drivers of hackney carriages and private hire vehicles (including the power to set fees); (Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976)

Power to license operators of hackney carriages and private hire vehicles (including the power to set fees); (Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976)

Functions in relation to licensing (under the Licensing Act 2003 - with the exception of approval of Statement of Licensing Policy);

Duty to comply with requirement to provide information to the Gambling Commission (Gambling Act 2005);

Functions relating to exchange of information (under the Gambling Act 2005);

Functions relating to occasional use notices (under the Gambling Act 2005);

Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises (Gambling Act 2005);

Power to make order disapplying section 279 or 282(1) of the Gambling Act 2005 in relation to specified premises (Gambling Act 2005);

Power to institute criminal proceedings (under the Gambling Act 2005);

Power to exchange information (under the Gambling Act 2005);

Functions relating to the determination of fees for premises licences (under the Gambling Act 2005);

Functions relating to the registration and regulation of small society lotteries (Gambling Act 2005);

Power to license sex shops and sex cinemas (including the power to set fees) (Local Government (Miscellaneous Provisions) Act 1982);

Power to license performances of hypnotism (Hypnotism Act 1952);

Power to license pleasure boats and pleasure vessels (Public Health Acts Amendment Act 1907);

Power to license market and street trading (Local Government (Miscellaneous Provisions) Act 1982);

Power to issue, amend or replace safety certificates (whether general or special) for sports grounds (The Safety of Sports Grounds Act 1975);

Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds (Fire Safety and Safety of Places of Sport Act 1987);

Power to license persons to collect for charitable and other causes (Police Factories etc (Miscellaneous Provisions) Act 1916 & House to House Collections Act 1939);

Power to sanction use of parts of buildings for storage of celluloid (Celluloid and Cinematograph Film Act 1922);

Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption (Section 13 Criminal Justice and Police Act 2001);

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### DELEGATION OF LICENSING FUNCTIONS

| Function   | Provision  | Full Committee | Sub-Committee  | Officer <sup>1</sup>  |
|--|--|----------------|--|---|
| <b>Licensing Act 2003</b>                                      |  |                |  |   |
| Application for a Personal Licence (first grant and renewal)   | Section 120 and 121 Licensing Act 2003   |                | To determine applications where Police objection is made.                                | To determine applications where no objections are made.   |
| Power to revoke Personal Licence                               | Section 124 Licensing Act 2003   |                | Power to revoke Personal Licence.  |   |
| Application for a Premises Licence/ Club Premises Certificate  | Premises Licence: Section 18 Licensing Act 2003<br><br>Club Premises Certificate: Section 72 |                | To determine applications where relevant representations are received and not withdrawn. | To determine applications where no relevant representations are made or where representations made have been withdrawn. |
| Application for a provisional statement                        | Section 31 Licensing Act 2003  |                | To determine applications where relevant representations are received and not withdrawn. | To determine applications where no relevant representations are made or where representations made have been withdrawn. |
| Application to vary Premises Licence/Club Premises Certificate | Premises Licence: Section 35 Licensing Act 2003<br><br>Club Premises Certificate: Section 85 |                | To determine applications where relevant representations are received and not withdrawn. | To determine applications where no relevant representations are made or where representations made have been withdrawn. |
| Application to vary designated Personal Licence holder         | Section 39 Licensing Act 2003  |                | To determine applications where Police objection is made.                                | To determine applications where no objections are made.   |
| Request to be removed as designated Personal Licence Holder    | Section 41 Licensing Act 2003  |                |  | In all cases.   |
| Application of transfer of Premises Licence.                   | Section 44 Licensing Act 2003  |                | To determine applications where Police objection is made.                                | To determine applications where no objections are made.   |

<sup>1</sup> Unless specifically stated to the contrary the delegation shall be to the Head of Safer and Stronger Communities

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| Application for Interim Authorities  | Section 48 Licensing Act 2003  |  | Consideration of Police objection to interim authority notice.        | To determine where no objections are made.                             |
| Application to review Premises Licence/Club Premises Certificate.                | Premises Licence: Section 52 Licensing Act 2003<br><br>Club Premises Certificate: Section 88<br><br>Section 167 Licensing Act 2003 |  | To determine applications for review.                                 |  |
| Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.        |  |  |   | In all cases.  |
| Determination of a police objection to a Temporary Event Notice.                 | Section 105 Licensing Act 2003   |  | In all cases  |  |
| Decision to object when Local Authority is a consultee and not a lead authority. |  |  | In all cases  |  |
| <b>Gambling Act 2005</b>   |  |  |   |  |
| Application for premises licences  | Part 8 and Section 163 Gambling Act 2005   |  | Where representations have been received and not withdrawn            | Where no representations received/ representations have been withdrawn |
| Application for a variation to a licence   | Part 8 and Section 187 Gambling Act 2005   |  | Where representations have been received and not withdrawn            | Where no representations received/ representations have been withdrawn |
| Application for a transfer of a licence  | Part 8 and Section 188 Gambling Act 2005   |  | Where representations have been received from the Gambling Commission | Where no representations received from the Gambling Commission         |

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| Application for a provisional statement                                | Part 8 and Section 204 Gambling Act 2005        |  | Where representations have been received and not withdrawn | Where no representations received/ representations have been withdrawn |
| Review of a premises licence   | Part 8 and Section 201 Gambling Act 2005        |  | To determine applications for review                       |  |
| Application for club gaming /club machine permits                      | Part 12, sections 271 and 273 Gambling Act 2005 |  | Where representations have been received and not withdrawn | Where no representations received/ representations have been withdrawn |
| Cancellation of club gaming/ club machine permits                      |   |  | X  |  |
| Applications for other permits   |   |  |  | X  |
| Cancellation of licensed premises gaming machine permits               | Part 12 and Schedule 13 Gambling Act 2005       |  |  | X  |
| Consideration of temporary use notice                                  | Part 9 Gambling Act 2005                        |  |  | X  |
| Decision to give a counter notice to a temporary use notice            | Part 9 Gambling Act 2005                        |  | X  |  |
| Functions in relation to Occasional Use Notices                        | Section 39 Gambling Act 2005                    |  |  | X  |
| Registration and regulation of small society lotteries                 | Part 5 of Schedule 11 Gambling Act 2005         |  |  | X  |
| Duty to comply with requirement to provide information to the Gambling | Section 29 of the Gambling Act 2005             |  |  | X  |

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| Commission   |  |                    |   |  |
| Functions relating to the exchange of information  | Section 30 of the Gambling Act 2005  |                    |   | X  |
| Power to exchange information  | Section 350 Gambling Act 2005  |                    |   | X  |
| Functions relating to the determination of fees for premises licences                            | The Gambling (Premises Licence Fees)(England and Wales) Regulations 2007   | Power to set fees. |   |  |
| Power to institute criminal proceedings  | Section 346 Gambling Act 2005  |                    |   | To the Borough Solicitor   |
| Power to designate officer of a licensing authority for a purpose relating to premises           | Section 304 of the Gambling Act 2005.  |                    |   | X  |
| <b>Taxi Licensing</b>  |  |                    |   |  |
| Power to licence (first grant, renewal and transfer) hackney carriages and private hire vehicles | <p>Hackney carriages: Town Police Clauses Act 1847; section 47, 57, 60 &amp; 79 Local Government (Miscellaneous Provision) Act 1976</p> <p>Private Hire Vehicles: sections 48, 57, 60 &amp; 79 Local Government (Miscellaneous Provision) Act 1976</p> |                    | To determine applications where the vehicle does not meet the Council's vehicle conditions or the vehicle does not pass the inspection. | <p>Officers may grant/renew where the vehicle meets the Council's vehicle conditions and the vehicle passes the inspection.</p> <p>Power to grant consent for the display of signs/advertisements on vehicles in accordance with the Council's vehicle conditions.</p> |
| Power to suspend or revoke hackney carriage and private hire vehicle licences                    | Hackney carriages: Town Police Clauses Act 1847; section 58 & 60 Local Government (Miscellaneous Provision) Act 1976   |                    | <p>To note reports relating to officer decisions to suspend vehicle licences.</p> <p>The power to revoke vehicle licences.</p>          | <p>To suspend vehicle licences</p> <p>Any officer decision to suspend a vehicle licence shall be reported to the next available meeting of the Licensing</p>   |



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|  | Private Hire Vehicles: sections 58 & 60 Local Government (Miscellaneous Provision) Act 1976  |  |   | Committee.<br><br>The power to issue notices for the return of vehicle plates/discs.   |
| Power to suspend hackney carriage and private hire vehicle licences pending inspection | Section 50 & 68 Local Government (Miscellaneous Provision) Act 1976  |  |   | Power to serve notice requiring vehicle to be presented for test.<br><br>To serve notice to require the address where a vehicle is kept when not in use<br><br>To suspend vehicle licences pending inspection as to fitness. |
| Power to licence (first grant or renewal) operators licences                           | Sections 55 – 58 & 79 Local Government (Miscellaneous Provision) Act 1976  |  | To determine applications where the Council's requirements are not met.   | Officers may grant/renew where the Council's requirements are met.   |
| Power to suspend or revoke operators licences  | Section 62 Local Government (Miscellaneous Provision) Act 1976   |  | To note reports relating to officer decisions to suspend operators licences.<br><br>Power to revoke operators licences. | To suspend operators licences<br><br>Any officer decision to suspend an operators licence shall be reported to the next available meeting of the Licensing Committee.  |
| Power to licence (first grant or renewal) hackney carriage and private hire drivers    | Hackney carriages: Town Police Clauses Act 1847; section 53, 54, 57, 59, 61 & 79 Local Government (Miscellaneous Provision) Act 1976<br><br>Private Hire: sections 51, 53, 54, 61 & 79 Local Government (Miscellaneous Provision) Act 1976 |  | To determine applications where the driver does not meet the Council's requirements.                                    | Officers may grant/renew where the driver meets the Council's requirements (such as medical certification, knowledge and satisfactory CRB disclosure)  |

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| Power to suspend or revoke hackney carriage and private hire drivers licences                      | Section 61 Local Government (Miscellaneous Provision) Act 1976   |                    | <p>To note reports relating to officer decisions to suspend drivers licences.</p> <p>Power to revoke drivers licences.</p> | <p>To suspend drivers licences</p> <p>Any officer decision to suspend a drivers licence shall be reported to the next available meeting of the Licensing Committee.</p> <p>The power to require the return of drivers badge.</p> |
| Power to set fees in relation to hackney carriage and private hire drivers, vehicles and operators | <p>Drivers: section 53 Local Government (Miscellaneous Provision) Act 1976</p> <p>Vehicles/operators: section 70 Local Government (Miscellaneous Provision) Act 1976</p> | Power to set fees. |  |  |

| <b>Sex Establishments</b>  |  |   |  |  |
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| Power to licence sex shops and sex cinemas (including first grant, renewal, transfer and variation of standard conditions) | Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3 | <p>First grant: all cases before the Licensing Committee.</p> <p>Renewal: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers.</p> <p>Transfer: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers.</p> <p>Variation of standard conditions.</p> |  | <p>Renewal and transfer: the power to renew and transfer where the following apply:</p> <p>(i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and</p> <p>(ii) no objections have been received, or those that have been received should in the officer's opinion be set aside on the ground that the Council could not lawfully take them into account.</p> |
| Power to set fees for sex establishments   | Para 19, Schedule 3 Local Government (Miscellaneous Provisions) Act 1982       | Power to set fees   |  |  |
| <b>Charitable Collections</b>  |  |   |  |  |
| Power to licence street collection   | Section 5 Police, Factories etc (Miscellaneous Provisions) Act 1916            |   | <p>To determine requests for waiver of the Council's street collection regulations.</p> <p>Determines appeals against officer refusal.</p> | <p>To licence street collections in circumstances where the collection complies with Council's street collection regulations.</p> <p>The power to waive regulation</p>   |

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|   |   |                            |   | 10 (in relation to processions) in appropriate circumstances.   |
| Power to licence House to House collection  | Section 2 House to House Collections Act 1939                                 |                            | Determines appeals against officer refusal.   | To licence House to House collections.<br><br>Appeal against officer decision to the Licensing Committee                      |
| <b>Street Trading</b>   |   |                            |   |   |
| Power to issue street trading licences or consents                                    | Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 |                            | To determine applications for street trading consents where representations have been received (and not withdrawn).<br><br>To determine applications for street trading licences. | To issue street trading consents where no representations are received (or where any that were received have been withdrawn). |
| Power to designate streets as consent streets, licence streets or prohibited streets. | Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 | Power to designate streets |   |   |
| Power to set fees in relation to street trading                                       | Paragraph 9, Schedule 4 Local Government (Miscellaneous Provisions) Act 1982  | Power to set fees.         |   |   |

## CHESHIRE EAST COUNCIL

### LICENSING COMMITTEE

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**Date of meeting:** 19 December 2008  
**Report of:** Kate Khan  
**Title:** Committee Procedure

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#### **1.0 Purpose of Report**

- 1.1 The purpose of the report is to request approval for the procedure to be adopted at hearings of the Licensing Committee and Sub-Committees.

#### **2.0 Decision Required**

- 2.1 The Licensing Committee is requested to approve and adopt the procedure to be followed at hearings under the Licensing Act 2003, the Gambling Act 2005 and in relation to 'general' licensing functions as set out at Appendices 1, 2 and 3 respectively.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 Section 9 of the Licensing Act 2003 prescribes that subject to the provisions of secondary legislation each licensing committee may regulate its own procedure and that of its sub-committees. The Gambling Act 2005 prescribes that licensing functions in Part 8 of the Act to the Committee established under the Licensing Act 2003.
- 5.2 The Licensing Act 2003 (Hearings) Regulations 2005 set out certain requirements in relation to the procedure for hearings under the 2003 Act. Similarly the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 make provision for hearings procedure when dealing with matters under the 2005 Act.

## **6.0 Risk Assessment**

- 6.1 There is a risk of legal challenge to decisions taken by the licensing authority if the procedure for hearings is not in accordance both with the relevant legislation and the principles of natural justice.

## **7.0 Background and Options**

### **Background**

- 7.1 As set out above under paragraph 5 (Legal Implications) the procedure in relation to hearings under the Licensing Act 2003 and the Gambling Act 2005 is to a degree regulated by secondary legislation. In addition to these statutory requirements, as the Committee is acting in a quasi-judicial manner, it is important to ensure that the procedure adopted by the Committee is in accordance with the rules of natural justice.
- 7.2 The draft procedures set out at Appendices 1, 2 and 3 have been drafted to comply with the relevant legislative requirements and are based on the current procedures in operation within the existing district Councils.

## **8.0 Overview of Day One, Year One and Term One Issues**

- 8.1 The requirement to have hearing procedures in place in relation to Licensing Committees and Sub-Committees is a Day One requirement.

## **9.0 Reasons for Recommendation**

- 9.1 The recommendations are made to ensure that the procedure in relation hearings of the Licensing Committee and its Sub-Committees from 1 April 2009 is clear and in accordance with the law.

### ***For further information:***

Officer: Mrs K Khan, Solicitor  
Tel No: (01625) 504264  
Email: k.khan@macclesfield.gov.uk

### ***Background Documents:***

None

## CHESHIRE EAST COUNCIL

## PROCEDURE FOR HEARINGS – LICENSING ACT 2003

The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Licensing Act 2003. The Sub-Committee has the discretion to refer a matter up to a hearing of the full Licensing Committee.

Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

PROCEDURE

**NOTE:** If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

|   |  |   |
|---|--|---|
| 1 | <b>Chairman</b>  | The Chairman will:<br>(i) call the matter to be considered;<br>(ii) call for any declarations of interest;<br>(iii) ask all parties to introduce themselves;<br>(iv) summarise the procedure to be followed at the hearing;<br>(v) will consider any request made by a party for another person to appear at the hearing;<br>(v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties). |
| 2 | <b>Licensing Officer</b>                                       | Will introduce and summarise the application, highlighting areas of contention or dispute.  |
| 3 | <b>Committee Members</b>                                       | May ask questions of the Licensing Officer  |
| 4 | <b>Applicant</b>   | Will present his/her case, calling witnesses, as appropriate.<br><br><i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>  |
| 5 | <b>Responsible Authorities (who have made representations)</b> | Each in turn may ask <u>questions</u> of the applicant, by way of clarification.  |
| 6 | <b>Local residents</b>   | To be invited to ask <u>questions</u> of the applicant, by way of   |

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|    | (ie. defined as "interested parties")                           | clarification.<br><br><i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>  |
| 7  | <b>Committee Members</b>  | Each in turn may ask <u>questions</u> of the applicant.   |
| 8  | <b>Applicant</b>  | May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.   |
| 9  | <b>Responsible Authorities</b>                                  | Will make their representations.  |
| 10 | <b>Applicant</b>  | Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.  |
| 11 | <b>Local residents</b><br>(ie. defined as "interested parties") | May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification.<br><br><b>(Note: This is not the point at which local residents should be stating their objections.)</b> |
| 12 | <b>Committee Members</b>  | May ask <u>questions</u> of the Responsible Authorities represented at the meeting  |
| 13 | <b>Local residents</b><br>(ie. defined as "interested parties") | The local residents who are objecting to the application will be invited <b><u>to make observations on the application</u></b> and present the bases of their objections.   |
| 15 | <b>Applicant</b>  | Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.  |
| 16 | <b>Committee Members</b>  | May ask <u>questions</u> of the Local Residents.  |
| 17 | <b>Chairman</b>   | To invite both <b>Responsible Authorities</b> and <b>Local Residents</b> to make their closing addresses.   |
| 18 | <b>Applicant</b>  | Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested conditions.   |
| 19 | <b>Committee</b>  | <u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.  |
| 20 | <b>Committee</b>  | Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.              |



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|  |  | In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days. |
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**Notes**

1. The hearing shall normally be held in public. There may be occasions on which the Committee find it necessary to exclude members of the press and public; any such decision will be taken on the basis that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public.
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.
3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Hearings Regulations 2005.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

### SUMMARY OF PROCEDURE

- 1 Chairman appointed (if this has not been done previously).
- 2 Chairman to call for declarations of interest and request that all parties introduce themselves.
- 3 Chairman summarises the procedure for the hearing
- 4 The Licensing Officer summarises the application
- 5 Applicant to present his/her case.
- 6 Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
- 7 Applicant to be questioned by the Committee.
- 8 Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
- 9 **Local residents** (defined as interested parties) will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
- 10 The applicant will be invited to sum up his/her case
- 11 Committee/Sub-Committee withdraws to make its decision
- 12 Committee/Sub-Committee returns to announce its decision to all present.

## CHESHIRE EAST COUNCIL

## PROCEDURE FOR HEARINGS – GAMBLING ACT 2005

The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Gambling Act 2005. The Sub-Committee has the discretion to refer a matter up to a hearing of the full Licensing Committee.

Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

PROCEDURE

**NOTE:** If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

|   |  |   |
|---|--|---|
| 1 | <b>Chairman</b>  | The Chairman will:<br>(i) call the matter to be considered;<br>(ii) call for any declarations of interest;<br>(iii) ask all parties to introduce themselves;<br>(iv) summarise the procedure to be followed at the hearing;<br>(v) will consider any request made by a party for another person to appear at the hearing;<br>(v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties). |
| 2 | <b>Licensing Officer</b>                                       | Will introduce and summarise the application, highlighting areas of contention or dispute.  |
| 3 | <b>Committee Members</b>                                       | May ask questions of the Licensing Officer  |
| 4 | <b>Applicant</b>   | Will present his/her case, calling witnesses, as appropriate.<br><br><i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>  |
| 5 | <b>Responsible Authorities (who have made representations)</b> | Each in turn may ask <u>questions</u> of the applicant, by way of clarification.  |
| 6 | <b>Local residents</b>   | To be invited to ask <u>questions</u> of the applicant, by way of   |

|    |   |   |
|----|---|---|
|    | (ie. defined as "interested parties")                           | clarification.<br><br><i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>  |
| 7  | <b>Committee Members</b>  | Each in turn may ask <u>questions</u> of the applicant.   |
| 8  | <b>Applicant</b>  | May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.   |
| 9  | <b>Responsible Authorities</b>                                  | Will make their representations.  |
| 10 | <b>Applicant</b>  | Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.  |
| 11 | <b>Local residents</b><br>(ie. defined as "interested parties") | May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification.<br><br><b>(Note: This is not the point at which local residents should be stating their objections.)</b> |
| 12 | <b>Committee Members</b>  | May ask <u>questions</u> of the Responsible Authorities represented at the meeting  |
| 13 | <b>Local residents</b><br>(ie. defined as "interested parties") | The local residents who are objecting to the application will be invited <b><u>to make observations on the application</u></b> and present the bases of their objections.   |
| 15 | <b>Applicant</b>  | Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.  |
| 16 | <b>Committee Members</b>  | May ask <u>questions</u> of the Local Residents.  |
| 17 | <b>Chairman</b>   | To invite both <b>Responsible Authorities</b> and <b>Local Residents</b> to make their closing addresses.   |
| 18 | <b>Applicant</b>  | Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested conditions.   |
| 19 | <b>Committee</b>  | <u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.  |
| 20 | <b>Committee</b>  | Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.              |

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|  |  | In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days. |
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### **Notes**

1. The hearing will be held in public unless the Committee is satisfied that it is necessary for all or part of the hearing to be held in private, having regard to (a) any unfairness to a party that is likely to result from a hearing in public and (b) the need to protect so far as possible, the commercial or other legitimate interests of a party
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.
3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees)(Premises Licences and Provisional Statements)(England and Wales) Regulations 2007.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

### **SUMMARY OF PROCEDURE**

- 1** Chairman appointed (if this has not been done previously).
- 2** Chairman to call for declarations of interest and request that all parties introduce themselves.
- 3** Chairman summarises the procedure for the hearing
- 4** The Licensing Officer summarises the application
- 5** Applicant to present his/her case.
- 6** Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
- 7** Applicant to be questioned by the Committee.
- 8** Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
- 9** Local residents (defined as interested parties) will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
- 10** The applicant will be invited to sum up his/her case
- 11** Committee/Sub-Committee withdraws to make its decision
- 12** Committee/Sub-Committee returns to announce its decision to all present.

**CEHESHIRE EAST COUNCIL**  
**LICENSING COMMITTEE PROCEDURE**  
**(‘General’ Licensing matters)**

- 1 Chairman will:
  - (a) call the matter forward and confirm whether there are any declarations of interest;
  - (b) request the parties to introduce themselves; and
  - (c) explain the procedure to be followed.
- 2 The Licensing Officer will present the report introducing the case.
- 3 The applicant and/or representative will be given the opportunity to speak in support of the application.
4. The Committee Members will then be given the opportunity to question the application on any matter which it is felt requires clarification or to ascertain the applicant’s suitability to hold the licence.
5. The applicant and/or representative will then be given the opportunity to add any further comments in support of the application.
- 6 The applicant and/or representative will then be asked to withdraw from the meeting whilst the committee considers its decision.
7. The applicant will finally be asked to re-join the meeting to be informed of the Committee’s decision.

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## CHESHIRE EAST COUNCIL

### LICENSING COMMITTEE

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**Date of meeting:** 19 December 2008  
**Report of:** Mr T Potts, Community Safety Manager  
**Title:** Fees and Charges

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#### **1.0 Purpose of Report**

- 1.1 The purpose of the report is to provide the Licensing Committee information on the fees and charges currently charged by Congleton, Macclesfield and Crewe Borough Councils in relation to licensing functions and to seek approval for the proposed fees for Cheshire East.

#### **2.0 Decision Required**

- 2.1 The Licensing Committee is requested to consider the proposed fees set out within Appendix 1 and is further requested to:
- 2.1.1 Approve the fees to be charged in relation to functions in relation to gambling, street trading and sex establishments; and
- 2.1.2 To approve the proposed fees in relation to private hire and hackney carriage licences in order that they may be subject to statutory consultation.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no significant costs involved in the implementation of the revised charging options. There will be a cost for the publication in local newspapers of the notice relating to taxi licensing fees.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 The harmonisation and review of fees and charges across Cheshire East will result in an increase in revenue in some areas, but could result in a decrease in others. The proposed fees and charges do not reflect the inflationary increase that will occur in April 2009. All the charges will be subject to review during the budget setting process.

#### **5.0 Legal Implications**

- 5.1 Fees in relation to licences and notices under the Licensing Act 2003 are set by the Licensing Act 2003 (Fees) Regulations 2005 (as amended). As a result the Licensing Authority has no discretion in relation to the fees that are charged for these functions.

- 5.2 Fees in relation to certain functions, such as permits and notifications, under the Gambling Act are prescribed, however the Act does allow licensing authorities to set its own fees in relation to gambling premises licences, up to a maximum prescribed level.
- 5.3 The remainder of the fees charged by the section, in relation to matters such as taxi licensing, sex establishments and street trading are not set by statute and are determinable by licensing authorities. Such fees must be reasonable and set on a cost recovery basis.
- 5.4 Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 prescribes that fees in relation private hire and hackney carriage vehicle licences and private hire operator's licences must be subject to a statutory publication requirement with provision for representations to be made within twenty-eight days of publication of the notice.

## **6.0 Risk Assessment**

- 6.1 Leaving the charges as they (i.e. with differences between the three districts) would result in different charges being applied within the administrative area of Cheshire East. It is suggested that this would lead to confusion and inequalities throughout Cheshire East.
- 6.2 Harmonising fees and charges from 1 April will result in some significant increases to groups of existing customers, and a reduction for others. Fees in relation to taxi licensing fees are to be subject to consultation to allow customers to make their views known to the authority before a determination is made.

## **7.0 Background and Options**

- 7.1 As set out above fees under the Licensing Act 2003 and certain fees under the Gambling Act 2005 are set by legislation and therefore the Council has no option but to charge this amount. The Gambling Act 2005 sets a maximum fee level that the Council may impose in relation to gambling premises licences, however the Council has discretion to set the fee up to this level. The Council also has discretion in relation to other 'general' licensing matters including taxi licensing and the licensing of sex establishments. Attached, as Appendix 1 is a spreadsheet showing the fees existing with the current districts, together with a proposed fee level for Cheshire East.
- 7.2 In determining the level of fee to be set, in circumstances where the Council does have discretion, the Council must take into account the cost of providing the service to ensure that the fees are reasonable and relate to cost recovery. Guidance from LACORS suggests "all direct and indirect costs, including a full proportional share of overhead costs, insurance, depreciation and cost of capital charge. For example, overheads include: accommodation, telephone, furnishing, IT, printing, stationery, and postage. Staff costs include: salary, pension, NI contributions, travel &

subsistence. There will also be legal and central support services costs such as personnel, press and publications, accountants etc.

- 7.3 The proposed fees shown within Appendix 1 have been calculated following an exercise carried out using a financial model agreed with the group accountant. The fees have been set based on the number of hours needed to process each application, and an estimated hourly rate of £50 per hour (based on costs within existing district councils).
- 7.4 The appendix shows the current fees charged by each district and propose a revised charging structure. This is based upon the amount of time it will take officers to deal with each application.
- 7.5 Licensing Committee is requested to consider the fee levels proposed. In relation to gambling premises licences the Committee is requested to consider whether, due to the fact that the hourly rate has been based on the existing costs within districts, rather than the yet unknown costs within Cheshire East, the maximum fee allowed within the Gambling Act should be set for year one. If this option were to be approved it would be suggested that this level would be revised in year two, once the costs within the Cheshire East Licensing Section are known.
- 7.6 If any representations are received during the consultation period, the Licensing Committee will be asked to consider a further report on taxi licensing fees in due course.

## **8.0 Overview of Day One, Year One and Term One Issues**

- 8.1 To ensure that harmonisation of fees and charges can take place, increases in charges will occur for some services. It is suggested that this should be in operational from day one, rather than adopting a “phasing” in approach, over a period of time, which can lead to complications, and again result in unequal charging throughout Cheshire East.

## **9.0 Reasons for Recommendation**

- 9.1 The fees and charges proposed in the tables aim to harmonise existing fees and charges across the old three district councils, whilst at the same time, minimising the impact on the revenue currently being received by each of the existing districts.
- 9.2 The proposals are considered equitable such that a customer is charged for the same generic service at the same rate irrespective of where they live or undertake their business activities.

***For further information:***

*Portfolio Holder: Councillor Brian Silvester*

*Officer: Tony Potts*

*Tel No: 01270 529869*

*Email: [tony.potts@congleton.gov.uk](mailto:tony.potts@congleton.gov.uk)*

***Background Documents:***

*None*

| <b>Licensing Act 2003</b>                               | <b>Congleton</b>            | <b>Crewe &amp; N</b>        | <b>Macclesfield</b>         | <b>Proposed</b>             |
|---|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| • Premises Licences                                     | Statutory Fee based upon RV | Statutory Fee based upon RV | Statutory Fee based upon RV | Statutory Fee based upon RV |
| • Club Premises Certificates                            | Statutory Fee based upon RV | Statutory Fee based upon RV | Statutory Fee based upon RV | Statutory Fee based upon RV |
| • Personal Licences                                     | Statutory Fee £37*          | Statutory Fee £37*          | Statutory Fee £37*          | Statutory Fee £37*          |
| <b>* Denotes Fees set by Government</b>                 |                             |                             |                             |                             |
| <b>Gambling Act 2005</b>                                | <b>Congleton</b>            | <b>Crewe &amp; N</b>        | <b>Macclesfield</b>         | <b>Proposed</b>             |
| • Adult Gaming Centre Initial Application               | £2000<br>Maximum Fee levied | £785                        | £1475                       | <b>£900</b>                 |
| • Adult Gaming Centre Annual Fee                        | £1000                       | £400                        | £785                        | <b>£600</b>                 |
| • Betting Shops Initial Application                     | £3000<br>Maximum Fee Levied | £785                        | £2210                       | <b>£900</b>                 |
| • Betting Shops Annual Fee                              | £600                        | £400                        | £470                        | <b>£600</b>                 |
| • Bingo Initial Application                             | £3500<br>Maximum Fee Levied | £785                        | £2580                       | <b>£900</b>                 |
| • Bingo Annual Fee                                      | £1000                       | £400                        | £785                        | <b>£600</b>                 |
| • Track Betting Initial Application                     | £2500<br>Maximum Fee levied | £785                        | £1840                       | <b>£1000</b>                |
| • Track Betting Annual Fee                              | £1000                       | £400                        | £785                        | <b>£600</b>                 |
| • Family Entertainment Centre Initial Application.      | £2000<br>Maximum Fee Levied | £785                        | £1475                       | <b>£900</b>                 |
| • Family Entertainment Centre Annual Fee                | £750<br>Maximum Fee Levied  | £400                        | £600                        | <b>£600</b>                 |
| • Club Gaming Permits Initial Application               | £150                        | £150                        | £150                        | <b>£150*</b>                |
| • Club Gaming Permits Annual Fee                        | £50                         | £50                         | £50                         | <b>£50*</b>                 |
| • Licensed premises gaming machine permits initial appl | £200                        | £200                        | £200                        | <b>£200*</b>                |
| • Licensed premises gaming machine permits annual fee   | £50                         | £50                         | £50                         | <b>£50*</b>                 |

| <b>Taxi Licensing</b>  | <b>Congleton</b> | <b>Crewe &amp; N</b> | <b>Macclesfield</b> | <b>Proposed</b> |
|--|------------------|----------------------|---------------------|-----------------|
| • Hackney Carriage Vehicle   | £230             | £345                 | £210                | <b>£300</b>     |
| • Private Hire Vehicle   | £230             | £335                 | £210                | <b>£300</b>     |
| • PHV Operators 5 years  | £407             | £345                 | £330                | <b>£345</b>     |
| • Hackney Carriage/Private Hire<br>6 month test for vehicles over<br>7 years old | £0               | £0                   | £100                | <b>£100</b>     |
| • Joint Hackney Carriage/Private<br>Hire Drivers Licence 3 years                 | £109             | £204                 | £150                | <b>£204</b>     |
| • Replacement Plates   | £21              | £0                   | £20                 | <b>£20</b>      |
| • Replacement Driver Badge   | £21              | £0                   | £10                 | <b>£15</b>      |
| • Replacement Window Stickers  | £0               | £0                   | £10                 | <b>£10</b>      |
| • Transfer of Licence  | £21              | £0                   | £25                 | <b>£25</b>      |
| <b>Other</b>   | <b>Congleton</b> | <b>Crewe &amp; N</b> | <b>Macclesfield</b> | <b>Proposed</b> |
| • Sex Shop Application   | N/A              | £2260                | £500                | <b>£2260</b>    |
| • Renewal  | N/A              | £1130                | £500                | <b>£1130</b>    |
| • Street Trading Consent   | £364             | N/A                  | £330                | <b>£364</b>     |