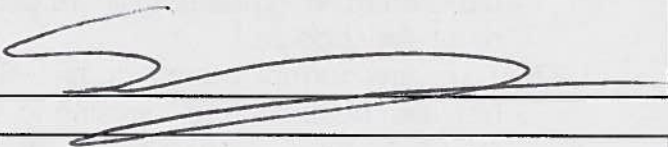




Haringey Council

Report for:	Environment & Housing Scrutiny Panel	Item Number:	
Title:	Joint Enforcement – Planning & Licensing		
Report Authorised by:	Stephen McDonnell 		
Lead Officer:	Eubert Malcolm		
Ward(s) affected:	Report for Key/Non Key Decisions:		

1. Describe the issue under consideration

1.1. Recent licensing applications to the Licensing Sub-Committees have raised concerns regarding the perceived lack of co-ordination between planning and licensing officers. An example of an issue is where an application to change the conditions of a licence to sell alcohol extends beyond the time that was agreed within the planning conditions when planning consent was given. In such a situation residents and members reasonably assume that the licensing application will be refused as it will contravene planning conditions. However this is not necessarily the case as licensing and planning work within different regulatory codes and both codes have to follow separate primary legislation and guidance when considering an application. This independent approach when undertaking due process in considering either a planning or licensing application can cause confusion especially if the decision taken contradicts previously agreed conditions.

1.2. This report sets out the scope of a short scrutiny review to consider this matter. The issues that will need to be addressed include:

1.2.1. A review of the legislative requirements in terms of planning and licensing to ensure where possible material matters relating to either code can be used



as evidence and subsequently duly considered by members prior to making a decision on a planning or licensing application.

1.2.2. To understand the risks associated in how the weighting of material evidence from either planning or licensing can be used in determining a planning or licensing application.

1.2.3. To review and understand how neighbouring boroughs deal with this matter. Identify 'best practice' within the industry.

1.2.4. To develop and communicate a message that is clear and can be easily understood by applicants, residents and other interested parties in how the decision making process differs between the planning and licensing regulatory codes.

1.2.5. To review current internal communications and working arrangements between planning and licensing to ensure that the services effectively share information and support each other in ensuring that either licensing or planning conditions are enforced.

1.2.6. To review and feedback on the Council's Statement of Licensing Policy (SoLP), this is due to be updated to reflect recent changes in legislation and will need to be consulted on by statutory consultees and other bodies. The SoLP is attached as Appendix A and the proposed changes are set out in a recent report to the Regulatory Committee (22nd November 2012), which is attached as Appendix B.

1.3. In the background information below, the licensing service sets out its current understanding and interpretation of the legislations and guidance which is supported by Queens Council advice. Also for further information attached as Appendix C is the LACORs Advice for Elected Members on Licensing Committees.

2. Cabinet Member introduction

2.1 There is a perception by residents and members that there is a lack of co-ordination between planning and licensing officers, when dealing with licensing applications to the Regulatory Committee. I consider that an independent review will improve the understanding of the differing regulatory codes that have to be taken into consideration when applications are being considered.

3. Recommendations

3.1. That members agree to the review and the scope as set out in paragraph 1.2.

4. Other options considered

4.1. The scope of the review will be duly considered by members and will be subject to change following their comments.



5. Background information

5.1. Context

- 5.1.1. Table 1 below demonstrates the number of licensing applications for 2011 and 2012. All of these applications were been sent to planning as a Responsible Authority (RA) for consideration and comment. Licensing has noted that seven responses were received back from Planning during this period, stating that the premises did not have appropriate planning permission.

Table 1 – Number of New/Variations Licensing Applications

	2011	2012
New Premises Licence applications	46	61
Variations to Premises Licence	39	29
Planning Permission not granted	7	7

- 5.1.2. More recently there have been 4 applications over the past 2 months where the premises either did not have planning permission for the venue type that they wished to operate under or did not have operating times under planning to match what they were applying for under licensing.

5.2. Co-ordination Licensing and Planning

- 5.2.1. Licensing informs applicants of the need to ensure that they have the relevant Planning use or conditions in place for the premises that they are applying for. Licensing will provide contact details and encourage applicants to make contact with Planning to discuss their applications, as set out in the Statement of Licensing policy (SoLP). "All premises that apply for a licence will be encouraged to obtain planning permission for the intended use and hours of operation if not already deemed "lawful" for the purposes of planning control". For comparison attached as Appendix D are extracts relating to planning issues from neighbouring authorities' SoLPs.
- 5.2.2. When Licensing does receive representations from Planning It is more often than not advising that the applicant does not have planning permission for the times they are seeking under the proposed licensing



application. However, licensing is unable to accept this type of representation as it does not relate to any of the four licensing objectives. Licensing will write back to inform planning that they must submit their representation linking any concerns back to the four licensing objectives.

- 5.2.3. An example of where Planning can be more involved in the licensing process is in relation to hours of closing of applicable premises. If a premise had a closing time imposed under Planning, this could have taken into consideration noise issues or the likelihood for disturbance. Both of these areas can be considered as material evidence in determining a licensing application and Planning, as a RA, has the ability to demonstrate that maintaining the existing conditions e.g. opening/ closing time is the best way to uphold the licensing objective of the prevention of public nuisance.
- 5.2.4. Licensing always checks with Planning to see what the latest planning status is on a property. This information is contained within the reports that go before the Licensing committee, but highlighting the fact that the comment is for information purposes and cannot form the determination for refusing/granting a license.
- 5.2.5. There is further collaboration between planners and licensing officers with regard to the enforcement of planning conditions such as hours of premises where they exist. No formal monitoring has been carried out as to the frequency of such contact but a review of email correspondence would appear to suggest that since 2006/07 the number of referrals is between 70 to 120 a year. Monitoring of these consultations and the responses from area officers may be helpful in providing a more accurate picture of where licensing issues and breach of planning control intertwine.
- 5.2.6. Planning are also part of the Responsible Authority Group which will be meeting monthly from January 2013 to discuss current applications. This group does not make decisions on applications as that will be acting ultra vires. The intention of the Group is to provide advice and guidance to the RAs from the Licensing authority.

5.3. Current Legislative Understanding

- 5.3.1. The Licensing Act 2003 does not state that consideration should be given for planning permission or of the lack of planning permission when determining licensing applications.
- 5.3.2. The links between planning and licensing law can cause practical problems in the licensing process. Interested parties often find it hard to accept that the council in its capacity as a licensing authority can



lawfully entertain a licensing application which if granted would in theory allow licensable activities to take place beyond the opening hours prescribed by the planning permission. Similarly, some applicants may feel put out when advised that their successful licensing application does not give them a variation to their planning permission.

- 5.3.3. The planning and licensing regimes follow separate regulatory codes, although administered by the same council. The Section 182 Guidance that is issued under the Licensing Act 2003 makes it clear that planning and licensing decisions in respect of the same premises can legitimately differ because the respective decision makers have to apply criteria which are different. The considerations that arise in a licensing hearing under the four licensing objectives will also be relevant under the planning context. Planning decisions are made with reference to amenity which has a lower threshold than a public nuisance and may need to take into account planning policies which will have no grounds within the licensing objectives.
- 5.3.4. In both the Licensing Act 2003 and the Gambling Act 2005 the Planning Authority assume the role of a Responsible Authority. This enables them to make representation under the relevant licensing objectives. What they cannot do is to make representation based on the fact that the applicants have not applied for the relevant planning permission for the intended use of the premises or say that the current conditions relating to the hours is out of step with what the applicant is seeking under licensing. What they can do is make representation that speaks to the concerns for the intended use, for example if it were a nightclub seeking very late hours the planning officer would need to highlight concerns in the context of the likely impact on public nuisance or public safety if a late night club were to be granted permission.
- 5.3.5. The section 182 licensing guidance states there is no hierarchy between the two regimes and no requirement that planning permission should precede a licensing application. We know that in relation to betting shops they will seek the premises license first and then seek the planning changes secondary. The industry does this as they believe the fact that they have been granted a license strengthens their case when they go before planning.
- 5.3.6. Early versions of the 182 Guidance stated that 'applications for premises licences should normally come from businesses with planning consent for the property concerned'. This gave the impression that planning took priority, but this stance proved to be unsustainable and was challenged. Councils, who had included this wording in their Statement of Licensing Policy, reviewed and revised



their policy following a Judicial Review that went against Birmingham City Council, which re-iterated that the licensing and planning regimes were separate.

- 5.3.7. Haringey sought legal opinion and was advised that the then policy was defective as it stood and should be changed. The Statement of Licensing Policy was changed to reflect the correct views that 'All premises that apply for a licence will be encouraged to obtain planning permission for the intended use and hours of operation'
- 5.3.8. Government further revised the 182 Guidance in 2012 and the latest wording in relation to planning / licensing states:

"PLANNING AND BUILDING CONTROL

13.55 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

13.56 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee."

- 5.3.9. Licensing barristers have taken a dim view of the wording in the Section 182 Guidance as it states that licensing committees and officers 'should consider discussion with their planning counterpart prior to determination with the aim of agreeing mutually acceptable operating hours.' This approach introduces a blurring of the lines between the regimes and is not supported by the primary legislation.
- 5.3.10. Strict consistency will only occur if the decision making criteria are brought into line with each other through changes to primary legislation.
- 5.3.11. It is not just the fact that factors relevant to planning and licensing decisions do not match, the route map to a decision is different in each case. Planning legislation requires that decisions be made in accordance with the development plan unless material considerations indicate otherwise. This may mean that when a night club is under consideration policies encouraging urban regeneration will be balanced against residential amenity.



5.3.12. The licensing process on the other hand focuses on the licensing objectives: the prevention of crime and disorder, the prevention of public nuisance, public safety and the prevention of harm to children.

5.3.13. The Licensing Sub Committee must make up its own mind on the facts before it about the relevance and weight of any objection on planning grounds. It cannot simply refuse to consider a license application that seeks hours or activities outside of the current planning permissions. In addition the Licensing Authority should not impose conditions that leave the licensing hours to be determined by the Planning Authority. For example there should not be a license condition that allows the license holder to stay open for the sale of alcohol provided this does not exceed the hours permitted by planning controls.

6. Comments of the Chief Finance Officer and financial implications

6.1. It is assumed all costs of this Scrutiny review can be met from within existing budgets. If this is not the case then Cabinet approval for appropriate funding will be required before actions can be undertaken.

7. Head of Legal Services and legal implications

7.1. The Legal implications are laid out in the body of this report.

8. Equalities and Community Cohesion Comments

8.1. The report proposes a Scrutiny Review to address the perceived lack of proper co-ordination between Planning and Licensing functions. The Policy and Equalities Team have been consulted in the preparation of the report and have no specific comments at this stage as the proposal has no specific equalities implications. However, Members should be aware that any policy or regulatory changes that may result from recommendations of the review may be subject to an equality impact assessment to identify the effects they may have on groups and persons who share any of the characteristics protected by Sector 4 of the Equality Act 2010 and any implications for the Council's wider public sector equality duties.

9. Policy Implication

9.1. At present there no policy implications. The Statement of Licensing Policy is to be revised in 2013.

10. Use of Appendices

Appendix A – Statement of Licensing Policy



Haringey Council

**Appendix B – Regulatory Committee Report 22nd November Notification to
Changes in Statement of Licensing Policy**

**Appendix C – LACORs Advice for Elected Members on Licensing
Committees**

Appendix D - Extracts from Neighbouring Boroughs' SoLPs

11. Local Government (Access to Information) Act 1985