

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Committee

Date: 10 October 2012

Place: Council Chamber, Civic Offices, **Time:** 2.00 - 3.20 pm
High Street, Epping

Members Present: K Angold-Stephens (Chairman), A Lion (Vice-Chairman), K Chana, Mrs R Gadsby, L Leonard, A Mitchell MBE, R Morgan, Mrs M Sartin, Ms G Shiell, Mrs P Smith, P Spencer, Mrs T Thomas and D Wixley

Other

Councillors: G Waller

Apologies: A Boyce and N Wright

Officers Present: A Mitchell (Assistant Director (Legal)), K Tuckey (Senior Licensing Officer) and G J Woodhall (Democratic Services Officer)

7. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

8. ANY OTHER BUSINESS

It was noted that there was no other urgent business for consideration by the Committee.

9. MINUTES OF THE LICENSING COMMITTEE

Resolved:

(1) That the minutes of the meeting held on 30 August 2012 be taken as read and signed by the Chairman as a correct record.

10. MINUTES OF THE LICENSING SUB-COMMITTEES

Resolved:

(1) That the minutes of the following meetings of the Licensing Sub-Committee be taken as read and signed by their Chairmen as a correct record:

(a) 3 April 2012;

(b) 12 April 2012;

- (c) 8 May 2012;
- (d) 12 June 2012;
- (e) 10 July 2012;
- (f) 7 August 2012; and
- (g) 4 September 2012.

11. APPLICATIONS RECEIVED UNDER THE LICENSING ACT 2003 AND GAMBLING ACT 2005

The Senior Licensing Officer reported that in respect of Premises License Applications or Variations, there had been 12 new applications, 363 renewals, 46 Change of Designated Premises Supervisor or variation applications received. Of these, 12 applications had been considered by the Sub-Committee and granted subject to conditions. Six (EU) Temporary Event Notices, 126 Temporary Event Notices and six late Temporary Event Notices had also been granted, and 62 Personal Licence applications had been received and granted under delegated authority. There had been no appeals to the Magistrates Court during the period.

In respect of the Gambling Act 2005, the Senior Licensing Officer stated that 4 club gaming permits had been granted, whilst 14 notifications had been received for two gaming machines.

Resolved:

- (1) That the report to the Licensing Committee regarding the applications received under both the Licensing Act 2003 and the Gambling Act 2005 be noted.

12. CUMULATIVE IMPACT POLICY

The Assistant Director of Corporate Support Services (Legal) presented a report as to whether an assessment should be conducted into the Cumulative Impact of licensed premises on the four Licensing Objectives in some areas of the District.

The Assistant Director explained that Cumulative Impact related to the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The Secretary of State had issued guidance under Section 182 of the Licensing Act 2003. The Council had to gather evidence to support the implementation of a Cumulative Impact Policy within its Statement of Licensing Policy, and the public also had to be consulted. If there was not sufficient evidence then the Council could not implement such a policy. If implemented, each application still had to be judged on its merits and any application that was unlikely to add to the cumulative impact of an area had to be granted. Such a policy could not be used for revoking an existing licence, it could only be considered when deciding to grant a new licence or varying an existing licence. The Council had to have proper regard for the differences between the different establishments that could sell alcohol and the differing impact that they could have on the promotion of the licensing objectives.

The Committee acknowledged that the introduction of such a Policy would create additional work for the Council's Licensing Officers. The Assistant Director reported

that the Licensing section was currently very busy, and that the Council would have to employ a consultant to collect the necessary evidence. Additional finance from the District Development Fund would need to be sought to pay any potential consultancy fees.

In response to further questions from the Committee, the Assistant Director stated that this was a policy for adoption by the Council, but any application received in breach of the Policy would be referred to the next available Sub-Committee meeting for a decision. The Council had to follow the guidance issued to adopt the Policy otherwise the Policy would be open to legal challenge. The public could invoke the Policy when responding to an application to grant a new licence or vary an existing licence, and no guidance was yet available on the setting of fees.

The Chairman commented that such a Policy could be useful in Loughton, but not necessarily in other areas of the District. There had been a spread of late-night venues in Loughton High Road, which adversely affected the quality of life for local residents; the problem being more of an anti-social nature rather than criminal. Residents in Loughton had given up reporting problems as they never seemed to get resolved. It was believed that the Street Pastors who patrolled Loughton High Road in the evenings were having a positive impact.

The Committee believed that this was a complex policy and the Council should not proceed with it at the current time but review the situation in the future. The Council should be proactive with local residents and encourage them to report problems with licensed premises. This could be advertised via the Council's own Forester magazine, as well as with Town and Parish Councils and the Council's website. It was highlighted that the Council's Safer Communities Teams had expertise and experience in dealing with anti-social behaviour, whilst the Portfolio Holder for Safer, Greener and Highways advised the Committee that further CCTV cameras were due to be installed in Loughton pending Cabinet approval in December.

Resolved:

(1) That consideration of whether to conduct an assessment into the cumulative impact of licensed premises on the four licensing objectives in certain parts of the District be deferred until the next meeting of the Committee on 10 April 2013; and

(2) That, in the meantime, residents be encouraged to report problems with licensed premises in the District to both Essex Police and the Council's Safer Communities teams.

13. LATE NIGHT LEVY AND EARLY MORNING RESTRICTION ORDERS

The Assistant Director of Corporate Support Services (Legal) presented a report on the introduction of Late Night Levy and Early Morning Restriction Orders.

The Assistant Director reported that the Late Night Levy would enable licensing authorities to seek a contribution from late-opening alcohol suppliers towards the costs of policing the night-time economy. It was a local power that a licensing authority could choose whether or not to exercise, and it had to cover the whole of the licensing authority's area. The Levy would be set at a national level, based upon the Premises' rateable value; the Police would receive 70% of the net Levy revenue, whilst the licensing authority could retain up to 30% to fund other activities besides policing.

The Assistant Director added that an Early Morning Restriction Order enabled licensing authorities to restrict sales of alcohol in the whole or part of their areas for any specified period between midnight and 6.00am, if this was considered appropriate for the promotion of the licensing objectives. It was a local power that a licensing authority could choose whether or not to exercise, and the licensing authority would have to demonstrate that they had evidence to justify the introduction of such an Order. It was highlighted that retail units with a Late Night Refreshment licence would also be affected by such an Order, even if they did not sell alcohol.

In response to questions from the Members present, the Assistant Director stated that the Late Night Levy would also be applicable for the period from midnight to 6.00am. It was unknown at the moment whether additional staff would be required to collect the Levy. It would depend upon the volume to be collected, but this could always be a part-time post. The Licensing team would be responsible for collecting the Levy, and any premises that did not pay would have their licence suspended. The Council would need to speak to Essex Police about the Levy, as there was no compulsion for the Police to spend the monies collected within the District. This discussion could be deferred until after the new Police & Crime Commissioner was elected and in post. The Senior Licensing Officer added that, at a recent Essex Licensing meeting, only two Councils in the county were considering implementing the Levy.

In view of the issues highlighted to the Committee, it was felt that no further action in respect of the Late Night Levy and Early Morning Restriction Orders should be taken until after discussions with the new Police & Crime Commissioner for Essex, and that the situation should be reviewed in the future.

Resolved:

- (1) That the provisions of the Police and Social Reform Act 2011 relating to Late night Levy and Early Morning Restriction Orders had now come into force be noted; and
- (2) That no further action be taken in respect of Late Night Levy and Early Morning Restriction Orders at the current time pending discussions with the new Police and Crime Commissioner for Essex but that the situation be reviewed in the future.

14. GAMBLING ACT 2005 - STATEMENT OF PRINCIPLES

The Assistant Director of Corporate Support Services (Legal) presented a report concerning the review of the Statement of Principles for the Gambling Act 2005.

The Assistant Director reported that the Gambling Act 2005 required all licensing authorities to publish a Statement of Principles to be applied when exercising their functions, and that this Statement should be reviewed every three years. An amended statement was discussed at the last meeting of the Committee, and a consultation exercise had subsequently been undertaken. A number of responses had been received, and the comments had been incorporated within the Statement where possible. The Committee was requested to recommend the adoption of the revised Statement of Principles to the Council.

The Chairman highlighted that the definition of interested parties now included democratically elected representatives, provided they represented the ward concerned.

Resolved:

- (1) That the responses received for the consultation on the revised Statement of Principles for the Gambling Act 2005 be noted; and
- (2) That the revised Statement of Principles for the Gambling Act 2005 be recommended to the Council for adoption.

15. LIVE MUSIC ACT 2012

The Assistant Director of Corporate Support Services (Legal) introduced a report on the Live Music Act 2012.

The Assistant Director reported that the Live Music Act 2012 removed the licensing requirements for the following:

- (i) amplified live music between 8pm and 11pm before audiences not in excess of 200 people on premises authorised to sell alcohol for consumption;
- (ii) amplified live music between 8pm and 11pm before an audience not in excess of 200 people in workplaces not otherwise licensed under the 2003 Act;
- (iii) unamplified live music between 8am and 11pm in all venues; and
- (iv) the provision of entertainment facilities.

Where there were public nuisance implications, i.e. audiences in excess of 200 people or the performance continuing after 11pm, then there was no exemption and the current licensing regime remained in force. Even if the performance was exempt under the Live Music Act 2012 but created a public nuisance, then responsible authorities and 'other persons' could still seek a review of the premises licence as was currently the situation. Furthermore, if the premises created a statutory noise nuisance then the Council's Environment & Neighbourhood Team could still take enforcement action.

Resolved:

- (1) That the changes to the Licensing Act 2003 brought about by the Live Music Act 2012, which came into force on 1 October 2012, be noted.

16. DRAFT STATEMENT OF LICENSING POLICY

The Assistant Director of Corporate Support Services (Legal) presented a report on the draft Statement of Licensing Policy.

The Assistant Director reminded the Committee the current Statement of Licensing Policy had been adopted in 2011 and did not require a review until February 2014. However, the Police Reform and Social Responsibility Act 2011 had made a number of amendments to the Licensing Act 2003, and it was felt appropriate to review the Council's Statement of Licensing Policy now rather than later. The Government had issued guidance in April 2012 and the following changes had been made to the current Statement of Licensing Policy:

- (i) recognition of the Council's equality duty and an explanation of how this duty would be complied with;
- (ii) the addition of the Licensing Authority and Primary Care Trusts to the list of responsible bodies to be consulted on for any particular application;
- (iii) the removal of the vicinity test for any person or business making a representation upon a particular application, although the representation now had to be related to one of the four licensing objectives;
- (iv) conditions that were considered 'appropriate' rather than 'necessary' could now be imposed upon any premises licence or club certificate;
- (v) additional issues for applicants to take into account in respect of the 'Protection of Children from Harm' licensing objective; and
- (vi) the Council, when exercising its environmental functions, could now object to an application for a Temporary Event Notice.

The Assistant Director emphasised that the Council had to conduct a public consultation exercise on the revised draft Statement of Licensing Policy.

Resolved:

- (1) That the current draft Statement of Licensing Policy be noted; and
- (2) That Officers be instructed to conduct a public consultation on the draft Statement of Licensing Policy.

17. REVIEW OF LICENSING SUB-COMMITTEE PROCEDURES

The Committee reviewed the proceedings of the Licensing Sub-Committees held during the preceding six-month period and considered whether the procedure, policy and organisation of the Sub-Committees required review.

The Chairman commented that there was currently no provision for members of the public to address meetings of the full Licensing Committee. This had been very apparent when the Committee had considered the installation of meters in Hackney Carriages and the setting of fare tariffs for journeys within the District by all vehicles licensed by the Council at its meeting in April 2012. The Chairman proposed that the Constitution & Member Services Scrutiny Panel be requested to investigate the implementation of a procedure for members of the public to address meetings of the Licensing Committee.

The Committee noted that the Senior Licensing Officer would inform Operators and independent Drivers if there were any items of interest on the agenda for a Licensing Committee meeting.

Resolved:

- (1) That the Constitution & Member Services Scrutiny Panel be requested to investigate the implementation of a procedure to allow members of the public to address meetings of the Licensing Committee.

18. REVIEW OF CURRENT AND FUTURE TRAINING NEEDS FOR THE COMMITTEE

The Committee considered the current and future training needs for the members tasked with discharging the Council's Licensing function.

The Chairman reminded the Committee that new members currently received a standard training package from the Assistant Director of Corporate Support Services (Legal). The Committee was requested to consider whether some form of refresher training should be organised for the existing members of the Committee.

The Committee noted that very few Betting Shop applications received any objections, which suggested that further training on the Gambling Act 2005 was not a priority. The Assistant Director stated that forthcoming Licensing issues were included on the agenda for Licensing Committee meetings, for which the Government guidance usually gave more detail. Currently, there was the possibility that an extra objective concerning health issues would be added to the four already included in the Licensing Act 2003.

The Committee felt that there was currently no urgent need for further new training for the members, but consideration should be given to organising some refresher training for existing members of the Committee.

Resolved:

- (1) That consideration be given by Officers to the organisation of refresher training sessions for existing members of the Licensing Committee.

19. MATTERS ARISING

The Committee considered further matters arising in respect of the Council's Licensing function, that had not been covered elsewhere on the agenda for this meeting.

The Committee questioned why there were not more representations received from Essex Police for applications under the Licensing Act 2003. The Senior Licensing Officer stated that all the Police Licensing Officers were having to re-apply for their positions, and this could result in the current Police Licensing Officer for Epping Forest covering more than one area. However, if there were no objections raised by the Police then the Police Licensing Officer would not attend the meeting.

The Committee requested clarification about whether District Councillors could attend and speak at Licensing Sub-Committee meetings. The Assistant Director of Corporate Support Services (Legal) stated that District Councillors could speak at a Sub-Committee meeting, but only for those residents that had made a written representation, although the District Councillor could make their own written representation to any application and thereby attend and speak at the meeting in their right. It would be useful if the resident could put this in writing at the bottom of their representation. For Town or Parish Councillors, the resident had to request in writing for the local Councillor to speak on their behalf at a Sub-Committee meeting.

The Assistant Director also stated that it was preferable for a ward member not to sit on the Sub-Committee if an application was located in their ward, although it was acknowledged that the Localism Act 2011 actively encouraged this practice.

20. DATE OF NEXT MEETING

The Committee noted that the next meeting had been scheduled for 10 April 2013, at 2.00pm.

CHAIRMAN