

# Somerset West and Taunton Council

## Licensing Committee – 15 June 2020

### Licensing Quarterly Update Report

This matter is the responsibility of Executive Councillor Federica Smith-Roberts

Report Author: John Rendell, Specialist (Licensing)

#### 1 Purpose of the Report

- 1.1 This report provides an update on the activities of the council's licensing service, changes in licensing legislation and other licensing related matters.

#### 2 Recommendations

- 2.1 That the report be noted.

#### 3 Risk Assessment (if appropriate)

- 3.1 The contents of this report do not relate to any of the risks identified in the Corporate Risk Register.

#### 4 Background and Full details of the Report

##### Staffing update

- 4.1 There have again been a number of changes to personnel in the Licensing Team since the Licensing Committee last met. An up to date who's who in the service is attached at **Appendix 1**.
- 4.2 Leigh-ann Fumagalli's secondment to the Change Team as a Business Analyst has been further extended. Whilst Leigh-ann has been sorely missed, she has been spending some of her time working with the team to help move certain application forms and processes from paper to the website.
- 4.3 Nikki Yendall has been temporarily redeployed to the Revenues and Benefits section in order to support the uptake in Universal Credit the council has experienced as a result of the Coronavirus pandemic.
- 4.4 The above leaves the team very light in terms of Case Managers at grade F (formerly Licensing Officers). Whilst this is impacting negatively on the output of the team, it is not being felt as significantly as it might be under normal circumstances. Further details on the current workload and performance of the service are explained later in this report.

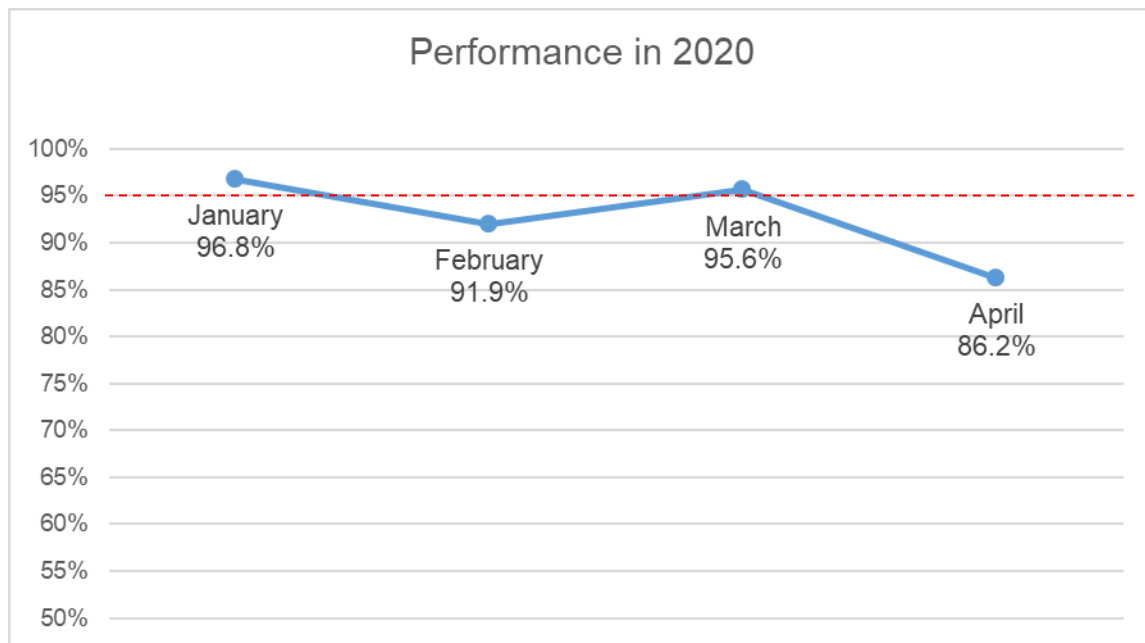
- 4.5 Resilience within the team is the key concern. As avenues for finding additional support for the team are explored and in order to balance some of the work pressures within team, the Case Managers at Grade D (formerly Licensing Assistants) are using this as a development opportunity and are taking on more technical work than they otherwise would have.

#### Current workload

- 4.6 The bulk of the work that the service undertakes can be broadly categorised as licence applications and service requests (reports and complaints received from members of the public and other sources, which relate to people, premises, vehicles and activities which are licensed or need licensing).
- 4.7 These two areas of work have reduced significantly in volumes between the months of March and April. Application and service request numbers, across all areas of licensing, have been compared with an average number, based on the same months in the years 2017, 2018 and 2019.
- 4.8 There were 28% less applications in March (117), compared to the average (for March, being 162) and 83% less in April (34 compared with 205). This equates to there being 59% less than the average taking both months together.
- 4.9 For service requests, there were actually 59% more in March than the three year average; 17, with the average being 10. For April, there were 60% less; 6, with the average being 15 for that month. Complaints and reports relating to premises breaching the Coronavirus closure regulations are excluded from these figures on account of a decision being made to allow them to be followed up by Environmental Health, a welcome step to alleviate work pressures.
- 4.10 The reduction in workload has been somewhat fortuitous, given the service having less than the desired full complement of staff. The reduction in work pressures is enabling Case Managers in the team to make significant some headway on a number of long-standing service request investigations.

#### Performance of the service

- 4.11 The service has a statutory duty to process various application types. In some cases, there are even prescribed time periods within which these applications should be completed.
- 4.12 The performance of the licensing service is measured against the number of applications that are completed within 14 days of them having been determined. In essence, this is when the council is in possession of all the information it needs and has made its decision to grant a licence or not. In some cases, an application is 'determined' immediately upon receipt and this might be because the form is judged to have been filled in correctly and the relevant fee has been paid. In other, more complex cases, a consultation may need to be carried out and the determination cannot not be made until after the consultation period has finished. The target for the service is that, for all applications that are completed within a set period, 95% must be completed within 14 days of that application having been determined.
- 4.13 Month by month since the turn of the calendar year, the performance has been as follows:



- 4.14 The month of April has been particularly trying for the Licensing team, as we have adapted to working completely remotely. It has put pressure on our procedures and ways of working which have in the past benefitted from the team working closely together in an office setting.
- 4.15 A paperless method has been used for a number of years to schedule/manage work. Broadly speaking, electronic files representing individual licence applications are saved into folders, which represent the days of the month, on a network drive shared with Environmental Health. As work must still be manually filed by a member of the team, this method can be prone to human error at times, in particular during periods of increased pressure on the service.
- 4.16 In the case of the month of April, the majority of applications that took longer than 14 days to complete (from the point of receipt/decision) were down to being misfiled at the point of receipt. As disappointing as this dip in performance is for the team, it is not a major concern. The team has generally coped well over the last six months, which have been challenging in many ways. The method of scheduling work is none the less under review.
- 4.17 Fortunately, none of the delays to the aforementioned applications were significant and in 4 cases, the applications benefitted from 'tacit consent'; this means that the applicant was able to operate as proposed once the period of consultation had been completed. For example, this is the case where a Premises Licence, issued in accordance with the Licensing Act 2003, is transferred from one person to another.

#### Numbers of forms of authorisation currently in force

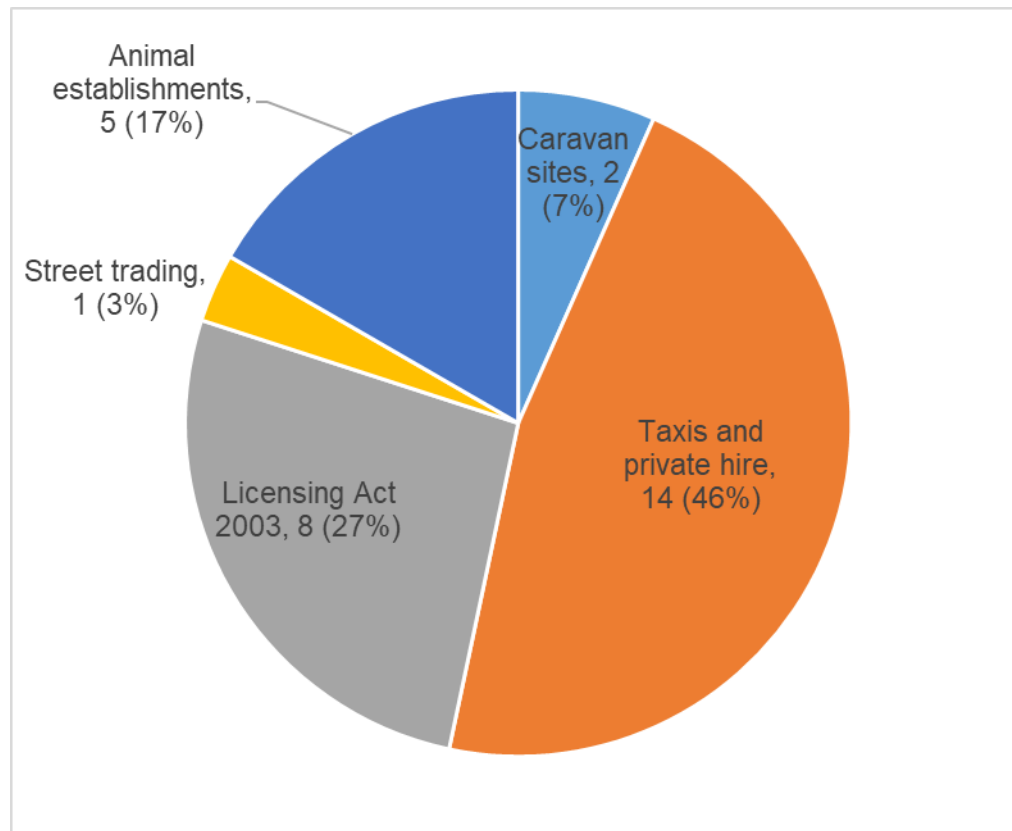
- 4.18 To give an idea of the variety and number of persons, premises, vehicles and activities licensed, the numbers of licences in force as of the 21<sup>st</sup> of February 2020 are shown at **Appendix 2**.
- 4.19 The majority of changes to the figures, when compared with those reported at the last committee meeting in March, are subtle. There has, however, been a reasonable

reduction in the numbers of licensed hackney carriages and private hire vehicles. At the time of calculating the figures on the 18<sup>th</sup> of May, there are 7% less hackney carriages than there were on the 21<sup>st</sup> of February, and 15% less private hire vehicles. Numbers of licences for vehicles, drivers and operators can fluctuate but the size of the downturn since February will undoubtedly be due to the impact of the Coronavirus (Covid-19) pandemic. Whilst there has been no specific central government prohibition on using taxis and private hire vehicles, demand for such vehicles will have reduced dramatically; owing largely to the temporary shutting down of the night time economy and a large chunk of the customer base, being the elderly and those unable to drive due to health conditions, 'shielding' in order to avoid contracting the virus. There will no doubt also be drivers unable to work as they too are shielding.

#### Service requests/complaints

- 4.20 The service investigates reports and complaints received from members of the public and other sources, which relate to people, premises, vehicles and activities which are licensed or need licensing. These are referred to as 'service requests' internally.
- 4.21 Service request investigations can be complex and normally involve the case officer:
- Speaking to the complainant/person who has made the request, to understand the nature of their complaint/request and whether the licensing authority is the correct enforcing body.
  - Clarifying where the complaint/request sits with the relevant legislation, any statutory guidance and/or case law as well as locally set licence conditions.
  - Gathering evidence, which may take the form of written witness statements, recorded interviews (not normally under caution), photographs, videos, screenshots of posts on social media sites such as Facebook and even hearsay. In some cases, the object of the complaint i.e. person against which the allegation is made, may be interviewed two or three times if further evidence comes to light after the original complaint/request is made.
  - Checking back through the licensing records of the object of the complaint/request to see if that person or premises has any previous issues or any other information/intelligence which is material to the investigation e.g. this can be especially pertinent if there is a pattern of similar complaints made against an individual.
  - Weighing up all the available evidence and making a recommendation to the Specialist or Licensing sub-committee (in a hearing) based on the balance of probability; that something is more likely to happen than not; as opposed to 'beyond all reasonable doubt', which is the evidential burden in criminal cases.
  - Contacting all of the interested parties to explain the verdict reached and action (if any) the licensing authority intends to take e.g. written warning to a taxi driver.
- 4.22 The growth of social media and 'marketplace' style websites, which allow people to advertise certain services or items for hire/sale, has certainly made it difficult to trace and contact perpetrators in some cases, in particular unlicensed dog breeders selling puppies.

- 4.23 Members of the committee received figures on service requests received between July 2019 and January 2020 at the meeting in March. Between February and April this year, 31 service requests were received, across the following categories (shown with the total figure and percentage of the total it represents):



- 4.24 Taxi and private hire licensing complaints and service requests form the bulk of those received, as is normally the case. In addition and as has been the trend since the commencement of the new animal licensing regulations in October 2018, there is a steady flow of complaints about alleged unlicensed dog breeders. These are sometimes referred to as 'puppy farms' when there are suspicions that dogs are being bred on a large scale and in unsavoury conditions.
- 4.25 Of the 31 service requests received between February and April, 7 (23%) are still undergoing investigation. Of the 25 that have been concluded and closed, 16 (64%) were closed within 14 days of receipt. 7 of the 25 (28%) took longer than 30 days to complete. The 2 that took the longest, being 64 and 98 days respectively, were investigations into dog breeding establishments, of which one was an alleged illegal breeder and the other, an already licensed one.
- 4.26 In total, there are 21 open and ongoing service request investigations, of which 12 originally began in 2019. The longest running investigation relates to an allegation of misconduct against a licensed taxi and private hire vehicle driver, which was received on the 5<sup>th</sup> of May 2019. It is certain that this particular investigation and others have taken longer than they normally might, owing to the staffing changes described earlier in this report. Be that as it may, the team has kept a close eye on investigations, re-prioritising on a regular basis and using available enforcement powers, where

necessary and appropriate, to ensure that any delays are not at the expense of public safety.

- 4.27 Another service request of note is the investigation concerning West Bay residential caravan site at Watchet. The latest development with this case was an extension to the deadline requiring the site owners to move property no.4. The deadline was extended from the 31<sup>st</sup> of May to the 31<sup>st</sup> of August, owing to the efforts to remove the property being frustrated by the impact of Coronavirus.

#### Impact of Coronavirus (Covid-19) on taxi and private hire licensing arrangements

- 4.28 Taxi and private hire driver, vehicle and operator licence applications form a large chunk of the work of the service and almost all of this work would normally be submitted in person at the council offices. Since the beginning of lockdown, licence holders have been instructed to make use of the 'general enquiries' function on the SWT website in order to send their grant and renewal applications electronically, with payments taken over the phone subsequently. Work is currently underway to introduce a generic 'submit a licence application' function on the website so that the payment is taken at the time of submission, thereby making a time saving.
- 4.29 Whereas under normal circumstances taxi and private hire drivers would receive a licence badge and vehicles, a licence plate, the service has instead been issuing applicants with 'letters of authorisation' to reassure members of the public that their driver and vehicle has been correctly licensed.
- 4.30 Unfortunately, not all of the licence applications can be processed without some form of face to face contact with the applicant and this is the case with applications for the grant of a taxi and private hire vehicle driver's licence. With this particular application, there are two reasons to meet the applicant:
- Confirm the applicant is legally entitled to work in the UK, in accordance with the Immigration Act 2016, by inspecting a variety of identification documents. Where a passport is presented, a Case Manager must check that the photograph is that of the applicant/person in front of them.
  - Complete an application for an enhanced criminal record certificate from the Disclosure and Barring Service (DBS – formerly the Criminal Records Bureau or 'CRB'). This also involves checking certain forms of identification document, including at least one photographic form.
- 4.31 Without being able to complete these two important steps on the way to determining whether the applicant is a 'fit and proper person' as the law requires, the Licensing service is effectively unable to grant any new driver licences at this moment in time and until it is deemed safe for staff to meet with applicants.
- 4.32 The requirement for a further enhanced criminal record certificate is also required upon renewal of a licence. This is normally every three years as this is the standard (and maximum) term of a driver licence. There is also the requirement for drivers to produce the results of a bespoke medical examination (just as they do upon application for the grant of a licence) at certain intervals; this is every three years for drivers licensed to work in the former West Somerset District and for those licensed to work in the former Taunton Deane district, every 5 years beginning at the age of 45 and then every year once over the age of 60.

4.33 A level of confidence in the suitability of an individual to hold their driver licence can be maintained in the intervening years, on account of the following safeguards:

- Licence condition which requires the holder to inform the Licensing Authority if their medical condition changes significantly;
- Licence condition which requires the holder to inform the Licensing Authority if charged or convicted of any offence or upon endorsement of their Driver and Vehicle Licensing Agency (DVLA) licence;
- The existence of the [Common Law Police Disclosure](#); powers the Police have which enable them to disclose sensitive information relating to the arrest or voluntary interview of a suspect and investigation, to a third party, such as a regulatory body e.g. the Licensing Authority, when a significant risk is identified which there is an urgent pressing social need to address. Essentially this means the Licensing Authority should be made aware of the arrest of a taxi driver for a serious offence which is likely to undermine their ability to hold a licence and put the travelling public at risk.

4.34 Whilst public safety is paramount, officers are aware of the impacts of licensing decisions; both on the holders of licences and in particular their need to earn a living, but also in these circumstances, that taxis and private hire vehicles are a vital form of transport for some, despite the government's advice being to avoid public transport. Rather than refuse to renew an individual's taxi and private hire driver licence on account of not being able to obtain an enhanced DBS certificate (and likely difficulties in obtaining a medical examination, given the current situation), drivers who were previously issued the maximum three year term licence (and cannot legally be given an extension), are being advised to submit a 'light touch' renewal without a DBS application and medical, at no cost, in exchange for which they will be given a 6 month licence. Likewise and with drivers previously issued a shorter term licence e.g. 1 year, their licence will be extended for 6 months at no cost. By the time the 6 month licences come to an end, a full renewal will be required as officers will either facilitate DBS applications in the normal way or adopt new protocols. Given the safeguards described at paragraph 4.32, this is considered to be the safest and fairest way to maintain the taxi and private hire licensing regime at this current point in time. There are

4.35 As described at paragraph 4.19, this will be a difficult time for members of the taxi and private hire trade. In order to be offer proactive support and address concerns being raised at the outset of the lockdown, the service contacted licensed drivers to clarify how certain situations might be dealt with, including the approach to driver renewals as outlined above:

- **Taxi and private hire vehicles registered with the DVLA as SORN (statutory off road notice):** If an operator chose to take a vehicle off the road, in order to save on costs such as insurance, it was clarified that the licensing authority would need to be notified, upon which the vehicle licence would be suspended. It was explained the suspension would be lifted upon confirmation that SORN has been withdrawn (which requires a new MOT to be obtained).
- **Requests for shorter term driver licences e.g. less than 3 years:** The legislation allows the licensing authority to issue a licence to a driver for less

than the standard 3 years where their individual circumstances warrant it e.g. financial hardship. Under normal circumstances, drivers would be advised to put forward a case in writing, which would then be considered by the Specialist. Drivers have been advised that a written request will not be required during the worst of the pandemic (a deadline has yet to be decided) on account of there being special circumstances impacting on all licence holders.

- **Simplifying of process for individuals to re-apply for a licence if they take a break i.e. due to shielding, during the pandemic;** It is proposed that any existing drivers who allow their licences to lapse during the pandemic will not be required to complete a knowledge test or provide evidence of having completed the practical driving test should they re-apply in order to drive again, once it is safe for them to do so. The requirement for other checks such as a DBS and medical, would remain.

- 4.36 General advice to taxi and private hire vehicle drivers on how to minimise the risk of contracting and transmitting the virus has been published on the SWT website, which can be read here: <https://www.somersetwestandtaunton.gov.uk/coronavirus-covid-19-advice-and-information/>
- 4.37 Officers are in the process of developing a policy regarding the installation and use of safety screens, following a number of enquiries. At the time of writing this report, it is likely we will look to adopt criteria along the lines of the following:
- Screens must be fitted securely and safely.
  - Screen made from a non-porous material to ensure it can be easily cleaned;
  - Screen must be clear and free from scratches, cracks, stickers, advertising or any other mark or item which might obscure the view of customers sitting in the rear of the vehicle, with the exception of a council issued fare card, which if used, must be laminated or kept in a sealed and transparent pouch or wallet to ensure it can be easily cleaned.
- 4.38 Once a policy has been drafted it will sent out to licence holders and the nominated testing stations for consultation.

#### Coronavirus related enforcement

- 4.39 As touched on in paragraph 4.9, Environmental Health has been the council's lead in terms of enforcing The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; the legislation which, in March, initiated the closures of business such as pubs, restaurants, shops and so forth. Be that as it may, the Licensing team has inevitably, on occasions, been the first recipient of allegations made against licensed premises breaching the restrictions.
- 4.40 Whilst Licensing Case Managers may not be the ones following up the complaints, they are recording and sharing this intelligence with licensing counterparts at Avon and Somerset Constabulary, on a weekly basis, so that there is co-ordination and an overlap with ongoing enforcement of licensing legislation. In particular, a close eye is being kept on any plans or formal licence/notice applications which may suggest activities that are not consistent with the rules or may encourage large public gatherings, which are of course not permitted at the time of writing this report.



### Remote licensing meetings and hearings lawful

- 4.41 The council, acting as the 'licensing authority', is required by law to hold hearings to determine certain types of licence application, normally where objections against the application are made. This is the case with applications made under the Licensing Act 2003 (alcohol, entertainment and late night refreshment) and Gambling Act 2005.
- 4.42 In accordance with policy, the council also convenes hearings for taxi and private hire and scrap metal matters.
- 4.43 Hearings held under the Licensing Act 2003 are governed by the Licensing Act 2003 (Hearings) Regulations 2005 and the Act itself. They provide a wide degree of flexibility to Licensing Authorities in determining their own hearing procedures and remote hearings i.e. those done by video conferencing applications such as Zoom, are perfectly legitimate.
- 4.44 Furthermore, The Coronavirus Act 2020 provides further powers for councils to hold remote hearings in accordance with regulations. On 2 April 2020, the Secretary of State made The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020. They came into force on the 4<sup>th</sup> of April 2020 and relate to local authority meetings that are held before the 7<sup>th</sup> of May 2021 in England. Within Part 2 of the regulations, it states: 'A reference in any enactment to a meeting of a local authority is not limited to a meeting of persons all of whom, or any of whom, are present in the same place and any reference to a "place" where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers.'

### Licensing Act 2003 and Gambling Act 2005 statements of licensing policy

- 4.45 The draft policies were due to be presented to full council in March but following a change to the agenda, the report is now scheduled for July's meeting.

## **5 Links to Corporate Strategy**

- 5.1 The council has a statutory duty to issues licences for various activities, as outlined in **Appendix 2**. By providing advice to the public, helping them to understand and meet regulatory requirements and responding proportionately where breaches of legislation occur, the service can support the following corporate aims:
- Support the town centres throughout the District to meet the challenge of changing shopping habits.
  - Support the enhancement of arts and culture provision within the District.

## **6 Finance / Resource Implications**

- 6.1 Where legislation allows for cost recovery, licence fees are levied against the administration of the regime and the supervision of licences issued. It would be unlawful to deliberately set the fees to make a profit and any over (or under) recovery is redressed in future fee levels.

## **7 Legal Implications**

7.1 No legal implications identified.

## **8 Climate and Sustainability Implications (if any)**

8.1 No direct carbon/environmental impacts arising from the recommendation in this report.

## **9 Safeguarding and/or Community Safety Implications (if any)**

9.1 The four licensing objectives under the Licensing Act 2003 are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

9.2 With the addition of securing the welfare of animals, these are the main aims of the Licensing service. The continued work of the service to achieve and promote these aims, further supports the role of the Council in ensuring community safety.

## **10 Equality and Diversity Implications (if any)**

10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 No equality and diversity implications were identified.

## **11 Social Value Implications**

11.1 As this report does not relate to the procurement of any services or products, no social value implications were identified.

## **12 Partnership Implications**

12.1 No partnership implications were identified.

## **13 Health and Wellbeing Implications**

13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

## **14 Asset Management Implications**

## 15 Data Protection Implications

## 16 Consultation Implications

## 17 Scrutiny Comments / Recommendation(s)

### Democratic Path:

- Reporting Frequency:** ☐ Once only ☐ Ad-hoc ☒ Quarterly  
☐ Twice-yearly ☐ Annually

Appendix 1	Staff update
Appendix 2	Licences issued and notices given

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