

## BABERGH DISTRICT COUNCIL

<b>From: Corporate Manager – Licensing</b>	<b>Report Number: R99</b>
<b>To: Regulatory Committee</b>	<b>Date of meeting: 12 February 2016</b>

### HADLEIGH MARKET LICENSING SCHEME – APPEAL PROCEDURES AND FEES

#### 1. Purpose of Report

- 1.1 This report refers to procedures for appeals (disciplinary or dispute) and fee setting in relation to the management and administration of Hadleigh Market (held at Market Place, Hadleigh), which is under the direct control of Babergh District Council.
- 1.2 The regulatory scheme in relation to the Hadleigh Market proposes that matters of dispute or disciplinary review are referred to the Regulatory Committee in appropriate cases, in line with rules of natural justice and good practice - which includes the right of affected persons to a fair hearing. This accords with other licensing related functions dispensed by the Council's Regulatory and Licensing Committees, and their Sub-Committees, and market scheme licensing is within the remit of the Regulatory Committee in accordance with Part 3 of the Council's Constitution.
- 1.3 This report therefore seeks adoption of an appropriate hearing procedure and also seeks Member approval of a fee scheme - which is proposed to be kept under review at least once in every three year period in line with other discretionary licensing fee schemes.

#### 2. Recommendations

- 2.1 That the Committee approve a hearing procedure, attached as Appendix A, for appeals relating to matters of discipline or dispute in connection with the operation of the Hadleigh Market scheme, and further resolve that the hearing procedure will take immediate effect in line with the wider regulation scheme revision.
- 2.2 That the Committee approve a fee scheme, attached as Appendix B, and further resolve that the fee scheme will take immediate effect in line with the wider regulation scheme revision and be reviewed at least once in every three year period.
- 2.3 That the Constitution of the Council be updated to reflect the decisions of this Committee taken in 2.1 and 2.2.

The Committee is able to resolve 2.1 and 2.2 above and make a suitable recommendation to Council with regard to 2.3.

### **3. Financial Implications**

- 3.1 This is a discretionary function related to the Council's control of its own assets. As with other licensing functions, where there is a discretion for recovering the reasonable costs of administration, inspection and supervision of a licensing scheme then that should be exercised. In addition, as owner and controller of the land for the market the Council is entitled to make a charge for the lease/use of its assets and utilities. It should also be considered that in this case the market has potential economic, tourism and cultural significance to the town centre and also that the existing market trading is very limited.

### **4. Legal Implications**

- 4.1 Failure to use fair and proportionate procedures and fee levels based on reasonable cost recovery may result in successful legal challenge.

### **5. Risk Management**

- 5.1 Failure to regularly review costs and activity, and revise and consult upon fee levels, may impact negatively on local taxpayers.
- 5.2 Given the scale and scope of market activity and the Council's entitlement to manage its own assets effectively the risks are considered to be low.

### **6. Consultations**

- 6.1 An extensive period of multi-channel consultation has taken place between the Council and those likely to be affected by any revisions to the local scheme. Ultimately the Council has significant discretion in how to manage the market, as both the land and the ability to operate a market on it are within its direct control.
- 6.2 It is likely that a longer term strategy consultation will take place in relation to the future of the market in due course. The current changes are envisaged as an interim progression only.
- 6.3 The consultation overseen by the Council's Economic Development Team has run until 25 January 2016, and a summary of any feedback is attached as Appendix C (including the wider consultation on Hadleigh's market). It should be noted that any comments relating to the appeals process and fees are directly relevant to the recommendations of this report, and wider general comments about the scheme will be progressed by officers where appropriate.

### **7. Equality Analysis**

- 7.1 There are no equality implications arising directly from this report. This is a revision to an existing licence fee scheme. The Council recognises its obligations under the Equality Act 2010, in the exercise of its licensing functions, and shall have due regard to any comments received during the consultation, or individual applications, on equality issues.

### **8. Shared Service / Partnership Implications**

- 8.1 Given the cross-cut nature of the Hadleigh Market scheme, this work has been progressed as a joint initiative between the Council's Economic Development Team and Licensing Team. Asset Management and Legal Services have also had input into the preparatory work.

8.2 Other Suffolk market licensing schemes have been considered as part of the preparatory work, although they are variable given the scale, activity and individual nature of their localities. Hadleigh Market is a very small scale operation in comparison to Sudbury, Bury St. Edmunds and Ipswich markets and is more akin to Framlingham and other smaller markets in Suffolk.

## **9. Links to Joint Strategic Plan**

9.1 These licensing functions most closely align with -

- supporting businesses to thrive and grow, with a particular emphasis on smaller and start-up concerns;
- developing vibrant market towns; and
- supporting safe and active communities.

## **10. Key Information**

10.1 Babergh District Council owns the lease which entitles it (as the holder) to operate a market in the Market Place at Hadleigh. Babergh District Council also own the land upon which the market stands (Market Place) following a transfer of ownership to the District Council from the Hadleigh Market Feoffment Charity in 1974. Until recently, the Council granted long leases to individual stallholders with outdated controls and with limited controls or procedures being in place.

10.2 Following the recent expiry/surrender of leases by traders, it was considered an opportunity to revise the current scheme pending a further exploration of the longer term viability, sustainability and impact of the Hadleigh Market. Most markets operate on a licensing scheme, so this approach was considered to be more appropriate than the previous outdated lease only arrangement and was accordingly developed by several of the Council's officers working together, in close consultation with traders and town centre business/other stakeholders.

10.3 A policy framework of 'market regulations' was created to set out the terms and conditions which must be adhered to by a trader granted a licence to trade in the Council's market. These regulations define the Council's rights as the market operator, and the standards and obligations the Council is placing upon a market trader. The Council intends to ensure that our communities and visitors receive an excellent standard of customer service, enjoy a positive experience and wish to visit and use the town centre facilities again. Hadleigh town centre provides essential community facilities to residents and visitors. Affordable business opportunities for traders make an important contribution to the Council's priorities of supporting local businesses to thrive and grow and thriving and vibrant market towns. Our Market Towns form an integral part of the fabric of our local communities and the district's wider appeal to tourists and visitors.

10.4 Within that policy work it was considered that in addition to trying to create the right conditions for the market to be sustainable and to grow, it was appropriate to have an 'appeals' mechanism in place and an appropriate and transparent fee scheme.

10.5 Given the remit of the Regulatory Committee in Part 3 of the Council Constitution, and its experience of fee setting and monitoring for other licensing regimes, it is considered appropriate that those elements of the scheme are considered and approved by members of that Committee. It is important that hearing procedures are fair and robust, and that Members have a considered and adopted process for occasions when they are considering such appeals. Appeals are likely to be a very rare occurrence, but a process should be in place.

10.6 Extensive development and consultation has already been undertaken and an Economic Development Officer will be present at the meeting and available to offer any support to councillors in considering the issues, in addition to the collated consultation feedback attached as Appendix C.

## 11. Appendices

Title	Location
A. Hadleigh Market Licensing Scheme Hearing Procedure (Dispute, Adjudication or Disciplinary)	Attached
B. Hadleigh Market Scheme Fees and Charges	Attached
C. Economic Development Team – Survey Summary	Attached

## 12. Background Documents

12.1 Market Licensing Regulations (Market Place, Hadleigh)

<http://www.babergh.gov.uk/assets/BDC-Market-Hadleigh-Regulations-Draft-Nov-2015-WEB.pdf>

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### **REGULATORY SUB-COMMITTEE HEARING PROCEDURE MARKET LICENSING SCHEME (HADLEIGH) (DISPUTE, ADJUDICATION OR DISCIPLINARY)**

- Hearings and reports will ordinarily be **CONFIDENTIAL** as likely to contain exempt information under Schedule 12A of the Local Government Act 1972 (as amended).
- References to the 'Applicant' may also apply to an existing licence holder if the hearing consideration relates to a licence already on issue (for example a variation or disciplinary)
- The witness called by the Licensing Officer will normally be the officer of the Council responsible for supervision of the Hadleigh Market.

1. The Council's Licensing Officer will present a report to the Sub-Committee outlining details of the matter, reasons for the hearing and determination options available to the Sub-Committee. The Licensing Officer calls any witnesses (if applicable). The Licensing Officer and witnesses (if any) may then, through the Chair, be questioned on the report or submissions by any party to the hearing.
2. The Applicant (and/or his advocate/representative) will then present their case in support of their position. The Applicant calls any witnesses (if applicable). The Applicant and witnesses (if any) may then, through the Chair, be questioned by any party to the hearing.
3. The Chairman may then allow additional questioning/ clarification of any of the parties in the order indicated by him.
4. The Council's Licensing Officer gives any closing comments to the Sub-Committee.
5. The Applicant (and/or their advocate) gives any closing address to the Sub-Committee.
6. The Sub-Committee retires to deliberate in private session. All parties will then be called back into the meeting for the announcement of the decision and reasons for the decision will be given by the Chairman or Legal Advisor to the Sub-Committee (in some cases the Sub-Committee may decide to defer making a decision for up to 5 working days). The Sub-Committee's ruling is final on behalf of the Council and the full written notification of the decision will follow forthwith.

#### **NOTES:**

- (a) The hearing will take the form of an informal discussion led by the Licensing Authority. The Chairman will allocate equal time to the parties, and may limit the maximum timing, to ensure that the parties have an equal opportunity to make their case.
- (b) The Chairman and, with his consent, any Member of the Sub-Committee may at any time question the Applicant, Licensing Officer or any witnesses. The Chairman may deviate from this procedure as he considers necessary or appropriate, to allow a discussion to flow and to allow all parties fair and equal opportunity to raise all points they may wish to make.

## **APPENDIX B**

### **HADLEIGH MARKET SCHEME (FRIDAYS) – FEES AND CHARGES**

#### **Charges**

Fees for removal and disposal of waste, utilities and cleansing are variable and will be advised and demanded by the Market Manager or Market Supervisor

#### **Permanent Traders (Price per foot of frontage)**

£1.00 Standard

£1.20 + Electricity

#### **Casual Traders (+ 50% of permanent fees)**

£1.50 Standard

£1.80 +Electricity

#### **Introductory Rate for new traders**

First 4 weeks at 50% of casual fees

#### **Incentive Scheme**

Pay quarterly (12 weeks) in advance and receive 1 week's free pitch

#### **Saturdays:**

Whole market place for a day rate of £150 (discretionary rate) the named organisers are responsible for ensuring insurances, permissions and licences are in place as per regulatory document.

## APPENDIX C

### Economic Development Team – ‘Future of Hadleigh Market’ Survey Summary

Development of the revised market regulations/policy document was alongside existing traders, and their input influenced some of the content (including draft fee scheme). No formal written comments were received on the policy/regulations consultation. However, for further information/context the recent results of a broader survey on the future of Hadleigh Market are summarised below:

- Survey was completed by 207 respondents. The survey therefore captures a significant amount of opinion.
- Among respondents, survey reflects 95% public opinion and 5% business opinion. 90% of public respondents live in Hadleigh or within 5 miles of the town, and likewise 100% of business respondents. The survey has therefore captured the views of local people.
- 92% of respondents are already aware of the market, 87% already visit at least once a month and 68% do not visit another market regularly. Therefore the potential exists to serve an existing customer base.
- 93% of respondents would not want to run a stall themselves, but 60% know others who might. Therefore the potential might exist to recruit a sufficient number of traders to run stalls.
- Important issues are the variety of goods for sale, particularly local goods, that goods are reasonably priced and that (besides Friday) trading includes Saturday for convenience. People would like to see sales of bread and cakes (including gluten free), cheese, pancakes and doughnuts, fruit, veg, fish and eggs, and a haberdashery. These issues must be carefully borne in mind when assigning licences to traders.
- 81% of respondents would be happy to see the car park by Barclay's Bank used to expand the market for up to 2 days per week, if it brought more trade to Hadleigh. Therefore the choice of location does not appear to create a problem.
- There is a general feeling that the market needs to be promoted effectively if it is to succeed. 80% of business respondents would be prepared to help with publicity, by displaying or distributing cards or flyers. Promotion is therefore required but may not need a large budget.