

Licensing: Review of Transition: briefing paper

1. Background

1.1 Licensing committee recommended a Statement of Licensing Policy on 7 October 2004. Policy and Resources Committee referred it to full council for adoption on 25 November 2004. The Licensing Authority must keep its policy under review during each three year period. Licensing Committee requested annual progress reports.

1.2 During transition, the following numbers of applications were determined:

Club premises conversions	36	
Club premises conversions and variations		13
Total	<u>49</u>	
Licensed premises conversions	848	
Licensed premises conversions and variations		408
Total		<u>1256</u>
Personal licence notifications		
1546		
New premises applications (during transition)	11(to 6.8.05)	

It is estimated that over 99.9% of premises licence applications were successfully determined during transition despite over 40% applications being made in the last week of the six month period. Licensing authorities had to determine applications within two months of receipt to avoid them being automatically granted or refused (for conversion or variation respectively). The Licensing Minister visited the Council's licensing staff and paid tribute to them citing the Council as one of the best in the country.

1.3 A number of strategies were used to encourage applications: advice lines, workshops, four mass letter drops, published leaflet, presentation at trades associations, telephone advice, personal advice, translation into Cantonese, website advice with links, newsletters, press releases and City News articles.

1.4 The Licensing Strategy Group, comprising the licensing authority, responsible authorities and interested parties monitored impact of transition and devised practical solutions. For instance, City News was used to provide an additional outlet for advertising applications. Meetings were held with Court Officers to develop protocols and practical arrangements for dealing with appeals. Officers are meeting with Kingscliffe Society and North Laine Community Association separately to receive comments on the transition process. (Notes to be appended following meeting scheduled for 2 December.

- 1.5 Licensing Panels met 52 times over the six month period. At its peak, it was meeting up to eight times a week for half day hearings. Information additional to reports that members have requested include maps, plans and the section in applications that details measures to promote the licensing objectives.
- 1.6 Backlogs that had to be recovered after this exercise included: issue of licences (which must contain conditions embedded in previous regimes from operating schedules, from hearings following relevant representations and mandatory conditions), issue of decision notices and creation of the licensing register.
- 1.7 Council officers and Members gave technical advice and political leadership to DCMS and Local Authority Coordinators of Regulatory Services. DCMS has invited the Council to take part in the scrutiny on licensing reform.
- 1.8 Corporate strategy links were made by reports to: Arts Commission (Outdoor Events Working Party), Equalities Forum, Brighton Music Network, Culture and Tourism sub-committee and Federation of Small Businesses. Building on advice given to LACORS on licensing public open land, officers are exploring the possibility of licensing larger parks and open spaces like the seafront to link with the council's outdoor events policy. The council promotes over 300 events annually. These will need to comply with the requirements of the new act.
- 1.9 The licensing function of licensing gaming and gaming machines transferred from Licensing Justices to local authorities from 24 November 2005. The Council already licenses provision of amusements with prizes and slot machines in non-licensed premises. All existing permissions granted by Licensing Justices remain valid and only need renewal at expiry.

2. Current developments

- 2.1 On 23 September 2005, the Culture Secretary and Licensing Minister announced:
 - A review of DCMS' statutory licensing guidance and
 - Monitoring of the impact to see how the Act is delivered on the ground.

The review will occur in two stages:

- 1) Within three months, immediate areas of concern would be covered with a view to clarifying and updating guidance
- 2) By Summer 2006, the government and interested parties would be consulted to consider any need to redraft guidance.

Brighton & Hove is one of 10 Scrutiny Councils working with DCMS on these reviews.

LGA recommendations include:

- 1) Lengthening the consultation period for applications
- 2) Improving consultation e.g. letter drops
- 3) Removing presumption to support later opening hours
- 4) Clarifying the unambiguous role for Members to represent constituents.

2.2 The Home Office is introducing a Violent Crime Reduction Bill. The Government drive to reduce violent crime may include two new initiatives:

- Drinking Banning Orders (DBO)
- Alcohol Disorder Zones (ADZ)

These are proposals to counter alcohol-related violence and disorder. DBO's would tackle binge drinking by banning individuals in designated places; ADZ's would be imposed in areas of high alcohol related disorder and raise a levy on licensed premises to fund additional public services.

2.3 The Local Government Association's view (shared by some residents' associations) considered that "there may be a presumption in the Act and Guidance in favour of longer hours constraining local authorities ability to reject or modify applications". This was refuted by DCMS. However, in practice Licensing Panels heard each case on its individual merit. Their discretion to impose conditions was only engaged if representations were considered relevant. Residents were often concerned that later opening hours might lead to potential disturbance or disorder and applicants could counter that argument where there was limited evidence of current problems. Nevertheless, many conditions were imposed to protect against public nuisance from simple, inexpensive measures like closing public house windows and doors and clearing beer gardens after specified times to technical solutions like the fitting of sound limiting devices. The ability to deal swiftly and effectively with the minority of licensed premises causing real problems in our communities will be by the use of new powers: fixed penalties and prosecutions, closure orders for disorder and noise and premises licence reviews which can lead to modification of conditions, removal of a licensable activity, removal of the designated premises supervisors, suspension or revocation of the licences.

3. Local Issues

3.1 Residents were often concerned where representations were not accepted. Guidance definitions included interested parties as persons living in the vicinity of the premises in question, and residents associations or bodies representing them. "In the vicinity" was not defined and rejections gave rise to some disputes. Concerns were also voiced that applicants were allowed to know identities of objectors.

However, this does allow applicants and objectors to identify and resolve problems. Public houses should be closely engaged with their local communities.

- 3.2 The Statement of Licensing Policy and Licensing Guidance support separation of regulatory regimes and avoidance of duplication. Both support licence applications being made from premises with planning consent. The Statement of Licensing Policy supports reports to the Planning Application Sub-Committee. However, because Licensing Guidance cautions against zoning, setting of fixed trading hours in designated areas and staggered closing times and supports flexibility, some anomalies with planning conditions arose. Sussex Police and residents expressed concerns at the possibility applications for licences were not consistent with planning conditions. Planning authorities are responsible authorities in their own right. Proprietors have responsibilities to comply with planning and licensing legislation.
- 3.3 DCMS believe it is too early to determine whether consultation arrangements for applications are working effectively or not, in terms of time for residents to make representations and effectiveness of arrangements. Locally, Ward Members have reflected concern of a perceived shortcoming. The residents may not become aware of applications. The Council has developed advice notes for Members and residents concerning making representations, lodging appeals and applying for reviews. DCMS have published further guidance, augmenting local materials. The Act's provisions were intended to provide for sufficient and genuine access to licensing authorities for those affected by licensable activity. They do not make provision for direct communication of the contents of an application by the licensing authority to residents. Additional letters generated from the licensing authority itself may possibly be seen to be *ultra vires*. Such representations could be challenged if it was felt a person was induced to put in a general objection.
- 3.4 Current work includes dealing with new applications and licensing open spaces. Preparing for demands on enforcement to promote the licensing objectives and development of the review process.
- 3.5 Resident groups have raised the issue in representations of "cumulative impact" although this resulted in dissatisfaction as special policies must be evidence based but can form part of statement of licensing policy review.
- 3.6 Based on experience with dealing with some applications, officers would wish to develop practice to request applicants to provide copies of public notices with dates of publication even though there are no legal powers to require this information. It would assist officers in determining which representations should or should not be rejected as being out of time. It

seems that in a number of cases, the applicants indicated that the period for objections was longer than it needed to be. The Council would take into account the objections received within the time scale indicated by the applicant, but after the strict 28 day time limit.

3.7 Initially 17 parks and open spaces have been identified as needing to be licensed. These are:

Preston Park, Victoria Gardens, Old Steine, The Level, Seafront, [Pier to Marina including Madeira Drive], Seafront [West Pier to Brighton Pier including The Ellipse], Hove Lawns, Western Lawns, Stanmer Park, Hove Park, Queens Park, East Brighton Park, St Ann's Well Gardens, Wild Park, Greenleas Park, Blakers Park, and Victoria Recreation Ground.