

Information for Scrutiny Board re Enforcement

The Licensing Act 2003 makes it clear that Planning is seen as separate from Licensing, with the Act providing the Licensing Authority with direction to promote the four Licensing Objectives. All decisions must be made solely based on these four objectives. These are

1. the prevention of crime and disorder;
2. public safety;
3. the prevention of public nuisance;
4. the protection of children from harm.

The Act is not the primary mechanism for the general control of anti-social behaviour and nuisance by individuals once they are away from the premises and, therefore, beyond the control of the individual, club or business holding the licence, certificate or authorisation concerned. Nevertheless, it is a key aspect of such control and the Council recognises that licensing law will always be part of a holistic approach to the management of the evening and night time economy in its area.

Many existing pubs, bars and restaurants (A3, A4 and A5) have no planning conditions at all (relating to hours of operation for example), having been in existence prior to the current Planning regime. Other businesses do have planning conditions that clearly set out the opening hours of the premises. It is entirely plausible that one premises may be controlled by planning condition and the next door unit covered by the Licensing regime. This illustrates that enforcement is not immediately straightforward and may require extensive research.

The Development Control Section contains three Officers, consisting of two Enforcement Investigators and one Principal Planning Officer (PPO). The PPO is a new role that arose as part of the April 2009 restructure of the Development Control Section, with this post sitting between the Development Control Managers and the Planning Officer posts. This post will assist the DC Managers by undertaking day-to-day workload management for the team and handling difficult professional issues and caseload. The post holder will take a lead role on enforcement matters for the two Enforcement Investigators, including planning enforcement appeals and appearing as Council Witness as necessary. Following a successful recruitment drive, the post holder is due to commence on 6 July 2009. One of the initial roles of this Officer will be the drafting of an Enforcement Policy to focus the aims and objectives of this Section of Development Control in order to provide greater clarity for our Customers.

The restructure of Development Control was a response to achieving budgetary savings across the Planning and Environment Services Directive. As part of this restructure process, Development Control achieved savings through the deleting of the following posts:

- Area Planning Manager post (PT)
- Senior Enforcement Officer
- Trainee Planning Officer
- Observation Officers x 3

The Principal Planning Officer arose from the need to provide guidance in the office to the Enforcement Investigators from a planning perspective and to provide a deputy for the Development Control Managers in their absence. This role was justified through the loss of the Area Planning Manager post and the Senior Enforcement Officer post. The previous Senior Enforcement Officer was not a planning professional and this was identified as a weakness in the Unit.

The Observation Officers were employed as out of office hour investigators. These Officers observed possible or actual breaches of planning control and reported back to the Senior Enforcement Officer; the Officers did not take any action themselves. The Council experienced problematic issues of accountability, including unreliability of evidence and this consequently harmed the ability of the Council to successfully bring prosecutions.

Out of hours investigators do not have any powers to instantly shut down premises operating outside the hours specified by a planning condition. Similarly under the licensing regime, a local authority as Licensing Authority cannot act to immediately shut down a premises; such powers do exist but can only be used by the police to apply for what are known as Closure Orders. Such orders can only be granted where there is evidence of actual or imminent disorder likely to cause risk to public safety, or public nuisance being caused by noise coming from the premises. These powers are generally used only in very serious cases. The Licensing Authority can bring prosecutions for failure to operate in accordance with the terms of a premises licence but this is a much more complex enforcement option which involves the gathering of evidence and a prosecution in the magistrates court. Generally the Licensing Officer has strong links with the police who would be able to provide opening hour information which may enable enforcement action to be considered by the Council.

Ultimately National Planning Policy Guidance Note 18 (PPG18) states that Local Planning Authorities have a general discretion to take enforcement action when they regard it as expedient. In deciding any enforcement action, the decisive issue for the Local Planning Authority should be whether the breach of planning control would unacceptably affect public amenity of the existing use of land and buildings meriting protection in the public interest. This process includes an assessment of the degree of complaints and the nature of such complaints. Enforcement action should thus always be commensurate with the breach of planning control to which it relates and would be inappropriate against a trivial or technical breach which causes no harm to amenity in the locality of the site. Compliance with licensing legislation and enforcement by other bodies such as the Police are factors in this process.

Agenda Item 5

PRINCIPAL LICENSING OFFICER – CONDITIONS ON PREMISES LICENSES

Conditions that are necessary for the promotion of the licensing objectives should emerge initially from the applicant, which are steps recorded in the application form. These are volunteered conditions and as a licensing authority we cannot insist that they volunteer conditions.

The four licensing objectives are: Prevention of Crime and Disorder; Public Safety; Prevention of public nuisance and protection of children from harm.

Once an application has been submitted it is subject to a statutory 28 day consultation period, whereby the Police, Environmental Health, Planning, Fire Authority, Trading Standards, and the Area Child Protection Committee can put forward and recommended conditions/ objections etc.

If the Licensing Authority does receive representations from any of the responsible authorities mentioned above; the Licensing Authority engages in mediation with the applicant to see if the suggested additional conditions can be placed on the licence. If the mediation process is successful, the licence is issued showing the volunteered conditions and the mediated ones. If the mediation process is unsuccessful, the application is referred to the Council's Licensing Sub-Committee who have the authority to impose and/or modify conditions on a licence.

During the 28 day consultation period, local residents and businesses can also make representations to the licensing authority about an application, again the licensing Authority engages in mediation with the applicant to see if the concerns of the residents/businesses can be addressed by modifying the application. If all parties are happy with the modifications, the licence is granted. If any party is still unsatisfied by the mediation process, again the application has to be determined by the Council's Licensing Sub-Committee. Again, the Sub-Committee has the authority to impose conditions which should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

It is important that conditions are proportionate and properly recognise significant differences between venues. They must also promote the 4 licensing objectives and not duplicate other statutory provisions.

As Licensing Officers we do not have the power to impose conditions on a licence ourselves.

Sharon Smith ACIS PgDip PA
Principal Licensing Officer

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