

Licensing Act Policy revisions

Licensing, Item 2

Committee: Licensing Committee

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Title: Licensing Act Policy revisions

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Agenda Item

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Item for
decision

Summary

The Licensing Act requires the Council to have a licensing policy and to reconsider it every three years, and at any other time as necessary. Prior to adopting a revised policy, the Council is required to carry out a broad consultation on the proposed policy. This report is to inform Members of the progress of the consultation and to seek Members' guidance as to what amendments (if any) Members wish to make to the draft policy in the light thereof, and to recommend the final version of the Policy to Full Council for adoption.

Recommendations

That Members consider the representations made with regards the draft licensing policy and instruct officers as to what variations (if any) they wish to make to the draft document in light thereof

Background Papers

Letter from Association of Convenience Stores

Letter from Stansted Parish Council

Letter from BBPA to Rochford District Council

Letter from Poppleston Allen Solicitors to Chelmsford Borough Council

Correspondence from Stansted Parish Council

Impact

Communication/Consultation	Full consultation carried out in accordance with the legislation and guidance
Community Safety	Effects of the Licensing Act on community safety to be considered and dealt with in the policy, within the context of the licensing objectives

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Equalities	Please see comments in the report from the Equalities working group. Policy to be made available to hard to reach groups and in different formats and languages as necessary
Finance	The fees are set by central government and remain unchanged. Nothing in the policy should have an impact on costs
Human Rights	None
Legal implications	The Licensing Authority will have to have regard to its licensing policy in determining applications
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

- 1 On 12 September 2007 the Committee approved a draft revised policy document as a basis for consultation. The draft policy document was published on the Council's website, a press release was made, and the item did appear in the local newspapers. Letters were sent to all the relevant authorities, interested parties, all the breweries who operate in the area, all parish and town councils, and all interest groups and associations. The letter stated where the policy document could be found and inviting comments. The consultation was to run until 27 November.
- 2 There has been a limited response to the consultation. To date we have only received three responses that contain any comments, from the Association of Convenience Stores, a Stansted Parish Councillor and Stansted Parish Council. However members will be aware that the draft policy was developed through a working group of the Essex Licensing Officer's Forum and any generic responses received by the Forum have been included in this report.
Association of Convenience Stores
- 3 The Association of Convenience Stores submitted a general response that covered generally the issues that they face and raise three of these general issues for consideration: to support Challenge 21, and the NO ID NO SALE campaigns, support of the revised Government guidance on the role of the Designated Premises Supervisor (DPS) and that licensing hours should normally mirror shop opening hours.

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- 4 The matter of the DPS has been addressed by the proposed amendment that replicates the revised Government guidance, and the matter of opening hours is already included. With regards the issues of ID card, that is already a suggested control measure. The current policy does not refer specifically to the Challenge 21 policy as a suggested measure, but more generally refers to the following of best practice.

Stansted Parish Council

- 5 The Parish Council raise a number of issues with regards licensing in Stansted, some of which relate to concerns with regards the running of current licensed premises, and they suggest a cumulative impact policy be adopted. In terms of the running of the current premises, they cannot be dealt with by a cumulative impact policy, and can only be dealt with if conditions are being broken or a review is requested.
- 6 They also suggest that the Council adopts a policy of staggered closing times. This would not be part of a cumulative impact policy, and the proposed amendment at paragraph 5.5 provides that in appropriate circumstances, staggered closing times could be used. Finally, they want to see greater control of use of the public highway. Again, the only way this could be achieved using powers under the Licensing Act 2003 would be through the imposition of conditions, which have to be on a case by case basis where representations are received. The alternative would be for the District Council to consider adopting a Designated Public Places Order in respect of the highways and pavements around Lower Street to enable the police to stop people drinking outside on the pavement.
- 7 The Government guidance is quite clear on how the inclusion of a cumulative impact policy should be approached, and essentially it has to be evidence based. The guidance advises that the Authority should consider whether there is good evidence that crime and disorder or public nuisance is happening and that it is caused by the customers of licensed premises, or that the risk of cumulative impact is imminent. If the Authority considers there is evidence, it should carry out consultation on the adoption of the special policy. On the basis of the evidence and the consultation, the Authority will have to consider whether it is appropriate and necessary to include a cumulative impact policy in the licensing policy.
- 8 The effect of the special policy is to create a rebuttable presumption that NEW licences and variations that will add or extend activities be refused, if relevant representations are made that there will be a cumulative impact. In addition, Government guidance is that a special policy cannot be used to specify a blanket terminal hour, which would directly undermine a key purpose of the Act, or as justification for revoking, or amending a licence on review.
- 9 The comments raised by the Parish Council do not include detailed evidence of serious problems of nuisance or disorder outside or in the vicinity of licensed premises, and do not appear to be supported by the Police or the Environmental Health officers. Equally, it is too late to include a special policy in this revision of the Policy as its inclusion has not been consulted upon.

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- 10 However, if Members so wish, the issue of a cumulative impact policy for Stansted can be considered as a separate matter to be taken forward by officers in the first instance, to advise the Parish Council of the nature of the evidence that is required, and seek the views of the Police and Environmental Health officers. Members can then take a view as to whether we should consider amending the licensing policy to include such a policy, and then go out to consultation on that basis.

It is not proposed to make any changes to the licensing policy at this stage, but Members should consider whether they want to take the matter of a cumulative impact policy forward for consideration and additional separate consultation.

11 **Stansted Parish Councillor**

- 12 The Parish Councillor raises a number of issues in relation to the enforcement of the current licences, which cannot be dealt with in the Licensing Policy. The issue of the enforcement protocol will be dealt with separately in conjunction with the Police, Environmental Health and the other responsible bodies. He does raise three specific proposals

- a. Licensing hours set to take account of the surrounding areas
 - The current policy already contains a provision at 5.3 that reflects the Council's approach to residential areas, and the proposed paragraph 5.5 includes consideration of residents' rights to peace and quiet
- b. No music played after 11 pm, nothing outside and all doors and windows closed
 - The Licensing Authority cannot include blanket conditions as each individual case has to be treated on their own merits, given the particular circumstances of the premises. It also has to be remembered that any conditions can only be imposed if representations are made, and then only if they are necessary and proportionate to deal with the effect of the activities at the premises on the licensing objectives. Equally, in the list of control measures at paragraph 5.8 that applicants should consider including on their application is a suggestion relating to the control of hours and noise matters.
- c. Enforcement to be the responsibility of the District Council in conjunction with other agencies
 - This is included in the enforcement protocol.

It is not proposed to make any changes to the Licensing Policy

British Beer and Pub Association

- 13 The British Beer and Pub Association did not respond to Uttlesford's request for comments but did respond to Rochford DC and Chelmsford BC, with more or less the same comments.

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- a. They would welcome reference in addition to the comments already included in the policy with regards recognising the Hampton Principles of inspection and enforcement

It is not proposed to amend the policy as matters of enforcement are dealt with in a separate protocol which will be amended to take account of these principles and the introduction of the Regulatory Enforcement and Sanction Bill and the Compliance Code for Regulators when appropriate

- b. They believe that a number of the suggested control measures outlined in the policy do not easily translate into conditions and would not be enforceable, although they are supported as good practice; others are unnecessary, as they are already offences, or replicate existing legislative requirements and should be removed:

- i. References to “ Effective and responsible management of premises”
- ii. “Appropriate instruction, training and supervision of staff”
- iii. “Adoption of best practice guidance”
- iv. “Acceptance of accredited “proof of age” cards”
- v. “Suitable and sufficient risk assessments”
- vi. “Proof of regular testing of procedures, appliances, systems etc”
- vii. “Management arrangements for collection and disposal of litter”

It is not proposed to amend the policy as suggested. The wording of the policy already suggests that they are types of control measures applicants may want to turn their minds to addressing, are generic and are not suggested conditions. It is the applicant’s discretion to use them as a starting point to try and ensure that they meet the licensing objectives: for example it would be entirely appropriate and enforceable for an applicant to say they will erect signage in relation to their age policy

- c. Remove word “will normally” and replace with “may” in paragraph 5.3 to ensure that there is no element of pre-judgment

It is proposed to amend the policy as suggested

- d. Remove wording in paragraph 3.6 which states that a DPS would be expected to normally be on the premises on a regular basis, as going beyond the legal requirements and is subjective.

It is proposed to amend the policy as suggested

- 14 Members may wish to note the comments of Poppleston Allen Licensing Solicitors sent to Chelmsford Borough Council with regards their licensing policy, which is in similar format to Uttlesford’s

- a. Welcomes the continued approach of the licensing authority that all applications are considered on an individual basis and that no

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conditions will be imposed that cannot be shown to be necessary for the promotion of the licensing conditions

- b. Welcomes the policy that where possible the licensing authority will mediate to achieve a satisfactory outcome for all involved where possible
- c. Supports the giving of written authorisation by personal licence holders in respect of the sale of alcohol by those not holding personal licences
- d. Supports the statement that strongly encourages the DPS to undergo additional training and have experience commensurate with the nature and style of premises.

15 The policy has also been assessed by the Equalities working group who have raised a few issues:

- a. A strap line needs to be included offering alternative formats and languages
Appropriate wording and information to go on cover page
- b. Paragraph 1.14 should include other pieces of legislation to cover the Corporate Equalities and Inclusion Policy – Disability Discrimination Act, and ensure clear reference to whose Race Relations Policy it is
Suggested rewording to read “The Licensing Authority recognises its responsibilities under the Race Relations Act 1976 and the Disability Discrimination Act 1995 both as amended. The impact of this policy on race relations and disability equality will be monitored through the Uttlesford District Council’s race equality and disability equality schemes.”
- c. Paragraph 1.26 make it clear that although the requirements are that notification should be in writing, if an individual is unable to read or write then a friend be permitted to construct the letter on their behalf.
Remove the word “written”. This sentence is to cover the situation where a parish council, or ward member or interest group like a tenants’ association or trade body make representations on behalf of somebody else. In order to accept them as relevant the licensing authority needs to know on whose behalf they are made to assess if they fall into the category of being affected by the application, and that the individual or company has asked to be represented. It does not matter how that evidence is provided, so it would be easier to remove the requirement for it to be written in order to deal with these concerns.

Letter from Punch Taverns

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Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Members adopt amendments to the draft policy which run contrary to Government guidance	Low. Members took part in the consultation process on the draft government guidance and there have been no significant amendments made to the guidance since then	Medium. Although a policy contrary to government policy would be susceptible to judicial review the Council responded promptly and appropriately when a high court decision suggested that the licensing policy was unlawful	Any amendments Members may wish to see to the draft should be consistent with government guidance
Members recommend a cumulative impact policy	Low. Limited amount of evidence currently provided	High. Such a policy could be the subject of a judicial review	If Members chose to implement such a policy, they should give adequate and defensible reasons for it.