

Licensing Committee

Grand Jury Room, Town Hall
7 March 2012 at 6.00pm

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

Access to information and meetings

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
7 March 2012 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley,
Christopher Garnett, Dave Harris, Pauline Hazell, Mike Hogg,
Margaret Kimberley, Michael Lilley, Colin Mudie and
Ann Quarrie.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they

wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 6

To confirm as a correct record the minutes of the meetings held on 23 November 2011 and 17 February 2012.

7. Late Night Levy and Early Morning Restriction Orders//Government Consultation

7 - 13

See report by the Head of Environmental and Protective Services.

8. Licensing Committee//Site Visits Protocol

14 - 18

See report by the Head of Environmental and Protective Services.

9. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE 23 NOVEMBER 2011

Present :- Councillor Barrie Cook (Chairman)
Councillors Mary Blandon, John Bouckley, Nick Cope,
Christopher Garnett, Dave Harris, Mike Hogg,
Michael Lilley, Colin Mudie and Ann Quarrie

10. Minutes

RESOLVED that the minutes of the meeting held on 5 October 2011 were confirmed as a correct record.

11. Police Reform and Social Responsibility Act 2011

The Committee considered a report by the Head of Environmental and Protective Services on the provisions contained within the Police Reform and Social Responsibility Act 2011 which received Royal Assent on 15 September 2011. Amongst the key changes introduced by the Act would be the inclusion of Licensing Authorities and Primary Heath Trusts as responsible authorities; the removal of the vicinity test enabling persons living and working in the borough and who were likely to be affected by the application, to make a representation; a late night levy; the power to suspend a licence for non-payment of the annual fee; and changes to the legislation concerning temporary event notices. It was anticipated that the provisions would be introduced in 2012 in two phases but that most would come into effect after the Olympic Games. Following the publication of the regulations a further report would be made to the Committee seeking its views on various aspects such as the late night levy.

There was considerable discussion on the removal of the vicinity test and concern that this would encourage vexatious litigants to make representations and therefore substantially increase the workload for officers and members of the Committee. The Head of Licensing and Enforcement responded that officers would be watching out for habitual complainants and would respond accordingly. The Head of Protective Services Manager highlighted that the proposed changes would enable those residents on the corridor routes from Town and who currently suffered public nuisance and crime and disorder to make representations against applications in the Town Centre which he believed was a positive step in getting their voices heard.

RESOLVED that the report be noted.

Councillor Hogg (in respect of being a personal licence holder) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

12. Government consultation on deregulation of Schedule One to the Licensing Act 2003 (Regulated Entertainment)

The Head of Environmental and Protective Services submitted a report on the consultation document “The De-regulation of Schedule 1 to the Licensing Act 2003 (Regulated Entertainment)”. The document sought views on the proposal to deregulate most of Schedule 1 of the Licensing Act which related to public entertainment. Regulated entertainment included the provision of plays, films, boxing and wrestling, indoor sporting events, live music, recorded music, dancing, and the provision of facilities for music and dancing. Under the existing legislation any regulated entertainment must be licensed by way of either a temporary event notice, premises licence or club premises certificate if it was provided for the public or for a fee and with a view to making a profit.

Under the provisions set out in the consultation paper almost all regulated entertainment would become deregulated. The only events which it was proposed would continue to be regulated were boxing and wrestling; sex entertainment venues; and entertainment provided for an audience in excess of 5000 persons. The sale of alcohol was unaffected by the proposals and would continue to be regulated. The implications of the changes would mean that venues in the borough would be able to provide unrestricted entertainments such as live and recorded music. It was anticipated that the proposals if approved would have a significant adverse impact on the quality of life of residents in the borough.

Appended to the report was a summary of the consultation document setting out the Council’s proposed responses to the questions raised. A copy of the responses received in relation to the consultation carried out by the Council with local residents’ associations and Parish and Town Councils were also made available to the Committee at the meeting.

The Committee considered at length the proposals and the likely inevitable consequences of an almost total deregulation and expressed its concern at the likely escalating problems for residents. In response to questions, the Licensing and Enforcement Manager confirmed that alcohol would continue to be regulated and so a measure of control would be retained in relation to those premises that supplied it. However, in relation to noise nuisance the Council would have to rely on other legislation to deal with any issues and in general this legislation carried a greater burden of proof and was more lengthy and costly than pursuing a breach of licensing conditions. There was likely to be a considerable impact on officer time if the deregulation of regulated entertainment was approved.

RESOLVED that-

- (i) the draft response circulated to the Committee be approved for submission to the Department for Culture, Media and Sport.
- (ii) final approval of the Council’s response to the consultation document be delegated to the Licensing and Enforcement Manager following consultation with the Chairman of the Licensing Committee.

The Chairman agreed to consider the following item as a matter of urgency because of the need to advertise the revised charges to bring into effect the Committee decision of 31 August 2011.

13. Urgent Item // Increase in Waiting Time Charges

The Committee considered a report by the Head of Environmental and Protective Services on the request by the Hackney Carriage Association to increase the waiting time for Rates 2 and 3.

On 31 August 2011 the Committee considered and approved a request from the Hackney Carriage Association to increase, from £12.00 to £16.00, the fare charged to customers of Hackney Carriages for “waiting time” for Rate 1. The Hackney Carriage Association’s letter asking for the change did not request that the increase also be applied to Rates 2 and 3 and therefore this was not approved by the Committee. The Hackney Carriage Association has subsequently requested that the increase be proportionately applied to Rates 2 and 3 to maintain the existing differential of one third from one rate to the next.

RESOLVED that the proportional increase for Rate 1 can be extended to Rates 2 and 3 in order to maintain the differential of one third from one rate to the next.

LICENSING SUB-COMMITTEE

17 February 2012

Present:- Councillor Cook (Chairman)
Councillors Blandon, Lilley, Mudie and Quarrie

12. Minutes

RESOLVED that the minutes of the meeting held on 23 November 2011 were confirmed as a correct record.

Councillors Blandon, Cook, Mudie and Quarrie (in respect of knowing the objector, Ms Hayes) declared their personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

The Licensing and Enforcement Manager, Mr O'Shea, declared that he knew the applicant's agent, Mr Fish but that he was not party to the decision making process and did not therefore consider the matter prejudicial.

13. Heaven Gentlemen's Club // Application for a Sexual Entertainment Venue

The Licensing and Enforcement Manager introduced a report setting out details of an application that had been submitted by Exquisite Enterprises Limited for Heaven Gentlemen's Club at 27-30 St Botolph's Street, Colchester for a sexual entertainment venue licence.

The application was to enable the provision of nude lap and pole dancing Mondays to Sundays inclusive from 12.00 to 04.00 the following day. Three valid objections were received to the application, two from Ward Councillors and one from a local resident and these were appended to the report. It was noted the Police had not objected to the application. The objections from Councillors Frame and Spyvee were concerned primarily with the effect that the granting of an extension of hours would have on crime and disorder and the problems already prevalent in the area. The applicants, having considered these points in advance of the meeting, had determined to amend the application and sought a licence to permit the provision of nude lap and pole dancing Fridays and Saturdays from 12.00 to 03.00 and Sundays to Thursdays from 12.00 to 02.00 and the Committee considered the application on this basis.

Mr Fish, agent for the applicant, presented the application and informed the Sub-Committee that the application was from an existing business that had been operating as a Gentlemen's Club for the past 2 years in its current location without any problems or reported incidents. The application before the Sub-Committee had been necessitated not because of any changes in the nature of the premises or its operation but because the law governing such entertainments had changed bringing them under the jurisdiction of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

In setting out the details of the application, Mr Fish highlighted that the conditions which had successfully controlled the operation of the premises over the past two years would form part of the new licence, in the event that it was granted. The Directors of the company, he considered, had an exemplary record in operating in this field and had operated another premises in a different authority area for the past 6 years without any problems. It was part of the local community and had established a good relationship with the St Botolph's Church which was located behind the premises. The premises did not encourage excessive drinking and Mr Fish outlined the security arrangements in place at the premises. Mr D'Angeles, the Head of Regency Security, provided further details and responded to questions on this matter and in particular in relation to the end of night policy which was of concern to the Sub-Committee. It was explained that at the time of closing there were relatively few customers in the premises and those that were there were encouraged to leave over a staggered period. The door staff were part of the Community Safety Accreditation Scheme which gave them powers to deal with issues in the street that may arise following the dispersal of customers from the premises and to issue fixed penalties for low level disorder issues.

Mr Newell and Mr Clark, Managing Directors of the business; and Mr Firkins, Manager of the premises, responded to members questions and provided further information on the application.

Ms Hayes, local resident, attended the meeting and addressed the Sub-Committee on her representation which questioned the appropriateness of the granting a sexual entertainment venue licence in the St Botolph's area which was part of a regeneration area and made reference to the St Botolph's Master Plan planning guidance to support the view expressed that to permit such a licence would be incompatible with the aspirations and objectives expressed for this area. In responding to the points raised Mr Fish reiterated that the premises had been operating in its current location for two years without attracting any objections; it was an unassuming premises and went largely unnoticed by those passing by; and there was no intention to change its mode of operation.

RESOLVED that the application for a Sexual Entertainment Venue Licence by Exquisite Enterprises Ltd for Heaven Gentlemen's Club at 27-30 St Botolph's Street, Colchester be granted to permit the provision of nude lap and pole dancing on Fridays and Saturdays from 12.00 to 03.00 and on Sundays to Thursdays from 12.00 to 02.00 subject to the following conditions –

- (i) that 2 members of door staff remain outside the premises and in the area for 20 minutes after its closure to monitor dispersal from the premises and to deal with any issues that may occur.
- (ii) the Management Policy appended to the application.
- (iii) all relevant mandatory conditions.



Licensing Committee

Item

7

7 March 2012

Report of	Head of Environmental and Protective Services	Author	Gary O'Shea ☎ 506956
Title	Government Consultation on secondary legislation for Dealing with Problems of Late Night Drinking		
Wards affected	All Wards affected		

This report is to advise members of the government consultation in relation to introducing secondary legislation to deal with the problems of late night drinking by allowing for the imposition by local authorities of the Late Night Levy and Early Morning Restriction Orders as provided under the Police Reform and Social responsibility Act 2011.

1. Decision Required

- 1.1 Members are requested to consider the contents of this report and provide their views on the issues therein so that these can be included in the Council's response to the questions raised by the consultation document.

2. Reasons for Decision

- 2.1 The Government is consulting on the proposals outlined below and it is considered important that this Council offers its views for consideration as part of the response.

3. Alternative Options

- 3.1 The only possible alternative would be not to respond and simply await the issue of the secondary legislation.

4. Supporting Information

- 4.1 Following government concern over alcohol related crime and disorder, particularly late at night; provision was included within the Police Reform and Social Responsibility Act 2011 (the 2011 Act) to allow for two main methods of tackling alcohol misuse. The focus is on the night time economy with the introduction of a Late Night Levy (LNL) and the power to introduce Early Morning Restriction Orders (EMROs).
- 4.2 The Government has recently issued a consultation document seeking the views of interested parties on the introduction of these two measures. The introduction to the document by the Minister of State for Crime Prevention and Antisocial Behaviour Reduction states that the Government believes that problems in the night-time economy should be addressed locally. He also says that the Government is committed to ensuring that the police and local authorities are given the right tools to address the alcohol-related problems in their area, whilst promoting a vibrant night-time economy to benefit business and the community that they serve.

- 4.3 It is suggested by the Minister that the Late Night Levy and the extension of Early Morning Restriction Orders (“EMROs”) will enable local authorities to achieve this. If local communities are concerned about premises that are open into the early hours of the morning and causing problems, then they should be able to respond flexibly. The majority (64%) of all violence occurs in the evening or at night and one-fifth of all violent incidents take place in or around a pub or club. By extending EMROs so that they can be applied from midnight, he feels that local authorities will have an additional tool to address problem areas in the night time economy.
- 4.4 He goes on to say that, where there is a vibrant late night economy with premises remaining open into the early hours, the local authority should have the flexibility to charge for a contribution towards any additional policing that this generates. Tax payers should not simply be left to pick up this cost. People who enjoy a night out often visit a variety of premises and it is appropriate that the costs are shared between these businesses.
- 4.5 **Late Night Levy** - The LNL provides the ability for a licensing authority to raise a contribution from certain late opening retailers towards policing the night time economy. It is a matter for the licensing authority to decide whether or not this is adopted and will apply to premises that open between midnight and 6.00am daily that are licensed for the sale of alcohol. The application of the LNL will extend to all ‘qualifying’ premises on a borough wide basis and will be subject to secondary legislation by way of regulations.
- 4.6 **Early Morning restriction Orders** - EMRO’s are designed to help licensing authorities to address specific problems caused by the late night supply of alcohol. This will apply to specified types of premises in a designated area only and is a current provision imposed by the last government which, to date, has not been commenced. The 2011 Act however, extends the times that an EMRO may be applied so that they may now be imposed from midnight to 6.00am as opposed to the previous hours of between 3.00am and 6.00am.
- 4.6 In order to impose an EMRO there must be clear evidence that it is appropriate for the promotion of the licensing objectives in the allocated area. However, certain classes of premises are intended to be exempt. As with the LNL, these will be subject to regulations.
- 4.7 The Government intends to introduce both of the above provisions and has issued a consultation document and impact assessment prior to doing so. A response is required by 10 April 2012.
- 4.8 The full scale of changes to the Licensing Act 2003 that were imposed by the 2011 Act was reported to members at the Licensing Committee held on 23 November 2011 when the previous consultation entitled “Rebalancing the Licensing Act” was reported upon. It is anticipated that most of these other amendments will take effect on or after October 2012.
- 4.9 There is obvious concern within the trade about whether or not these provisions will be imposed in this Borough and if so, where (in relation to EMRO’s) and at what fee level (in relation to the LNL). It is expected that regulations will actually set the level of fees centrally in the same manner as other Licensing Act 2003 fees are. This would appear to be likely as possible fee levels have been indicated within the consultation document.

- 4.10 The matter of the LNL in particular has been raised at a Colchester Pubwatch meeting where there was concern over the potential of additional costs to the trade at a time of economic austerity. The meeting was advised that there has been no discussions to date on the matter of adoption and that a decision will only take place once the regulations are released. Further, It has been promised that consultation will take place with the trade and that any final decision will consider all relevant facts, including the economic benefits/effects, and will balance this against the need and burden of proof as to whether it is appropriate to introduce a LNL.
- 4.11 Should, at some later stage, the Council decide to impose a LNL, any fees collected are required to be split between the licensing authority and the Police on a 30/70 split in the favour of the Police. In considering imposition of a LNL, the Council may wish to establish a protocol on the use of the funds to ensure that the maximum benefit in relation to the night time economy of the Borough is achieved.

5. Proposals

- 5.1 The consultation consists of the consultation document itself and an impact assessment. These have been e-mailed to each member of the Licensing Committee for reference purposes and a hard copy has been provided in the Members' room.
- 5.2 A summary of the main points in the consultation has been attached as appendix A.
- 5.3 The proposals have the potential to affect both residents and traders within the Borough and it is important therefore that the Council addresses any concerns that may result from the consultation document.
- 5.4 There are 19 consultation questions, to which responses will be drawn up and included in this authority's response and a list of these responses will be circulated in advance of the deadline for final approval.
- 5.5 There is a relatively short window for response on the consultation. As well as the Licensing Committee, the document has been circulated to other members and officers within the authority as the effect of these two changes of legislation are more wide-reaching than licensing alone. It is intended to collate any comments received into a single response on behalf of the Council which will be circulated prior to its submission.
- 5.6 No decision on whether or not to impose either of these control measures will be required until such time as regulations have been published. If the Council intends to consider one or both of these powers, it would be highly advisable that a wide-ranging consultation of local business and residents is carried out first to ensure that the measures are necessary and appropriate.

6. Standard References

- 6.1 At this stage, there are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications. These will be covered fully when the secondary legislation is issued and the issue of implementation is brought before members.

Background Papers

Consultation Document – “Dealing with the problems of late night drinking - A consultation on secondary legislation for the late night levy and early morning restriction orders” (Home Office).

Consultation Summary – Dealing with Problems of Late Night Drinking

Introduction

This is a consultation on the implementation by government of the provisions for Early Morning Restriction Orders and the Late Night Levy as provided by The Police Reform and Social Responsibility Act 2011.

The government intends to implement the provisions both for the Late Night Levy and Early Morning restriction Orders.

Regulations will be made under powers contained within the Police reform and Social Responsibility Act 2011 (the 2011 Act).

Prior to making regulations and implementing the measures, government is seeking views relating to various factors. The consultation runs for 12 weeks from 17 January 2012 until 10 April 2012 and seeks views on the following:

Early Morning restriction Orders (EMRO's)

- The process for adopting an EMRO
- Categories of business that will be exempt

Late Night Levy

- The process for adopting the Late Night Levy
- Categories of business that licensing authorities will have the power to exempt or to offer reduction of fees payable
- The kinds of services that the licensing authority will be permitted to fund from collection of the levy

The scope of the consultation is wide with views sought from anyone who will be affected e.g. members of the public, those affected by alcohol related crime, owners or employees of licensed premises, trade bodies, best practice organisations, criminal justice agencies and licensing authorities.

Early Morning Restriction Orders

An EMRO may be applied flexibly between midnight and 6am to restrict the sale of alcohol in a specified area. Implementation must be considered appropriate. It does not have to run for the entire period between midnight and 6am and may be applied daily or on specified days only.

Regulations will prescribe details of the process to be involved and may specify certain types or classes of premises as exempt.

EMRO's will apply even when a Temporary Event Notice is otherwise in effect.

It is stipulated that some premises do not contribute to alcohol related crime and disorder as such there may be some general exemptions contained within the regulations.

Nationally applied exemptions will not be widespread as it is considered that local authorities should retain local discretion.

The general exemptions being proposed are premise with over night accommodation e.g. Hotels, Theatres and Cinemas, Community Premises e.g. Village Halls that have successfully applied to remove the DPS requirement and Casino's or Bingo Halls that maintain a membership scheme.

Late Night Levy

The Levy will applied to both the 'on' and 'off' trade and must apply to the entire authority area. As with EMRO's the authority may decide the times at which a levy will apply provided this is within the midnight to 6am period specified.

The Levy will not apply to Temporary Event Notices.

Regulations will prescribe details of the process for adoption of the Levy.

The licensing authority is expected to discuss implementation with the Police and Crime Commissioner (PCC) and local Police to decide whether a levy is appropriate. The PCC, the Police, licence holders and others must be formally consulted prior to adoption and the consultation must cover matters such as any requirement for local exemptions or discounts and appropriation of the funds collected.

The final decision lies with the licensing authority.

The proposed government exemptions for the Late Night Levy (that authorities may choose to adopt) are, Premises with overnight accommodation e.g. Hotels, Restaurants, Theatres and Cinema's, Casino's, Bingo Halls, Community Amateur Sports Clubs, Community Premises and Country Village Pubs, Business Improvement Districts (BIDs), Premises holding a club premises certificate, businesses qualifying for Small Business Rate Relief, Premises that open late only at New years Eve.

Additionally the authority in proposing a levy may offer reductions for premises operating a best practice scheme such as; Pubwatch, Best Bar None, premises making a contribution to the local Community Alcohol Partnership, premises that pay a levy in a BID district and any other local best practice schemes.

Late Night Levy Revenue

Of the net revenue collected (allowing for deduction of licensing authority costs) the remainder must be split between the licensing authority and the Police by way of a 70:30 ratio in the Police favour.

It is unlikely to be possible for the licensing authority to direct the funds freely and the consultation therefore questions where the funds should be directed e.g. taxi marshals, late night town wardens, street cleaning services, booze buses etc.

Questions

A list of the consultation questions is outlined below, some of which relate to the 36 page impact assessment that has been circulated to all committee members by prior email along with a hard copy in the members' room.

CONSULTATION QUESTION 1:

Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?

CONSULTATION QUESTION 2:

The government proposes that EMRO's will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMRO's should apply on New Year's Eve?

CONSULTATION QUESTION 3:

Do you agree or disagree that the categories of premises above should be exempt from EMRO's?

CONSULTATION QUESTION 4:

Do you have any other suggestions on the types of premises that should be considered for an exemption from EMRO's?

CONSULTATION QUESTION 5:

Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?

CONSULTATION QUESTION 6:

Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

CONSULTATION QUESTION 7:

Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

CONSULTATION QUESTION 8:

Do you think that premises operating under a club premises certificate should be exempt from the late night levy?

CONSULTATION QUESTION 9:

What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?

CONSULTATION QUESTION 10:

Do you agree or disagree that there should be an exemption for New Year's Eve?

CONSULTATION QUESTION 11:

Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?

CONSULTATION QUESTION 12:

Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?

CONSULTATION QUESTION 13:

Do you agree or disagree with this set-up of cumulative discounts?

CONSULTATION QUESTION 14:

Should there be scope for further exemptions and reductions from the late night levy?

CONSULTATION QUESTION 15:

What activities do you think licensing authorities should be able to fund with their retained proportion?

CONSULTATION QUESTION 16:

What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

CONSULTATION QUESTION 17:

What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

CONSULTATION QUESTION 18:

If you have any comments on the Impact Assessment, please detail them here?

CONSULTATION QUESTION 19:

If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMRO's in your area?



Licensing Committee

Item

8

7 March 2012

Report of	Head of Environmental and Protective Services	Author	Gary O'Shea
Title	Protocol for Site Visits by Licensing Committee		
Wards affected	All Wards affected		

This report is to introduce and agree a formal protocol for site visits by Licensing Committee members.

1. Decision Required

- 1.1 Members are requested to agree the protocol, for immediate adoption, as attached at appendix A.

2. Reason for Decision

- 2.1 In order to maintain impartiality and avoid any perception of bias, it is important that any contacts that members have with applicants prior to a hearing are closely controlled.

3. Alternative Options

- 3.1 The only acceptable alternative to adopting a protocol for site visits would be to never permit such visits to take place. However this would be unduly restrictive and could limit the effectiveness of the Committee on the few occasions that visits may prove helpful.

4. Supporting Information

- 4.1 Licensing sub-committee hearings are quasi judicial in nature, whereby an application must be considered on its individual merits. Determination of any application must be made in a balanced and fair manner with consideration to all relevant facts including the application and its content, any representations (either for or against), any available supporting evidence, the relevant legislation, codes of practice and the Councils' own policy.
- 4.2 All sites are investigated and considered by officers as part of the normal process of determining applications. The results of these investigations will be reported to the Sub-Committee in the written report on the applications. This information should normally be sufficient for members to be able to make a decision on the applications.
- 4.3 Members will be able to view the application, representations and the report at least 10 working days in advance of the hearing. In addition, there is the option of questioning the applicant at hearing stage and whilst those that made representation are not obliged to attend, it is often the case that they will and that they may therefore be asked questions.

- 4.4 For the reasons stated above it is unlikely that members would need to visit any site that is subject of the application. Such visits should not usually be encouraged as the format of hearings requires that there is no pre-determination of a case. Whilst such visits would be for purposes of familiarisation to aid any decision and not intended to pre-determine, it is possible that this may inadvertently create a perception of bias.
- 4.5 Notwithstanding the above, the nature of an application, a general unfamiliarity of the area or a number of other factors may mean that a visit by the sub-committee prior to the hearing would benefit the process. It is therefore important that such visits should follow a structured and recognised format. A visit protocol is therefore required.
- 4.6 The protocol requires that Councillors should only visit premises for the purpose of assessing an application if this forms part of an organised pre-arranged visit. Even under such circumstances, it is important that an adopted procedure is followed to ensure that the accountability and transparency of the sub-committee hearing is not compromised.
- 4.7 The protocol covers nine key points that should be adhered to on all visits and is attached as appendix A.
- 4.8 It is recognised that Councillors generally live locally and that they may therefore come into contact with premises outside of the determination process. Whilst this cannot be avoided, it remains important to ensure that hearings remain fair and transparent and for this reason the protocol also provides guidelines for individual Councillors.

5. Proposals

- 5.1 In order to avoid any perception of bias, given that sub-committee decisions are open to public scrutiny and legal challenge, visits should generally be avoided. However, when deemed to be necessary it is important that the protocol should be adhered to at all times.
- 5.2 Members are requested, subject to any amendments as may be deemed appropriate, to resolve to adopt the protocol.

6. Strategic Plan References

- 6.1 There are no strategic plan issues associated with this report.

7. Consultation

- 7.1 It is not considered necessary to consult on this proposal.

8. Publicity Considerations

- 8.1 There is a risk of adverse publicity if a protocol is not followed when visiting application sites.

9.0 Financial Implications

- 9.1 It may occasionally be necessary to incur some costs to visit the site of an application. These would normally be limited to the costs of transportation of members to the location and can be met from existing budgets.

10.0 Equality, Diversity and Human Rights implications

- 10.1 There are no equality, diversity or human rights implications associated with this report.

11.0 Community Safety Implications

- 11.1 There are no community safety implications associated with this report.

12.0 Health and Safety Implications

- 12.1 It will be necessary to carry out a risk assessment prior to any visits to ensure that members and officers are not exposed to any risks to their health and safety.

13.0 Risk Management Implications

- 13.1 The adoption of this protocol will assist to ensure that any suggestions of lack of impartiality do not damage our reputation.

Background Papers

None

Licensing Committee - Site Visits Protocol

All sites are investigated and considered by officers as part of the normal process of determining applications. The results of these investigations will be reported to the Sub-Committee in the written report on the applications. This information should normally be sufficient for members to be able to make a decision on the applications.

There may be occasions when councillors want to personally visit specific sites. Reasons for this may be, for example, to understand local conditions and the relationship of a licensed premises to the surrounding area, as it may not be possible to see the full picture from the submitted drawings or from outside the site.

1. Members of the Licensing Sub-Committee requesting site visits should specify the reasons for the site visit and detail the particular issues they want to look at on site.
2. A formal site visit will be held where it is clear there will be benefits from holding one. A record will be kept of why visits are being held and who attended.
3. Only members of the Licensing Sub-Committee in question and officers of the Council will be invited to attend any premises visit. Whilst other parties may be present they will not be permitted to address, the applicant, members of the Sub-Committee, officers or any other person present in relation to the application.
4. Neither the applicant nor any other parties who are present at the site visit will be permitted to participate in the discussion, or to speak directly to members of the Sub-Committee.
5. If access to private land is needed, officers will gain the agreement of the landowner before the visit.
6. On assembling at the site, a relevant officer or the Chairman will advise those present of the purpose of the site visit and the procedure to be followed, so that all are aware that it is a fact finding exercise only and that no decision will be taken until the Licensing Sub-Committee meeting.

7. There must be no discussion of the merits of the case, and all questions from councillors will be put through the relevant officer or Chairman. Questions should not be put directly to the applicant or to any other people present. In the event that further discussion, between the officers in attendance and the applicant/others present, proves necessary in order to answer members' questions on factual matters, the Chairman may decide on a brief adjournment of the meeting to facilitate this process.
8. The visiting party will stay together as a group. No lobbying by applicants or objectors will be allowed and the public has no right to be in attendance. If an applicant or group persists in attempting to lobby, all councillors and officers will leave the site and the site visit will be abandoned.
9. When councillors on the Licensing Sub-Committee are on site visits they must not make any comments that could give the impression that they had already formed a view on the merits of the application. No decision on the application will be made until a formal meeting of the Licensing Sub-Committee, where councillors will have before them all necessary information to be able to make an informed decision. This will include a record of the site visit.

Site visits by individual councillors

1. Councillors should never visit sites for the purpose of assessing an application unless on a pre-arranged and authorised group visit.
2. If any councillor has previously visited premises socially, or for any other reason, they should always declare their visits to the Licensing Sub-Committee before the item is considered.
3. Councillors need to be aware that lobbying could prejudice their opportunity to speak and vote at any Committee meeting where a licensing application is considered.
4. Any councillor that does undertake a site visit on their own will not be acting as part of the Licensing Authority and so will have no rights of access to any private land.
5. A note of any visit to a site outside of the Licensing Sub-Committee process must be made and passed to officers and will be recorded on the licensing application file.

GO/LIC
24 February 2012

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