

# Licensing Act Committee

3 November 2009

## LICENSING ACT 2003 REVIEW OF PREMISES LICENCE PROCEDURES

Report of the Director of Community Services

STRATEGIC AIM:	<b>Creating a Safer Community Increasing our culture, sport and recreational offer Maintaining high levels of employment and a thriving third sector</b>
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### 1. PURPOSE OF THE REPORT

- 1.1 The licensing of premises and persons to sell alcohol and to permit premises to be used for entertainment is controlled by the Licensing Act 2003 and 9 statutory instruments which detail procedures. In addition to this is the statutory guidance produced under section 182 of the Act by the Department of Culture, Media and Sport (DCMS).
- 1.2 The whole process is therefore, highly regulated and leaves very little scope for local discretion. This review looks at ways in which the statutory process can be enhanced, without being in breach of the law or the guidance, in order to improve communications surrounding applications for premises licences.

### 2. RECOMMENDATIONS

- 2.1 **That all Members and the Strategic Management Board be notified of Premises Licences applications and applications for variations to licences in future.**
- 2.2 **That the reasons for rejecting an objection to a licence application be fully explained to the person(s) submitting a representation and that they be advised to contact the Police and/or their ward member if they have views that they wish them to take into account.**

### 3. REASONS FOR THE RECOMMENDATIONS

- 3.1 To make the process more transparent and ensure that greater awareness is given to licence applications.
- 3.2 To give reasons to the person(s) submitting a representation(s) as to why their representation is not valid.

#### **4. NOTIFICATION PROCEDURE**

- 4.1 An applicant must publish an application for a premises licence or a variation to a premises licence in the local newspaper. The notice must state to whom representations should be made.
- 4.2 A notice also has to be posted outside the premises. The notice must be coloured pale blue and be at least A4 in size.
- 4.3 Representations have to be made to the Licensing Authority within 28 days of the notice being published. Late representations cannot be considered.
- 4.4 In addition to this, the applicant must notify the following:
  - a) The Licensing Authority (i.e. Rutland County Council);
  - b) The Police Authority
  - c) The Fire Service
  - d) Environmental Health
  - e) Planning Authority
  - f) Trading Standards
  - g) The Authority responsible for the protection of children from harm
  - h) The Health and Safety Enforcement Authority for the premises
- 4.5 When the Licensing Officer is notified, the procedure has been to inform the Community Safety Team. In addition, the procedure in future will be to notify all Council Members and the Strategic Management Board.
- 4.6 In 2009 a new procedure was introduced for minor variations. The procedure described in paragraphs 4.1 to 4.5 above does not apply to minor variations. The Minor Variations process is dealt with in a separate report which will be considered by this Committee at its meeting to be held on 3<sup>rd</sup> November 2009.

#### **5. MAKING REPRESENTATIONS**

- 5.1 Guidance is available from the Licensing Authority on how to make a representation against a premises licence application. Extensive information, forms and pro-formas are on the Council's Licensing Act 2003 website. If requested, print-outs of any form or guidance note can be provided either by the Licensing Officer or Customer Service Team.
- 5.2 Representations can be made by any of the statutory consultees listed above.

- 5.3 Representations from the public can only be accepted if they are from persons within the vicinity of the premises and relate to one or more of the four licensing objectives.

## 6. VICINITY

- 6.1 The guidance on this is clear and states: “In making the initial decision on the question of vicinity, licensing authorities should consider whether the individual’s residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside those premises”. Thus, there must be a direct link between the premises in question and their residence or business of someone making a representation.
- 6.2 What constitutes the vicinity is open to interpretation, but if there are a number of similar premises in a town centre, determining which one is giving rise to a nuisance to a resident becomes more difficult the further you move away from those premises. If there is only one such premises, then the vicinity can be considered as a wider area.
- 6.3 With regard to preventing public nuisance the guidance is clear that conditions imposed on the premises licence have to be focused on measures within the direct control of the licence holder. It further states that conditions relating to antisocial behaviour of customers once they are beyond the control of the licence holder cannot be justified.
- 6.4 The guidance also is clear that beyond the vicinity of the premises antisocial behaviour are matters for personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right.

## 7. LICENSING OBJECTIVES

- 7.1 Representations can only be made under the four licensing objectives.
- These are:
- Prevention of Crime and Disorder
  - Public Safety
  - Prevention of Public Nuisance
  - Protection of Children from Harm
- 7.2 In making representations against a licence application, objectors must state how the premises would be in breach of the licensing objectives. In the case of existing premises applying for variations to their licence, this should include evidence to support their objection. It is not acceptable simply to say that they object because they think to licence the premises might result in trouble. A Licensing Panel is unlikely to attach much weight to a representation like this, without something more substantial to consider.
- 7.3 The Licensing Officer is obliged to screen representations made, in the first instance, to ensure that they come from the vicinity of the premises and address the licensing objectives. If they don’t they can be subject to legal challenge from the applicant on admissibility.

7.4 Where it is determined that a representation is not admissible the objector is informed in writing. In future, to ensure that the reasons for rejecting the representation are understood, the letter will explain the grounds for rejection and make it clear that this has been dealt with in accordance with the Licensing Act and the statutory Guidance Notes. The person making the representation will also be advised that if they are aggrieved by this they should make their views known to the Police and their ward councillor.

## 8. MEMBER REPRESENTATIONS

- 8.1 A ward member can request to be heard at a licensing panel provided that he/she is specifically acting on behalf of a resident or residents who have made valid representations.
- 8.2 Members who live within the vicinity of premises which are applying for licences can make representations to the Licensing Authority and the Licensing Panel in much the same way as any other affected resident. The Model Code of Conduct with regard to Member's interests has been relaxed in respect of licensing matters to permit this. However, if any member acts in this way they cannot be involved in any other meetings which discuss the licensing application nor serve on the Licensing Panel.

## 9. RISK MANAGEMENT

<b>RISK</b>	<b>IMPACT</b>	<b>COMMENTS</b>
<b>Time</b>	<b>Medium</b>	<b>The council has to meet the statutory time periods set out in the Licensing Act 2003, regulations made under the act and the Statutory Guidance.</b>
<b>Viability</b>	<b>Low</b>	<b>The changes proposed in the procedures with regard to notification of applications received will be undertaken from existing resources</b>
<b>Finance</b>	<b>Low</b>	<b>Any additional costs will be met from existing budgets</b>
<b>Profile</b>	<b>High</b>	<b>Application for a new or variations to an existing premises licence may result in representations being received from residents. This can result in individual applications having a high profile until the application process is completed, and beyond</b>
<b>Equality and Diversity</b>	<b>Low</b>	<b>The new procedure will apply to all the residents and businesses in Rutland</b>

## 10. CONCLUSIONS

- 10.1 The process of licensing has to be seen to be fair and transparent. The legislation is designed to reduce the burdens on businesses that serve alcohol and provide entertainment by providing one license which can have several categories of use. Whether the premises are licensed solely as a bar or as a multi-entertainment complex, the licensing procedure is the same.
- 10.2 Applications have to be dealt with impartially and fairly; the interests of the business have to be balanced with the interests of residents and other businesses in determining such applications. The Council, as the Licensing

Authority, cannot invite representations, nor can it make its own observations on an application. The Licensing panel has to hear all the evidence and make a decision, which it must communicate immediately, based on their judgement of the issues, in a very similar way that Magistrates do.

**Background Papers**

Background File Ref:  
Licensing Act 2003  
Statutory Guidance Made Under Section 182  
of the Licensing Act 2003  
Rutland County Council Statement of Licensing  
Policy 2008

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