

BRECKLAND DISTRICT COUNCIL

Report of Phil Adams, Environmental Health and Building Control Manager, Breckland Council

To: Licensing Committee 16th November 2011

Author: Patrick O'Brien, Licensing Officer,

Subject: The Police Reform and Social Responsibility Bill 2010-2011 and its Implications for Licensing Procedures and Policy within Breckland District.

Purpose: To appraise the Licensing Committee of forthcoming Legislative Changes in Policy, Powers and Procedures in respect of the LA 2003

Recommendation(s):

That Members consider and discuss the new legislative changes as detailed within the report, in conjunction with supporting documentation, and initiate any changes to Licensing Procedures and Policy as appropriate.

1. INTRODUCTION

1.1 Background

The Licensing Act 2003 became law on 24 November 2005, and regulates licensable activities and qualifying club activities. The Act introduced a single licence scheme for licensing premises and gave licensing authorities (in the form of a committee of not less than ten nor more than 15 members of the local authority which has responsibility for both personal licences to sell alcohol and premises licences) four licensing objectives, to ensure that licensable activities are carried out in the public interest. In the past few years, legislation through the Licensing Act 2003, Violent Crime Reduction Act 2006 and Policing and Crime Act 2009 has been introduced to try and tackle the harms that arise from the misuse of alcohol.

This legislation has not achieved the previous Government's objectives and has simultaneously introduced unnecessary additional burdens and bureaucracy in the system. A new bill, the Police Reform and Social Responsibility Bill 2010-11 became law on 10th December 2010 and is intended to address the difficulties encountered thus far by Licensing Authorities. The Government has changed the balance of the Licensing Act to make Licensing Authorities more pro-active and empowered to take decisions. It intends to deliver these changes in 14 key areas and issue new Guidance to Licensing Authorities in April 2012 at the earliest.

1.2 Issues

The following 14 areas of change should be read in conjunction with the Briefing Document prepared for the Licensing Committee as listed in Appendix A

- 1.2.1 Applicants to Give Greater Consideration to Local Area. In theory this could be a positive approach to receiving new applications as often the accompanying conditions are simply too weak or self-serving to be properly effective or enforceable. However given the suggestion in the report that applicants may '*include contextual information on issues such as the local area's social-demographic characteristics, specific local crime and disorder issues and an awareness of the local environment*' this could give rise to an increase in Freedom of

Information requests as applicants and their agents seek to comply. The effect on the Licensing Team in terms of time needed to respond would not be to their advantage.

- 1.2.2 Early Morning Restriction Orders (EMRO) There is an existing but 'uncommenced' power within the Licensing act allowing Licensing Authorities to restrict sale of alcohol in certain areas between 3am and 6am as they deem it necessary in order to promote the licensing objectives. The new change will revise the times to between midnight and 6am and will now allow the licensing Authority to act when it believes it is 'appropriate'. If this is to be a major shift in licensing policy then the Policy document itself will have to be revised. However, it is felt that this may be a power more suited to high density urban areas where there is an ever present display of anti-social behaviour and associated crime linked to a specific location than to the market towns of Breckland.

It could be viewed that such a policy would undermine the principle and advantages of staggered closing times. If such a policy was to be implemented this would affect existing licences as well as new ones as well as Temporary Events Notices. This could give rise to additional hearings (and thus costs) as each applicant or premises would seek to establish its own individual case and why it should be exempted. At the time of writing the mechanisms of imposing such orders and the appeal process is unclear and further Guidance is awaited.

- 1.2.3 Autonomy on Closing Times This will give Licensing Authorities greater power in determining the closing times of premises, by way of 'staggered' times, zoning and fixed closing times. This matter has been partly covered in the above paragraph but one aspect not discussed is the facility of Zoning whereby a premises in a predominantly residential area may have a different closing time imposed to one in the high street of the same town or village. In practice this can sometimes be determined in hearings by Licensing sub-Committees but only where relevant representations have been made. If a new blanket policy on Zoning was to be implemented the question arises as to how existing premises licences would be affected. Inevitably the result would be more hearings as each applicant would seek to establish grounds for exemption.

- 1.2.4 Late Night Levy In principle this appears to be a positive step in terms of addressing the costs of policing the night time economy. However it should be pointed out that it is most likely based on a 70-30 split in favour of the Police. It also places responsibility on the Licensing Team to collect this levy and for Finance to pass on proceeds to Police. This in itself will add to additional administrative costs.

In practice it is felt that licensed premises already trading after midnight may seek to vary their licences and pull back to 23:59 hrs. The cost for a typical band B premises would be free as opposed to an additional annual levy of £768. However, this policy may give rise to the practice of 'stacking' where premises that cease serving alcohol at one minute to midnight allow customers to prepay for drinks and then permit them consume at their leisure - thereby going into the early hours with the associated risks of antisocial behaviour still applying. From a legal point of view as long as no licensable activity is taking place on the premises after midnight, and no new entry is permitted, the premises would be complying with their licences as consumption of alcohol is not regulated. The view of Police in respect of this potential issue is not known at present.

- 1.2.5 Making Health Bodies Responsible Authorities This change allows Primary Care Trusts (PCT's) to become responsible Authorities, alongside the presents grouping of Police, Fire, Children's Services, Health and Safety, Environmental Health etc as an organisation to be consulted on new premises applications and the variation of existing licences. It is expected that such representations, if made, would most likely address the affect irresponsible selling and consumption of alcohol would have on overstretched NHS resources, especially A&E departments. However it should be noted that from March 2013 these PCT's will be replaced by Clinical Commissioning Groups (CCG's) ie. a group of

local G.P's surgeries. Who exactly, and at what level, may make such representations is unclear at present. However this would add a local dimension to any applications and could, for example, result in representations being made on the basis that any applications for increased hours, additional new premises etc may impact on local health. Such representations would be most likely be contested - resulting in potentially more Licensing Committee hearings and at a cost to the Council.

- 1.2.6 Making Relevant Licensing Authorities Responsible Authorities This is one of the most significant changes to the Licensing Act in that it will enable Licensing Authorities to refuse, remove or review licences without having to await a representation or application from one or more of the existing Responsible Authorities. It will also permit a Licensing Authority to make representations on any application in its own right as it sees fit. Clearly the potential for conflict of interest is ever present but such provisions already exist within the Gambling Act, although such provisions currently remain untested within the Breckland area. It is hoped the publication of the Guidance will identify, who, in what circumstances and for what reasons, may make such representations on behalf of the Authority. It must also be pointed that the exercise of such power by the Licensing Authority may be challenged by an applicant whenever it is invoked, possibly incurring significant legal costs.
- 1.2.7 Persistent Sales of Alcohol to Children Historically, this area has been dealt with by Trading Standards and the Police through jointly targeted test purchasing. Those premises who sell alcohol to underage persons twice in 3 months are prosecuted before the Magistrates Court and in the past this has resulted in a 3 month suspension of the premises licence resulting in severe financial loss to the owners. Whilst the doubling of the maximum fine is noted and allows the Police to seek 'voluntary closure' for two weeks as opposed to the present 48 hours, it is expected that the present arrangement for enforcement in this area will continue. However, it should also be noted that under the provisions of Para 1.9 above the Licensing Authority may be able to act in a faster and more decisive manner where it is established that a premises is breaking the law in this aspect. The new Guidance will require all premises in such cases to be reviewed with a presumption of revocation.
- 1.2.8 Police Representations Revised Guidance will be issued requiring Licensing Authorities to give greater weight to any objections made by Police in respect of applications and adopt all their recommendations unless there is clear evidence that these are not relevant. This is a controversial move and would suggest that police representations must be given far greater weight than those of other Responsible Authorities. This may lead to judicial challenge in the Higher Courts if a decision is made based on the principle of superior Police evidence.
- 1.2.9 Reducing the Burden of Proof Under the existing Act a Licensing Authority may only make decisions or impose conditions on new or existing licences as is 'Necessary' to promote the 4 licensing objectives. Such decisions must be justified and as such there is a high burden of proof attached. The new guidance will now allow Licensing Authorities to make such decisions and attach conditions where it feels it is 'appropriate' to do so. This gives greater strength and flexibility to Licensing Authorities to tackle problem premises but any decision must be still be justified based on the evidence heard.
- 1.2.10 Suspending Licences due to Non Payment of Fees This is a welcome change to existing legislation. Recovery of unpaid fees causes a significant amount of work for the Licensing Team who lack the ability to prevent defaulters from continuing to sell alcohol. Under the new legislation such premises, following a 21 day grace period, will have their licences suspended until the annual fee is paid, with the average fee being Band B and set at £180. This will save a significant amount of administrative time and it is felt that the number of such suspensions will be relatively small.

1.2.11 Temporary Event Notices (TEN's) This proposal represents a significant change to the current practice. It will place Environmental Health officers as the same footing as Police regarding objections and allow both Responsible Authorities 3 days to object as opposed to the current 2. It will also permit representations to be made under all of the licensing objectives compared to the single one at present ie 'Prevention of Crime and Disorder. In essence the potential 'noise disturbance' factor can now be addressed. Where no objections are received the Licensing Authority can now add conditions to a TEN if appropriate. However, it is also proposed to increase the 'life' of a Ten from 4 to 7 days and relax the 10 working days notice required of applicants to 5 days.

1.2.12 Removal of Vicinity Test for Interested Parties The Licensing Act 2003 whilst not defining 'Vicinity' has always specified who can make representations in respect of a licence application – such as persons living in the vicinity, a body representing people living in the vicinity or any person involved in the vicinity. It also allows for an elected member to of the Licensing authority to make representations on behalf of constituents. The new changes, to be published in the revised Guidance, will now allow any person, company or body to make representations in respect of an application although such representations will still have to be relevant. This potentially could open the door to a high volume of representations being received whenever for example a leading supermarket or pub chain wishes to make an application, leading to increased levels of hearings being required. The cost implications are obvious.

In addition there is a requirement that Licensing Authorities must publish key information on the Authority's website to ensure any interested parties have access to new and other licensing applications. Breckland Council's Licensing register is fully operational and in this regard compliance has already been met. There has also been some discussion as whether the Authority will be required to advertise such applications in the form of local and press notices as opposed the current system whereby the applicant bears this responsibility and cost. Until the Guidance is published it is impossible to provide further clarification.

1.2.13 Cumulative Impact Policies Breckland Council's current Licensing Policy document states on page 10 *'that having regard to the evidence currently available and being aware of measures already available to Police and the local authority to address such issues (ie unacceptable levels of crime and disorder) considers there is no particular part of the district causing a cumulative impact on any of the licensing objectives'*. This was written in 2010 and in the interim there is nothing known to suggest that this situation has changed. The changes to the implementation of Cumulative Impact Policies will now make it easier for Licensing Authorities to implement to reflect the concerns of the local community. It is not anticipated that the current status quo will change as currently only an estimated 20% of authorities have such a policy in place.

1.2.14 Licensing Fees This is a welcome change to the existing situation whereby the licensing fees introduced in 2005 have not been changed since. It is now proposed to issue Guidance allowing Licensing Authorities to set their own fees (which will be capped) on a cost recovery basis. The Guidance will define what can and cannot be taken into account when setting fees and is expected to exclude costs incurred in policing the night economy as provisions have been made for this in the form of a levy. Locally set fees will affect all those paying fees under the Licensing Act including applicants for new premises licences and holders of existing ones, as well as applicants for TEN's. Whilst an increase in licensing revenue is welcome at this time it is impossible to give any forecast of revenue streams until the Guidance on this matter is released.

2. IMPLICATIONS

- 2.1 As these changes have yet to be implemented are largely based on yet to be published revised Guidance it is not possible to state the Risk, Financial, Legal or Equality and Diversity implications at this stage.

3. ALIGNMENT TO COUNCIL PRIORITIES

- 3.1 Building Safer and Stronger Communities
Prosperous Communities

4. WARDS/COMMUNITIES AFFECTED

- 4.1 All Wards within the Breckland district

Background papers:-

- i) 'Rebalancing the Licensing Act' –A consultation on empowering individuals, families and local communities to shape and determine local licensing. – Home Office 2010
- ii) 'Responses to Consultation' – rebalancing the Licensing Act –Home Office 2011

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Key Decision

Not a Key Decision

Appendices attached to this report:

Appendix A 'Briefing Document on the Police Reform and Social Responsibility Bill 2010-2011'