

# LICENSING ACT COMMITTEE

26 July 2010

## LICENSING ACT 2003 NOTIFICATION OF RESIDENTS OF APPLICATIONS FOR PREMISES LICENCES AND VARIATIONS TO A PREMISES LICENCE

Report of the Director of Community Services

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

- 1.1 To inform members of the guidance and issues relating to the notification of residents living in the vicinity of a premises where an application has been received by the Licensing Authority for either a new Premises Licence or a Variation to an existing Premises by way of a circular.

### 2. RECOMMENDATIONS

It is recommended that:

- 2.1 **Members consider whether they want to introduce the notification of residents living in the vicinity of a premises where an application has been received for a new Premises Licence or a Variation to an existing Premises Licence by way of a circular, having regard to the issues and risks outlined in Paragraph 4 below.**
- 2.2 **If Members are minded to notify residents, then “vicinity” needs to be defined in terms of either the distance from the premises making the application or other criteria to be used when notifying residents.**

### 3. REASONS FOR THE RECOMMENDATIONS

- 3.1 At the last meeting of this committee the notification of residents of an application being received by the Licensing Authority was discussed. Some members at that meeting were concerned that the legal requirements on the notification of an application being made i.e. the posting of a notice at the premises and a public notice in a local newspaper were not adequate leading to some residents being unaware that an application had been made.

- 3.2 Whist there is no statutory requirement to notify residents that an application has been made to the Licensing Authority, the revised statutory guidance states: "It is open to Licensing Authorities to notify residents living in the vicinity of premises by circular of premises making an application, but it is not a statutory requirement".
- 3.3 If members wish to introduce notification of residents as described in 3.2 above, the vicinity in relation to the premises submitting an application needs to be defined.

#### **4. ISSUES TO BE CONSIDERED**

- 4.1 Officers have researched what other licensing authorities are doing in relation to notifying residents. Locally none of the local authorities in Leicestershire notify residents individually of the submission of a Premises Licence application or a Variation to a Premises Licence.
- 4.2 Nationally the majority of local authorities do not notify residents of the submission of these types of applications. Some London Boroughs do, however, notify residents.
- 4.3 The main reason for not notifying residents is the risk of a challenge from both residents and applicants in relation to who is notified and the determination of vicinity. Another concern is that in notifying residents in the vicinity the Licensing Authority could be accused of soliciting representations.
- 4.4 Westminster City Council recently lost a Judicial Review in the High Court. The application for judicial review was brought by the residents' association, the management company, the freeholder and four individual residents of residential flat premises situated close to the Royal Albert Hall London. The application was brought in respect of a decision of the Council made on 25 May 2009, as licensing authority for the purposes of the Licensing Act 2003, to vary the licence governing the use of the Albert Hall in London principally to add boxing and wrestling to the list of permitted activities, to extend opening hours and to extend the time for serving light refreshments.
- 4.4.1 The Council sent about 100 letters to residents of premises within a 30 metre radius of the premises, however no letters were sent to any of the claimants or other residents of the block of flats whereas a substantial number were sent to residents of dwellings to the north-east of the Hall. The letters which were sent were dispatched pursuant to a practice of the Council to notify businesses and residents, in the "immediate vicinity" of subject premises, of licensing applications in respect of such premises. This practice was published in a Council leaflet ("Licensing in Westminster") and on the Council's website. The applicant advertised its application, as required by the Act, and by placing notices outside the Hall. There is no statutory requirement upon the Council to provide any other information to local residents; its practice so to do is purely "extra-statutory" The Council had also refused to accept late representations from the claimants.

4.4.2 The Claimants contend that the decision to grant the licence was unlawful for two reasons: first, because the Council was wrong in law to conclude that it was prohibited from considering late representations against the application; and secondly, because having promised to notify residents in the immediate vicinity, it failed adequately to do so, so frustrating a "legitimate expectation".

4.4.3 In the Judgment Mr Justice MCombe stated "in the language of *Coughlan's* case, the notification decided upon by the Council here was not a legal requirement, but once embarked upon it had to be carried out properly. This is not to say that the notification exercise will fail because some residents have been missed, but it will fail if it obviously will not catch whole residential buildings as substantial as the one in issue here. It would fail similarly if the council knew of a relevant resident, but simply decided not to notify him. In the end, I take the view that what happened here was indeed so bad as to be irrational and, therefore, unlawful. For the reasons given above this claim for judicial review succeeds and, as was accepted by Mr. Walsh at the hearing, the result must be that the decision under challenge must be quashed and with it the variation to the IP's premises licence in respect of the Hall".

4.5 Following this case LACoRS have produced advice for Local Authorities

" Colleagues should now refer to the 2010 High Court judgment of R V Westminster City Council ex parte Albert Court Residents Association and others when considering whether to notify (or to continue to notify) local residents of applications under the Licensing Act 2003."

4.5.1 The Court in this case found that:

- The authority's notification of residents was not carried out as mere courtesy
- The authority had decided that its notification process was necessary for the proper discharge of its functions
- And as a consequence the residents had a reasonable expectation of notification of licensing activity by the authority of licensing applications in the vicinity

4.5.2 In addition LACoRS Licensing Policy Forum were asked to provide its views on Councils sending postal notification of licensing applications to interested parties in the vicinity of the premises concerned.

4.5.3 The majority of the Forum was of the opinion that residents should not be notified on the grounds that the licensing authority could be seen to be prescribing vicinity; practical matters such as time and resources were also an important consideration. One advisor also maintained that unlike the previous public entertainment regime (where local authorities had a wide discretion regarding notification) the Licensing Act 2003 prescribes quite clearly and specifically how applications should be advertised and to go beyond this risks challenge.

## 6. RISK MANAGEMENT

<b>RISK</b>	<b>IMPACT</b>	<b>COMMENTS</b>
<b>Time</b>	<b>Med</b>	If adopted the notification of residents in the vicinity of premises following and application would need to be sent out promptly to allow recipients to make representations within the statutory time period of 28 days
<b>Viability</b>	<b>Mid</b>	Notifications would be dealt with from existing staffing resources
<b>Finance</b>	<b>Med</b>	The costs undertaking the notifications would be covered from the Licensing Act budget
<b>Profile</b>	<b>Low/ Med</b>	If adopted the notification process would generally only have a low profile unless the notification procedure was challenged
<b>Equality and Diversity</b>	<b>Low</b>	None identified

## 7. CONCLUSIONS

7.1 Whilst it is possible to notify residents living in the vicinity of premises when an application is made, the need to define who will be notified in terms of distance or other criteria presents risks to the Council as the Licensing Authority from a challenge by way of a judicial review. This could involve high costs if such a challenge was successful.

### **Background Papers**

Rutland County Council Statement of Licensing Policy  
Guidance issued under section 182 of the  
Licensing Act 2003

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