



DARLINGTON

Borough Council

General Licensing Committee Agenda

9.30 am

Tuesday, 17 August 2021

The Council Chamber, Town Hall, Darlington

Members of the Public are welcome to attend and make representations at this Meeting.

1. Introductions/Attendance at Meeting
2. Appointment of Chair for the Municipal Year 2021/22
3. Appointment of Vice Chair for the Municipal Year 2021/22
4. Declarations of Interest
5. To approve the time of meeting of this Committee for the Municipal Year 2021/22 on the dates agreed in Calendar by Cabinet at Minute C97/Feb/21
6. To approve the Minutes of the meeting of this Committee held on 6 April 2021 (Pages 3 - 6)
7. To approve the Minutes of the meetings of the General Licensing Sub Committee held on 18 May 2021 (Pages 7 - 8)
8. Mobile Homes Fees Policy for Fit and Proper Test (Pages 9 - 20)

Report of the Group Director of Services
9. SUPPLEMENTARY ITEM(S) (if any) which in the opinion of the Chair of this Committee are of an urgent nature and can be discussed at this meeting

10. Questions



Luke Swinhoe
Assistant Director Law and Governance

Monday, 9 August 2021

Town Hall
Darlington.

Membership

Councillors Clarke, Crumby, Donoghue, Dulston, Haszeldine, C L B Hughes, B Jones, Lee, Mills, Newall, K Nicholson, A J Scott and Snedker

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GENERAL LICENSING COMMITTEE

Tuesday, 6 April 2021

PRESENT – Councillors B Jones (Chair), Clarke, Crumbie, Donoghue, Dulston, C L B Hughes, Lee, K Nicholson, A J Scott and Snedker

APOLOGIES – Councillor Newalll

ABSENT – Councillor Haszeldine

OFFICERS IN ATTENDANCE – Allison Hill (Democratic Officer), Brian Murray (Assistant Licensing Manager), Colin Dobson (Licensing Manager), Bethany Symonds (Lawyer) and Anthony Hall (Superintendent Registrar)

LG19 DECLARATIONS OF INTEREST

There were no declarations of interest reported at the meeting.

LG20 TO APPROVE THE MINUTES OF THE MEETING OF THIS COMMITTEE HELD ON 23 FEBRUARY 2021

Submitted – the Minutes (previously circulated) of the meeting of the General Licensing Committee held on 23 February 2021.

RESOLVED – That the Minutes of the meeting of the General Licensing committee held on 23 February 2021 be approved as a correct record.

LG21 APPLICATION FOR RENEWAL OF LICENCE FOR PREMISES TO BE APPROVED AS A VENUE FOR MARRIAGES AND CIVIL PARTNERSHIPS - BANNATYNE HOTEL, DARLINGTON

The Assistant Director, Law and Governance and Proper Officer for Darlington Registration District submitted a report (previously circulated) to consider an application received from Bannatyne Hotel, Southend Avenue, Darlington for the renewal of its licence to be approved as a venue for Civil Marriages and Civil Partnerships in accordance with the provisions of the Marriage Act 1949 (as amended by the Marriage Act 1994); the Civil Partnerships Act (2004); the Marriage and Civil Partnerships (Approved Premises) Regulations 2005; and the Marriage (Same Sex Couples) Act (2013).

The submitted report gave a summary of the Bannatyne Hotel as an approved venue; the designated rooms and maximum number of persons permitted in each room; and a copy of the application was appended to the submitted report.

RESOLVED – That the application be granted for the renewal of Bannatyne Hotel, Southend Avenue, Darlington as an approved venue for the solemnisation of Marriages and Civil Partnerships in respect of the venue subject to the standard licence conditions and that the maximum number of persons permitted to occupy ceremony rooms on the occasion of Civil Marriages or Civil Partnerships be as detailed in the submitted report.

LG22 REVIEW OF LICENCE AS A PREMISE APPROVED FOR MARRIAGES AND CIVIL PARTNERSHIPS - TOWN HALL, DARLINGTON

The Assistant Director, Law and Governance and Proper Officer for Darlington Registration District submitted a report (previously circulated) to consider a review of the arrangements for marriages and civil partnerships in the Town Hall Darlington to ensure business continuity in accordance with the provisions of the Marriage Act 1949 (as amended by the Marriage Act 1994); the Civil Partnerships Act (2004); the Marriage and Civil Partnerships (Approved Premises) Regulations 2005; and the Marriage (Same Sex Couples) Act (2013).

It was reported that the Register Office relocated from the Dolphin Centre to the Town Hall, Darlington in October 2016 and has since then been a successful choice for couples for a register office marriage or civil partnership.

There are currently three options for couples being the Statutory Marriage Room; the Council Chamber Foyer; and the Council Chamber.

It was proposed to maximise the potential options for a location for a wedding in an emergency or urgent situation to offer Committee Rooms 1, 2, 3 and 4 and the Civic Reception Lobby as deemed to be suitable as an emergency alternative to the Council Chamber and Council Chamber Foyer. These rooms would not be offered as options for couples wishing to be married, they are for business continuity use only.

RESOLVED – That the Council Chamber, Council Chamber Foyer and statutory marriage room continue to be the venues for marriages and civil partnerships in the Town Hall but that the following be licensed as additional rooms for marriages and civil partnerships for business continuity purposes:

- (i) Committee Room 1 – maximum of 40 persons;
- (ii) Committee Room 2 – maximum of 40 persons;
- (iii) Committee Room 3 – maximum of 20 persons;
- (iv) Committee Room 4 – maximum of 20 persons; and
- (v) The civic reception lobby – maximum of 30 persons

LG23 INTERIM PROCEDURES FOR GRANT OF PAVEMENT CAFE LICENCES

The Director of Economic Growth submitted a report (previously circulated) to invite Members to consider a proposal to simplify the application process of granting a pavement café licence when deviating from our Pavement Café Policy.

It was reported that a revised Pavement Café Policy was approved by Members of the Licensing Committee in March 2014 following a review. A full consultation process took place with all stakeholders and an Equality Impact Assessment was carried out by Darlington Association on Disability (DAD).

The Covid-19 pandemic had highlighted a requirement for social distancing, thereby reducing capacity within premises and given the continuing importance of the outdoors to reduce transmission of the virus, government strongly encouraged local authorities to plan

for outdoor dining and make all necessary changes to local high streets, squares and the public realm so this was as convenient as possible for businesses and members of the public.

On the 5 March 2021, Robert Jennick MP, Minister for Housing, Communities & Local Government, wrote to council leaders highlighting support for the safe re-opening of the hospitality trade and what was to be expected from local authorities (also previously circulated) and there was an expectation that a pavement café licence will be granted unless there was a good reason not to do so.

It was also highlighted that when an application was received and representations had been made it would ordinarily require a hearing by the Licensing Committee to decide if a licence should be granted and this may take several weeks from application to determination to complete. As this delay would reduce the ability of a struggling business to take advantage of using outside space at a critical time of recovery an interim and pragmatic approach to support local businesses on the road to recovery was proposed.

Members agreed that this simplification of the application process was a positive move to support businesses at this difficult time and was crucial to the local economy. They also sought clarification on what checks would be undertaken to ensure that all premises were not abusing their licence conditions and how the consultation process would be carried out with neighbouring properties and the relevant groups.

RESOLVED – That Members approve a new interim decision making process to be adopted when an application for a pavement café licence falls outside the current policy.

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GENERAL LICENSING SUB COMMITTEE

Tuesday, 18 May 2021

PRESENT – Councillors Donoghue, B Jones, Lee, A J Scott and Snedker

OFFICERS IN ATTENDANCE – Colin Dobson (Licensing Manager), Allison Hill (Democratic Officer), Brian Murray (Assistant Licensing Manager), Bethany Symonds (Lawyer) and Marian Garland (Local Authority Designated Officer (LADO))

LGS17 ELECTION OF CHAIR FOR THE PURPOSE OF THE MEETING

RESOLVED - That Councillor B Jones be elected Chair for the purpose of this meeting

LGS18 DECLARATIONS OF INTEREST

There were no declarations of interest reported at this meeting.

LGS19 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED – That, pursuant to Sections 100A (4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the ensuing item on the grounds that it involves the likely disclosure of exempt information as defined in exclusion paragraphs 1 and 7 of Part 1 of Schedule 12A to the Act.

LGS20 REVIEW OF A PRIVATE HIRE DRIVER LICENCE (EXCLUSION PARAGRAPHS 1 AND 7)

Ref 01/21 - The Director of Economic Growth submitted a report (previously circulated) to give consideration to a review of a Private Hire Driver Licence in light of information received from the Local Authority Designated Officer (LADO) and in light of ongoing criminal investigation by Durham Constabulary.

The submitted report outlined that the driver had been suspended by the Licensing Manager on 29 March 2021 in consultation with the Chair of the General Licensing Committee in the interests of public safety.

The driver did not attend the meeting and was therefore unable to respond to Members questions as to why he was a fit and proper person to retain a Private Hire Driver Licence.

The Local Authority Designated attended the meeting and outlined to Members the allegations that had been made against the driver.

In reaching their decision, Members took into consideration the Council's Licensing Policy, which sets out the Council's stance on the Relevance of Convictions, Cautions and Endorseable Fixed Penalties in assessing whether an applicant is a fit and proper person; the Council's Private Hire and Hackney Carriage Licensing Policy and Procedures; and Section 61(1) of the Local Government (Miscellaneous Provisions) Act 1976.

After careful consideration Members decided to revoke the Private Hire Driver Licence because although the driver had not been convicted the allegations made were very serious and Members decided that this gave them reasonable cause to revoke the licence.

RESOLVED – That the Private Hire Driver Licence be revoked with immediate effect in accordance with Section 61(1) of the Local Government (Miscellaneous Provisions) Act 1976.

GENERAL LICENSING COMMITTEE

17 August 2021

MOBILE HOMES FEES POLICY FOR FIT AND PROPER TEST

Purpose of the Report

1. The purpose of this report is to invite Members to approve a fees policy required under newly introduced Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020.

Background

2. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site. The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management.
3. The Regulations were made on 23rd September 2020 and allow local authorities to receive applications from site owners. By 1st October 2021 all site owners must submit an application for a relevant person to be assessed as fit and proper persons.
4. The Regulations apply in relation to all relevant protected sites other than non-commercial family-occupied sites. These include both “residential parks”, which are used exclusively residentially, and “mixed use parks”, which are used for both residential and holiday purposes.
5. In order to lawfully operate a site when the Regulations come into force, the site owner or the person appointed to manage the site must be a fit and proper person to manage the site. The person subject to the assessment is the “relevant person”.
6. The site owner must apply to the local authority for the relevant person (either themselves or the site manager), to be included on a register of fit and proper persons. A site owner may only apply if they hold or have applied to obtain a licence for that site. The same requirements apply where the owner or the site manager is not an individual, such as a park owned or managed by a company.
7. Sites that are exempted by the Regulations are those that are only occupied by members of the same family and are not being run as commercial residential sites.

8. The site owner must provide sufficient information for the local authority to make an assessment whether the relevant person is a fit and proper person and this will include the disclosure of specified criminal convictions.
9. Local authorities will be able to charge fees to cover the cost of assessing applications to be included on the fit and proper register and an annual fee to cover the cost of maintaining the scheme. An application must be accompanied by the relevant application fee.
10. It is for the local authority to fix application fees and decide the amount and frequency of any additional payments that may be required by way of annual fee.
11. The authority must prepare and publish a fees policy before they can charge a fee (**Appendix A**). It may revise the fees policy and, where they do so, they must publish the revised fee policy. Fees should be fair and transparent so that anyone required to pay a fee will know what they will be or are being charged for. Fees should only cover the costs (or part of the costs) incurred by a local authority in carrying out their functions under the Regulations.
12. Darlington currently has 19 licensed caravan sites and the fee to license these ranges from £200 to £260 depending on the number of pitches. There is a charge of £100 for a variation to be made to this licence.

Proposal

13. When determining a fee structure, local authorities are able to take into account a number of factors for a person to be entered on the fit and proper register (**Appendix B**). As these are new regulations it is impossible to determine what issues may arise during this process. It is therefore proposed that a fee of £100 is charged to cover costs incurred in the first instance, whereupon a process mapping exercise will be carried out to provide an accurate cost for subsequent annual applications.
14. Although the fit and proper test registration fee is separate to a Caravan Site Licence fee, as £100 is the current fee for a variation to that licence, this is considered a fair and transparent cost that has already been approved, until such a time process mapping can take place. The fees policy will then be amended with any change to the fee and brought to the licensing committee for approval before publication.
15. There is no requirement under the Regulations to consult with site owners or homeowners on setting fees.

Recommendation

16. Members are invited to approve the Fees Policy with a charge of £100 for publication.

Dave Winstanley
Group Director of Services

Appendices

Appendix A – Draft Fees Policy

Appendix B – Costs incurred for fee

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Fit and Proper Fee Policy (Mobile Homes) 2021/2022

Introduction

1. A relevant protected mobile home site is a one that requires a licence, which is not solely for holiday purposes or is otherwise not capable of being used all year round. A relevant protected site cannot operate unless the local authority is satisfied that the manager qualifies as a fit and proper person, Sections 12A -12E of the Caravan Sites and Control of Development Act 1960, as implemented by Section 8 Mobile Homes Act 2013 (subject to paragraph 10 below).

2. A site owner under the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (SI 2020/1034) must apply to their local authority for the relevant person (themselves or their appointed manager) to be added to a register of fit and proper persons managing sites in their area.

3. The site owner may only apply to be added to the register if they hold, or have applied for, a site licence for the site. This provision also applies where the site owner or site manager is a registered company.

4. The Regulations permit the local authority to determine the fee for an application or registration for someone to be added to the register. It is imperative that the fee is included with the application and failing to include this may mean that the site owner is in breach of the requirements of the Regulations.

5. It is important to highlight that this fee policy will not refer to the recovery of costs, which the local authority may have incurred, or will be incurred, in appointing a person to manage a site with the site owner's consent. This will be calculated separately to the application fee.

6. Site owners will be required to submit a completed application by 30 September 2021 and pay the fee, outlined below, to Darlington Borough Council.

Fees for Fit and Proper Persons Register Applications

Application fee

7. Darlington Borough Council has provided a breakdown of tasks associated with the fit and proper person assessment and/or checks for applicants to be included on the fit and proper register at **Appendix 1** to this document. The application fee will be £100 and this will be paid annually subject to a condition.

8. The local authority have taken into account the following matters on which costs are incurred, or likely to be incurred, when determining its fee policy for consideration of applications for entry on a fit and proper person register:

- (a) Initial enquiries;
- (b) letter writing/emails/telephone calls etc. to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the fit and proper process;
- (c) sending out forms/processing online application forms;
- (d) updating files/ computer systems and website;
- (e) processing the application fee;
- (f) land registry searches;
- (g) time for reviewing necessary documents and certificates;
- (h) preparing preliminary and final decision notices;
- (i) review by manager or lawyers; review any representations made by applicants or responses from third parties;
- (j) updating the public register;
- (k) carrying out any risk assessment process considered necessary and
- (l) reviews of decisions or in defending appeals.

9. The charges are limited to recovering the costs of exercising the fit and proper person test function only and do not include other costs that have already been charged for by other service areas.

10. **Appendix 1** to this document outlines what Darlington Borough Council considers to be reasonable costs, that provide transparent justification for the fee to be imposed upon receipt of the initial application.

11. Darlington Borough Council will be required to conduct relevant checks regarding the applicant's background in management and their financial standing. The results of these checks will allow the local authority to make a decision whether to accept the application. Time taken for these checks will be taken into account whether the application is granted or not.

12. Where an applicant contacts the Licensing team before making an application, to ascertain the likelihood of the success of that application, the authority is expected to provide informal advice, for example, the conditions surrounding an application, the information required to be submitted and general guidance on making the application.

13. Any preliminary advice the local authority provides is accounted for in the fee and will not be charged separately.

Revising Fees

14. Darlington Borough Council will review this fee policy after 12 months and will publish the revised policy. Any changes will be justifiable and reasonable, ensuring full transparency for the site owners.

15. The purpose of publishing the fee policy is to show that the fees imposed by the local authority are fair and transparent, so that anyone required to pay a fee can understand the charges.

Amending conditions attached to an entry on a register

16. Darlington Borough Council may alter the conditions attached to an entry on a register (by adding new conditions or changing or deleting existing ones), following a review. Officers must notify the site owner of its interim decision (except in the case where it is deleting a condition) and consider any representations made by the site owner, before reaching a final decision. If the site owner is unhappy with the decision to alter, or not alter, the conditions, they will have a right of appeal to the First-tier Tribunal (Property Chamber).

17. There are no requirements for a site owner to make an application for a condition to be altered. Any costs involved with amending existing conditions, or adding new conditions to an entry, are factored into the application cost.

Payment of fees

18. As outlined above in paragraph 4, Darlington Borough Council is not required to consider an application for entry on the register unless that application is accompanied by the correct fee. If the correct fee is not paid, the application will not be valid and the site owner could be in breach of the Regulations.

20. If Darlington Borough Council decides not to approve an application the applicant is not entitled to a refund of the fee paid.

An appointed manager fee

21. This is where the local authority is provided with the site owner's consent to appoint an individual to manage a site. The costs associated with this should be reasonable and are recoverable from the site owner. These fall outside the application process.

22. Costs that can be recovered will depend on the agreement made between Darlington Borough Council and the site owner. Before entering into any discussions or agreements relating to the appointment of the manager, advice will be sought from the legal team.

Appendix 1

What is included within the fee

Pre application advice

Receipt of application and record on Uniform computer system

Ensure all documents are correct and fee paid

Document checking

Consult with key partners

Review any representations

Grant of application

Add details to public register

Add/alter any conditions

Total cost per application

£100

The above cost makes an assumption that no cases will result in an appeal to the First Tier Tribunal Service.

Appendix B

Costs incurred that can be within the fee

- (a) Initial enquiries;
- (b) letter writing/emails/telephone calls etc. to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the fit and proper process;
- (c) sending out forms/processing online application forms;
- (d) updating files/ computer systems and website;
- (e) processing the application fee;
- (f) land registry searches;
- (g) time for reviewing necessary documents and certificates;
- (h) preparing preliminary and final decision notices;
- (i) review by manager or lawyers; review any representations made by applicants or responses from third parties;
- (j) updating the public register;
- (k) carrying out any risk assessment process considered necessary and
- (l) reviews of decisions or in defending appeals.

In addition, a local authority will need to make such inquiries as are necessary in connection with the application, such as those relating to the relevant person's ability to secure the proper management of the site.

All time taken in establishing the information required to make an informed decision may be included in the application fee, whether or not the entry on the register is granted.

Where an applicant contacts the local authority before making an application to ascertain the likelihood of the success of that application, the authority is expected to give such informal advice, including on likely conditions that may be attached to an entry, so the applicant can make an informed judgement on how to proceed with the application.

The local authority cannot charge separately for its advice or work in advance of receipt of the application. However, it can build into its fee structure for such applications the costs (or likely costs) it incurs as a result of such pre-application advice, including where no formal application is subsequently submitted.

Officer time can be considered as it may be necessary to visit a site to ascertain whether or not the condition(s) subject to which a fit and proper person application has been granted has been met. Travel time to and from the site, including fuel costs can also be taken into account and could be calculated using a single value for travel costs to apply to all sites.