



Briefing Report for: Regulatory Committee 23rd May 2013	Regulatory Committee Discussion paper	Item number	
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Title:	DISCUSSION PAPER ON MATTERS RELATING TO THE UPDATE OF THE STATEMENT OF LICENSING POLICY
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Lead Officer:	DALIAH BARRETT – Licensing Team Leader
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Ward(s) affected: ALL	Report for Key/Non Key Decision:
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1 Describe the issue under consideration

- 1.1** The Licensing Act 2003 Act came into force in 2005 and provided a unified system of regulation of the activities of the sale and supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment. Each licensing authority is required to determine and publish its policy statement that they propose to apply in exercising their functions under the Act during the five year period to which the licensing policy applies. The Policy must, however, be kept under review and revisions made when considered appropriate. The existing policy expires in January 2014 by which time a new policy must be published which will apply for 2014-2019 (subject to any further revisions during that period).
- 1.2** The 2003 Act contains four licensing objectives which the licensing authority has a duty to promote. These are:
- The prevention of crime and disorder,
 - public safety,
 - The prevention of public nuisance, and
 - The protection of children from harm.

The licensing authority can only consider matters within the scope of the Licensing



1.3 Exercising of functions

In its capacity as the non statutory Committee, the Regulatory's Committee's functions include formulating, reviewing and approving for consultation the Statement of Licensing Policy under the Licensing Act 2003 and recommending it, and any revisions to it, the full Council for adoption.

2 Background information

2.1 The Police Reform and Social Responsibility Act 2011 amended several sections of the Licensing Act 2003. On 25 April 2012 a number of the amendments become effective.

2.2 The amendments to the Licensing Act 2003 have required the Home Office to revise the Secretary of State's guidance to Licensing Authorities issued under Section 182 of the Licensing Act 2003. In accordance with the Act the Licensing Authority must have regard to the Guidance when carrying out its licensing functions.

2.3 The main amendments to the Licensing Act 2003 and the Secretary of State Guidance are as follows;

- Licensing Authorities and Local Health Bodies become "Responsible Authorities"
- The "vicinity" test for persons/businesses making representations for/against licence applications is abolished.
- In addition to the Police, Environmental Health Officers may now submit objections to a Temporary Event Notice (TEN). Objections from both bodies may now be made in connection with any of the four licensing objections, and not just the "prevention of crime and disorder" objective and existing licence conditions, can be attached to TENs, in some circumstances.
- The limit for the number of days per calendar year an individual premises may hold a TEN is increased from 15 to 21 days.
- The limit that an individual TEN can last is increased from 96 to 168 hours.
- The provision for applicants to submit 'Late TENs'
- A non payment of the annual licensing fee by a premises licence/club premises certificate holder may result in the premises licence being suspended.
- The statutory review period for a Statement of Licensing Policy's has been extended from 3 to 5 years.



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- The criteria on which licensing decisions must be made has been changed from being “necessary” to “appropriate” (the inherent legal requirement for “proportionality” remains unaffected)
 - The Live Music Act is now also law
- 2.4** Further amendments to the Licensing Act 2003 took effect at the end of October 2012. The amendments are in relation to a Late Night Levy (LLN) and Early Morning Restriction Orders (EMROs).
- 2.5** Proposed amendments to the draft Revised Statement of Licensing Policy 2012. In summary the proposed amendments to the Statement of Licensing Policy are:
- ❖ Requirement for Licensing Authorities to review their Statement of Licensing Policy every three years has been deleted and replaced with five years.
 - ❖ Replacing ‘Department of Culture Media & Sport’ with the ‘Home Office’ in relation to alcohol matters.
 - ❖ To update the information in relation to numbers, hours and ‘late notices’ for Temporary Event Notices (TENs).
 - ❖ Replacing the term ‘Interested party’ with ‘other persons’.
 - ❖ Replacing the term ‘necessary’ with ‘appropriate’.
 - ❖ To update advice regarding non payment of annual licence fees.
 - ❖ To include additional advice for applicants regarding information to be provided in their operating schedule when submitting an application.
 - ❖ Removal of the word ‘vicinity’ in relation to representations.
 - ❖ To include the Primary Care Trust and the Licensing Authority as responsible authorities.
 - ❖ Live Music Act
 - ❖ Make minor amendments to some wording and formatting of the policy to provide clarity.

3. Matters requested to be discussed

- 3.1** Cllr Ejiofor has requested that clarity is given as to whether or not Committees are able to consider having set closing times in an area without Benefit of a cumulative impact area being declared. The Home Office produced the attached document at Appendix 2, that advises of the intention of giving more autonomy to licensing authorities regarding closing times. This was also documented in the Home Office response document on rebalancing the Licensing Act 2003.

When the Act initially came into being in 2005 the Guidance steered authorities away from declaring blanket closing times across their areas. In 2011 as part of the Governments response to the rebalancing consultation they declared ;



'In addition we will amend the Statutory Guidance to make it clear to local areas that they can make decisions about closing times. The guidance will ensure that licensing authorities can reflect the needs of their local area by using measures such as fixed closing times, staggered closing times and zoning where they consider them to be appropriate. Again, this proposal received widespread support in consultation responses'

3.2 The revised Section 182 Guidance now advises licensing authorities of the following matter relating to the issue of closing time:

"Hours of trading

"10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.13 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours."

3.3 Authorities are therefore able to give an indication through the Statement Of Licensing Policy what hours they consider reasonable for areas of the borough or across the borough as a whole, these would be called 'Framework hours'. We are not able to say that we will not consider applications outside of these time as that would be unlawful. Needless to say each case has to be decided on its own merits.

3.4 Planning interface with Licensing

Cllr McNamara has raised the issue of licences being awarded to applicants under the Licensing Act 2003 that would take them outside of what their Planning permission allows. The Section 182 Guidance recently published now advises of the following in relation to this relationship:

“CONSIDERING CASES WHERE LICENSING AND PLANNING APPLICATIONS ARE MADE SIMULTANEOUSLY

9.41 “ Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.”

“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.”

3.5 The Guidance is now giving a clear indication that if earlier hours of operation are contained with a planning permission on a particular premises, then the Planning conditions must be observed by the license holder. However this does not stop the Licensing Sub Committee from considering an application for later hours at that premises and granting the later hours applied for. In fact, the guidance does not suggest a restriction on licensing hours would be justified simply because it would match its planning consent.



The views put forward in the Section 182 Guidance can be seen to be Supporting a more robust view on Licensing /Planning relationship in the context of the Statement of Licensing Policy, but care must be taken to ensure that we are not saying that we will refuse licensing applications as they do not align with hours set under planning. We can give an indication that we would expect the applicant to have the correct planning permission Section 13.56 of the Guidance could be read to suggest that we say we would expect the applicant to observe the earlier closing times of the two, this would be to stay on the right side of Planning law. It does not mean that licensing hours should be restricted on this basis.

We must also bear in mind that this issue must also have been raised through a relevant representation to the Licensing Authority during an application stage in order for the Licensing Authorities discretion to be engaged.

4.0 Public Health – Alcohol Strategy matters for consideration

4.1 The Public Health Directorate have launched their Annual Report and this year it is around the harmful effects of alcohol. This can be reflected through the Statement of Licensing Policy in the following ways:

- To introduce a Haringey Code of Practice that will incorporate measures such as -reduce the strength campaign – this will be removing beers and lagers at 6,5 ABV or above which are particularly harmful to health and sold cheaply.
- Good practice in resisting sales to underage
- Guidance to staff on refusing sales confidently.

4.2 Gathering evidence to support bringing in a cumulative impact policy to Combat the density of alcohol licensed premises that are adding to the harmful effects of alcohol on the Haringey community

4.3 The potential impact on the promotion of the Licensing Objectives by a significant number of licensed premises concentrated in one area is called “cumulative impact”. This should not be confused with the issue of “need” which relates to the commercial demand for licensed premises and cannot be taken into account when determining licensing applications.

4.4 The cumulative impact of problems experienced from a number of licensed premises would be far greater than that arising from individual premises. Often in these circumstances it is also far more difficult to ascertain which premises are causing the problem, being attributed to many licensed premises and other factors contributing to the problem. A CIP may be adopted where all other mechanisms for controlling cumulative impact are felt to be inadequate.

Any CIP implemented would be an amendment to the Licensing Act 2003 - Statement of Licensing Policy, potentially at its next publication



in January 2014. The CIP would need to be reviewed regularly in between the 5-yearly revisions of Statement of Licensing Policy.

4.5 A CIP may be implemented for a designated area (or areas) where the Licensing Authority considers it appropriate to deal with problems arising from licensed premises in that area. These problems may not necessarily be experienced in the vicinity of such licensed premises. Problems may include fighting, shouting, vomiting, urinating, litter, disorder in queues at takeaways and taxi ranks. Many CIPs in other areas appear to be implemented because the cumulative impact of licensed premises in an area is adversely affecting the promotion of the Licensing Objectives of Prevention of Crime & Disorder and Prevention of Public Nuisance.

5.0 Details of evidence that would need to be put into a Cumulative Impact Policy

5.1 There are a number of details that need to be considered in the detail of the CIP, which must be supported by evidence demonstrating that the CIP is appropriate:

- a. which areas should be designated;
- b. which types of premises must be included;
- c. what criteria should be included in a relevant representation based on cumulative impact;
- d. what additional information should be considered when deciding to grant or refuse an application.

5.2 The area(s) also needs to be carefully considered, so as not to create dispersal of licensed premises to the boundaries of the area and therefore create increased problems or new hotspots outside these boundaries.

Evidence would need to be collated to ensure that the CIP could stand up to a judicial review. This could come from the Police, Environmental Response, Community Safety or even Accident and Emergency figures from the Public Health RA. Much of the data currently being collated by the various agencies working in partnership would be useful as evidence, particularly if the data could be mapped to identify problem hotspots, although further data may be needed. In other authorities data currently being collected includes:

- a. Crime & Disorder statistics compiled (this is premises-specific but includes breakdown of incidents occurring in the street and non-attributable to licensed premises).
- b. Breakdown of Licensing Authority complaints by type (noise, safety, underage)
- c. Noise complaints statistics
- d. Underage test purchase operation failures

5.3 The evidence would need to demonstrate that the problems being



experienced are resulting from, or significantly attributed to, a pocket of licensed premises in any one area; but not specifically attributable to any licensed premises. Many other authorities that have implemented a CIP have used 2 years' worth of evidence to support their case; many demonstrate an increase in problems over the 2-3 years prior to the CIP proposal.

5.4 Statistical evidence in support of a CIP might include:

- a. An overview of licensed premises in a potential designated area, including a breakdown of nightclubs, pubs, takeaways etc, including details of their capacity: research carried out by other authorities has shown that premises with capacities of over 500 contribute a significantly higher proportion of disorder;
- b. Proximity of licensed premises to residential areas;
- c. Percentage of licensed premises in the potential designated area(s) ;
- d. Levels of recorded crimes, showing a breakdown into types of crimes, levels of crime throughout the week, and a breakdown of times of day ;
- e. Levels of noise complaints, possibly with the same type of breakdown into days of the week and times of the day ;
- f. Percentage of overall crimes and noise complaints that occur in potential designated area(s);
- g. Hotspot maps detailing recorded crimes and noise complaints;
- h. Pedestrian footfall figures;
- i. Night cleansing information or statistics;
- j. Accident & Emergency data

5.6 The evidence gathered would naturally help to define which areas would need to be designated under this CIP. Many authorities have used public roads as the defining boundary for this area. The evidence will also shape which types of premises to be included in the CIP. Most authorities have restricted themselves to inclusion of applications which include the sale or supply of alcohol, Off licences can be caught by this also as can late night refreshment premises can create holding areas which also lead to problems.

5.7 If a CIP were implemented, there would be a presumption of refusal to any applications for new Premises Licence or Club Premises Certificates, or material variations to such which may include additional authorised hours⁵, or an increase in capacity of a venue.

5.8 However, a CIP would not provide absolute prohibition for the grant of new licenses or material variations in the defined area, nor would it negate the need for Responsible Authorities or Interested Parties to



make representations. Representations based on Cumulative Impact must be received before the Licensing Authority (via its committee) could refuse an application. If an application does not attract representations, it is deemed granted.

5.9 Furthermore, if the applicant can demonstrate via their operating schedule that the premises will not contribute to the cumulative impact, the application may be granted subject to conditions. Many applications made in CIP areas appear to fall within this category. Where applications are refused under the CIP, appeals may be made to the magistrate's court which could, if it chose, exercise its discretion to grant the application or depart from the CIP (though the court would be expected to give reasons for doing so). Furthermore, the establishment of a CIP is susceptible to judicial review.

6.0 Any problems experienced with individual premises in a designated area would still need to be dealt with by way of Review. The CIP cannot be used as justification for removing an existing Licence, or reducing the hours authorised by that Licence. It should therefore be noted that implementation of a CIP should not be expected to reduce problems arising from the night-time economy; rather, it should prevent problems from increasing further, and should be used in tandem with other strategic and enforcement tools available. Cumulative Impact Policies are only one potential way to tackle the problems in the night-time economy. The Government have signalled that they are considering permitting alcohol harm consideration under a health objective to be used in future to bring in a CIPs.

7.0 Adoption route

7.1 The Policy needs to be reviewed and in place by January 2014, for this to happen it must first have permission granted by the Regulatory Committee to go out for consultation.

- The consultation should be for 12 weeks (less is permissible)
- All the responses should be collated and a further report submitted to Regulatory Committee, who will then agree for the policy to go to Full Council for December 2013.
- A further four weeks of publishing the public notice for adoption must also be carried out.