

AGENDA ITEM: 4

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Meeting	Licensing Committee
Date	5 January 2006
Subject	Licensing Act 2003 and Gambling Act 2005
Report of	Interim Head of Environmental Services
Summary	This report includes an update on progress with the Licensing Act 2003, issues related to the Licensing Policy and the role of the Responsible Authorities, and information about the Gambling Act 2005.

Officer Contributors	Rick Mason, Environmental Services Manager – Commercial Services, Terry Vaughan, Group Manager Health & Safety & Licensing
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Licensing Committee
Function of	The Council
Reason for urgency / exemption from call-in (if appropriate)	N/A

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1. RECOMMENDATIONS

- 1.1 That Members note the progress made with implementation of the Licensing Act 2003 and the briefing on the Gambling Act 2005.
- 1.2 That no further action is taken at the present time regarding saturation zones.
- 1.3 That Members consider what action they would wish to see taken in terms of the Licensing Policy in respect of the following issues:
 - i). wider impact of decisions;
 - ii). Licensing Forum; and
 - iii). enforcement programme.
- 1.4 Depending on the Committee's decisions on 1.3 above, the Interim Head of Environmental Services, in consultation with the Borough Solicitor, Democratic Services Manager, other Heads of Service and Statutory Bodies, as appropriate, take the necessary action.
- 1.5 That the Committee note the action being taken to deal with any applications during the period prior to and immediately after the local elections (paragraphs 8.22 & 8.23) and indicate if they have any comments on the proposals.
- 1.6 That, subject to the further information to be presented to the meeting and referred to in paragraph 8.28, the use of video evidence at hearings be approved.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 The Council's licensing policy was published on 7 January 2005.
- 2.2 Decisions of Licensing Committee on 14 September 2005.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The new licensing regime is the result of a Government policy decision that local authorities are obliged to implement. There are four statutory objectives to be met through licensing:
 - Public safety
 - The prevention of crime and disorder
 - The prevention of nuisance
 - The protection of children from harm

Achievement of these objectives is dependant on the Council's adopted Statement of Licensing Policy, and the application and enforcement of appropriate conditions attached to individual licences.

- 3.2 The new licensing arrangements for gambling are a result of a similar Government decision.

4. RISK MANAGEMENT ISSUES

- 4.1 If the Licensing Policy does not accurately reflect the views of the Council as licensing authority, it will hinder sound decision-making with respect to licence applications and licence reviews. Judicial review of the policy by parties who believe it to be unsound would involve cost and possible adverse publicity. Similarly, decisions or conditions on individual licence applications which contradict the Licensing Policy may lead to costly appeals.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 The Licensing budget for 2005/6 is for a net income of £175,000. This being based upon a projected staffing cost of £128,000 and fee income of £303,000. In the event staffing costs have exceeded budget while income levels have been less than projected with the result that the projected outturn for 2005/6 is (£40,000) a shortfall of £135,000. These costs relate to the Licensing Team of Environmental Services and are being reported in the Revenue Monitoring report to Cabinet Resources Committee on 5 January 2006.
- 5.2 A zero based budget exercise has is being undertaken for 2006/7 using estimated application and review projections and a risk-based enforcement regime. This is currently being finalised in the light of Council agreement to the budget headlines on 20 December and an update will be provided at the Committee meeting.

6. LEGAL ISSUES

- 6.1 None

7. CONSTITUTIONAL POWERS

- 7.1 The Responsibilities of the Licensing Committee are to deal with all functions under the Licensing Act 2003 and associated regulations, not otherwise delegated to the Licensing Sub-Committee (Part 3 Responsibility for Functions).

8 BACKGROUND INFORMATION

Applications update

- 8.1 Between the first appointed day on 7 February 2005 and 19 December 2005, the council has received:
- 1317 applications for personal licences
 - 857 applications for premises licences and club premises certificates
 - 102 Temporary Event Notices

There have been 129 Sub-Committee hearings.

- 8.2 There have been 11 appeals against decisions of the Sub-Committees. One case, the Railway Bell, has been resolved, and one, the Railway Tavern, has been withdrawn. The remainder are still in progress.

Licensing policy

- 8.3 The Council's licensing policy was published on 7 January 2005, after consultation. It must be reviewed within 3 years, but it may be reviewed sooner.
- 8.4 The majority opinion during consultation was that the policy is sound. However, the view was expressed by the police and others that saturation policies should be adopted, covering six crime and disorder hotspots identified by the police. These policies would create a presumption against the granting of new licences in those areas, due to the cumulative impact of licensed premises on crime and disorder. It would still be necessary to treat each application on its merits, and it would be possible, as now, to treat different types of premises appropriately, for example by refusing a pub but allowing a restaurant. However, any such special policies could be challenged by licence applicants by means of judicial review, and it is important that they should be supported by robust and adequate evidence.
- 8.5 Members are reminded that cumulative impact can be taken into account when determining an application even though there is currently no saturation policy, and that were there such a policy for an area, it would still be necessary for a representation to be made before an application could be refused. Comparatively few authorities have adopted saturation policies.
- 8.6 The research to justify a saturation policy will be a major project, and it would be difficult to carry out this work in-house. It may therefore be appropriate to commission an external agency. Outline proposals have been obtained from a number of agencies and these indicate a potential cost of up to £40,000. Another possible option would be for the work to be done by a local university as a post-graduate project.
- 8.7 Up-to-date information from a range of sources will be needed. New arrangements may have to be put in place to collect the data, which can then be analysed to define the boundaries of the hot spots, take into account the effect of the Act and the existing policy, and compare the situation with the rest of the borough and with similar areas elsewhere. This will enable members to make an informed decision whether or not to adopt one or more new draft special policies, which would then be subject to consultation before being put into effect. Doing such research would also protect the Council in the event that the policy is challenged. Any such policy would need to be reviewed regularly to assess whether it is still needed, or needs expanding.
- 8.8 Creating an area in which there is a presumption against granting new licences, is likely to disproportionately discourage small and independent businesses from applying, whereas large chains, particularly those operating

'high volume' premises, will have the resources to challenge special area policies and will clearly make a business decision on whether to do so.

- 8.9 There is currently no budgetary provision for this work and if the committee wish it to be pursued it will need to be considered as a growth bid as part of next year's budget. It is considered that the potential costs involved would not be merited in view of the points above.
- 8.10 Members may wish to consider whether there are any changes that should be made to the licensing policy in the light of experience. In accordance with the Act, any such changes will have to be subject to consultation before they can be adopted. It is worthwhile to note that the licensing policies of Canterbury, Doncaster and Gloucester were criticised for being over-prescriptive, and had to be changed. Canterbury's was judicially reviewed, and held to discourage potential licence applicants.

Overview of sub-committee decisions

- 8.11 Sub-Committees have dealt with a large number of applications, and in each case, decisions were made in the light of the evidence presented. These decisions have consequences for the licensing objectives, both individually and taken together. For example, many licences now have similar terminal hours. This has avoided the creation of zones having different terminal hours, and may help prevent patrons moving from one premise to another to take advantage of later hours. However, the similar terminal hour across the borough may tend to increase difficulties for the police, who may be faced with the same closing time problems as before but at a later hour.
- 8.12 If Members have any concerns on the wider impact of the many individual decisions, they may wish officers to come back to a further meeting with information about the resource implications of assessing the impact of those decisions and whether policy or other changes would be appropriate.

Licensing Forum

- 8.13 The Guidance to the Act recommends that licensing authorities set up a licensing liaison group at which licensing developments and problems can be monitored and discussed. The Licensing Policy includes a commitment to establish such a forum. To implement this, the Licensing Team will invite representatives from appropriate bodies such as the responsible authorities, local business and residents groups to regular meetings, initially to be held every six months, beginning in 2006. Significant matters arising from these meetings would subsequently be reported to the Committee. The meetings will be part of the routine work of the licensing team and the costs will be contained within the base budget.

Role of responsible authorities

- 8.14 When a premises licence application is submitted, copies are provided to the Responsible Authorities (the Police, Fire Authority, Trading Standards,

Nuisance Team, Health and Safety Team, Safeguarding Children Board and Planning). This gives them the opportunity to make representations if they consider it necessary.

- 8.15 So far, the police have made many representations, and a number have come from the fire authority. Only a small number of relevant representations have been received from 'internal' responsible authorities. Discussions have taken place with the authorities to ensure that representations are made when applications give cause for concern, and that they refer when appropriate to potential licence conditions.

Licence conditions

- 8.16 Licences so far granted have few imposed conditions other than restrictions on terminal hours and the types of licensable activity permitted. This means that much of the formal enforcement action necessary to promote the licensing objectives at licensed premises will have to be taken by the responsible authorities, using their own powers. Where it is appropriate to add conditions following a representation, for example conditions designed to prevent under-age sales of alcohol or to reduce noise emission, Members are encouraged to do so. Conditions can be enforced directly by licensing officers during routine inspections. Members are encouraged to make use of the Council's guide to good practice at licensed premises, which includes suggestions for licence conditions that may be imposed in contested cases. We will be working with the responsible authorities to promote the use of the good practice guide.

Enforcement action

- 8.17 Enforcement action by licensing officers to date has been very limited due to the pressure of applications. When enforcement visits by licensing officers begin, it is expected that there may be an increase in the number of applications for new licences or to remove restrictions.
- 8.18 Future enforcement is planned to address compliance with licence conditions and restrictions, such as closing times and nuisance control measures. Complaints will be investigated, and in addition there will be a planned programme of risk-based routine checks by licensing officers. These will include inspections carried out during the hours when the premises are operating.
- 8.19 Relevant enforcement action is also being undertaken by the responsible authorities in accordance with their own work plans. For example, the police have taken action to reduce crime and disorder in the vicinity of licensed premises, and Trading Standards officers have arranged a number of test purchases to reduce sales of alcohol to children. Discussions have taken place with such authorities to avoid duplication and ensure consistency as far as possible.
- 8.20 Members have requested a fully costed assessment of the work of the Licensing team, including for enforcement of the Licensing Act. This is being

prepared as part of the budget process for 2006/7 and officers will provide an update at the Committee meeting.

Licences for Council premises

- 8.21 The licensing policy includes a commitment that licences will be sought for appropriate public spaces to facilitate cultural activities. These spaces could include parks and other places where, for example, community festivals could take place. Such events may easily exceed the limits for Temporary Event Notices, and unless there is a premises licence already in existence, the event may not be able to take place. The council's Green spaces team are therefore planning to submit applications for 11 parks felt to be suitable for events to avoid this difficulty arising.

Hearings at time of election in 2006.

- 8.22 It will be difficult for Members to take part in hearings at the time of the election. Existing licence holders will be requested not to submit variation applications between the dates that could lead to a hearing at election time and this will be published in a licensing newsletter. Any potential applicant for a new licence who contacts us before sending in the papers will be requested to avoid 2nd to 30th May 2006. However, it may be that applications and TENS will be submitted nevertheless. If contested, they cannot be granted without a hearing and, unless determined within the legal deadline, they will be deemed refused, with a right of appeal. This issue affects all licensing authorities, however there has as yet been no central guidance issued. It is believed that Barnet is one of the few authorities to have raised this issue.
- 8.23 It is suggested that hearings could be adjourned in the public interest, so that an adjournment meeting can be held before the period starts to deal with all cases coming up in that period. However this would not deal with the issue of Temporary Event Notices.

Licensing Officers' reports

- 8.24 Members decided at the last meeting of the Committee that licensing officers' reports for Sub-Committees should be shorter. The text of the report generally consists of:
- Brief details of the existing licences held by the applicant
 - A summary of the representations
 - A brief reference to particularly relevant sections of the Policy and statutory guidance
 - Officer comments on the representations to assist Members
 - Some brief general advice on licence conditions
- 8.25 In addition there is a decision record, which forms the bulk of the report and is often long and complex. This is because the application itself is long and complex, with many details to be decided and recorded. The decision record

was introduced to make sure that decisions were recorded systematically and not overlooked. If it is reduced, there is a danger that errors will occur.

- 8.26 Options have been discussed with Democratic and Legal Services and it is considered that there is little scope for reduction if Members are to have all the relevant information which may influence decision making.

Use of video evidence at hearings

- 8.27 Video evidence can be very helpful in showing conditions at premises and in their vicinity. It is increasingly being used in court for prosecutions, and may assist Sub-Committees when determining applications. The police have indicated that they would like to be able to present video evidence; however, videos could be produced by any of the parties to the hearing.
- 8.28 Using video evidence raises a number of practical and legal issues, for example in the copying, advance disclosure and presentation of the video. Officers are investigating these, including looking at the practice at other authorities, and will provide an update and advise on specific proposals and practice at the meeting. While there will be some initial set up costs in making provision for video evidence these will be contained within the base budget.

Gambling Act 2005

- 8.29 This Act introduces a new deregulatory licensing regime with many similarities to the Licensing Act 2003. Personal licences will be issued by the Gambling Commission, and premises licences will be issued by the Council. There are three defined licensing objectives:

- Preventing gambling from being a source of crime, being associated with crime or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

- 8.30 There are defined responsible authorities, principally:

- The Gambling Commission
- The Police
- The Fire Authority
- The Planning service
- Environmental Health
- Child welfare agency e.g. Safeguarding Children Board
- HM Customs and Excise

- 8.31 The responsible authorities and interested parties will be able to make representations, and contested applications will be determined by the Licensing Committee established for the purposes of the 2003 Act. A three-year licensing policy must be drafted and subject to wide consultation before adoption which is expected to be by the end of 2006. The Council may make

a resolution not to have any casinos in the Borough, but will have to be able to justify its decision. The target date for full implementation is 1 September 2007.

- 8.32 It is expected that the workload will be smaller than for the 2003 Act. Preliminary estimates indicate that there are approximately 42 existing premises in the borough that will require a licence.
- 8.33 It is anticipated that the main issue in practice will be the drafting and adoption of the Gambling Licensing Policy. The responsible authorities have been asked to take part in formulating the policy, and it is expected that a draft will be available, subject to statutory guidance, by end March 2006.
- 8.34 Further reports will be made to the Committee on these issues once official guidance is published and the timetable becomes clear.

9 LIST OF BACKGROUND PAPERS

- 9.1 Police submissions – research on hotspots

BS: MEE
BT: PA