

Licensing Committee

Grand Jury Room, Town Hall
12 January 2011 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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There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
12 January 2011 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley, Mark Cory,
Wyn Foster, Christopher Garnett, Dave Harris, Mike Hogg,
Margaret Kimberley, Michael Lilley 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 - 2

To confirm as a correct record the minutes of the meeting held on 24 November 2010.

7. Licensing Policy//Consultation Responses

To Follow

To consider a report by the Head of Environmental and Protective Services.

8. 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

24 November 2010

Present:- Councillor Cook (Chairman)
Councillors Blandon, Bouckley, Cory, Foster, Garnett,
Harris, Hogg, Kimberley, Lilley and Quarrie

12. Minutes

RESOLVED that the minutes of the meetings held on 6 October 2010 be confirmed as a correct record.

13. Draft Licensing Policy 2011-2014

The Committee considered a report by the Head of Environmental and Protective Services on the Licensing Policy which the Council was required, by the Licensing Act 2003, to review every three years. The Policy had been reviewed having regard to the various legislative changes that had taken place since its last review in 2008 including the amendment to the Section 182 Guidance. The draft Statement of Licensing Policy sought to balance the interests of licensed businesses and residents. The policy was in line with the Council's vision for Colchester to develop as a prestigious regional centre. The Council and the Licensing Authority wished to discourage anti social behaviour, in particular alcohol related anti social behaviour and crime and disorder, and to encourage the effective and responsible management of licensed premises that would proactively promote the four licensing objectives.

The report set out the consultees that the Council was required to consult. Consultation letters would also be sent to a number of other interested parties including Ward Councillors, Parish and Town Councils, residents groups and responsible authorities. At the end of the consultation period the draft Policy would be sent to Counsel for legal scrutiny and a report would be brought back to the Licensing Committee for approval prior to the matter being referred to full Council for its approval and ratification.

The Committee gave consideration to a suggested amendment to the Policy proposed by the Chairman in relation to Temporary Event Notices which stated that "A Temporary Event Notice will not be granted by the Licensing Authority to an early morning drinking establishment, operating seven days weekly, if such an establishment has previously applied for an extension of its existing licensed closing time; which at a subsequent hearing of the Licensing Authority's Sub-Committee was refused on the grounds that the extension in hours would have the potential of attracting an increase in crime and disorder in the nearby area and was objected to by the Police on these grounds, at the time of the hearing". The Licensing Manger expressed concern regarding the legality of the inclusion of such wording in the Policy and the Monitoring Officer then addressed the Committee to echo the concerns expressed by Mr Harvey. It was agreed that an appropriate way forward was to seek Counsel's opinion on its inclusion when the matter was referred at the end of the consultation period.

RESOLVED that-

- (i) the draft statement of Licensing Policy be approved for the purposes of consultation
- (ii) consultation be undertaken as outlined in paragraphs 4.2 to 4.6 of the report by the Head of Environmental and Protective Services and that the revised policy be brought back to the Licensing Committee following its scrutiny by Counsel.



Licensing Committee

Item

7

12 January 2011

Report of	Head of Environmental and Protective Services	Author	Colin Daines ☎ 282596
Title	Three year Review of the Statement of Licensing Policy // Results of Consultation		
Wards affected	All		

This report details the outcome of the consultation exercise undertaken in relation to the statutory three year review of the Statement of Licensing Policy and seeks the Licensing Committee's approval of the draft revised policy subject to its scrutiny by Counsel.

1. Decision(s) Required

- 1.1 The Committee is asked to consider the results of the consultation exercise undertaken for the three year review of the Statement of Licensing Policy and the proposed suggested amendments to the policy. The Licensing Policy has been circulated separately.
- 1.2 The Committee is also asked to consider any suggested changes as a result of the scrutiny of the Policy by Counsel, Mr Phillip Kolvin. The comments of Mr Kolvin will be circulated separately due to the timescales involved in the production of this agenda.

2. Reasons for Decision(s)

- 2.1 The Licensing Authority is required by the Licensing Act 2003 to have consulted on the review of its three year Statement of Licensing Policy and have any revisions to that policy agreed and adopted.

3. Alternative Options

- 3.1 There is no legal alternative other than to comply with this requirement.

4. Supporting Information

- 4.1 The Licensing Act 2003 is entirely prescriptive about those parties who must be consulted with as part of the consultation process for the review of the Licensing Policy.
- 4.2 The Licensing Authority has therefore consulted with the Chief Officer of Police; the Fire Authority; representatives of holders of premises licences, club premises certificates and personal licence holders; and persons who are representative of businesses and residents in its area. In addition to this, all responsible authorities, Ward Councils, Parish and Town Council's, known Residents' Associations and many other trade and voluntary organisations that have connections to or interests in the licensed trade have been consulted. The consultation period ended on 31 December 2010.

- 4.3 Consultees were invited to not only give their views on how the current Statement of Licensing Policy had operated but also to put forward their views or ideas for changes that may be considered for inclusion in the revised policy.
- 4.4 At the time of writing this report only 3 responses to the consultation have been received and these are shown as Appendix 1. Any further responses received will be reported to the Committee at its meeting.
- 4.5 The Parish Council responses are largely supportive of the stance taken in the Policy and seek no further amendments. One comment requesting additional enforcement was received from Wivenhoe Town Council.
- 4.6 Councillor Spyvee has submitted a response to the consultation and comments on the issues of advertising on the premises and issues concerning minor variations. It is not considered that any changes are required to the policy although a minor change to consultation procedures is suggested.

- Advertising Application on the Premises

Councillor Spyvee is correct in his assumption that the requirement to place a notice on site is a statutory requirement and therefore does not need to be included in the Council's Licensing Policy. There is a requirement to place a notice on site for both minor and full variation applications and the wording of the notice is prescribed and therefore is not something that can be altered by the Licensing Authority. With regard to representations, these can be made by statutory consultees and interested parties such as residents and/or businesses in the vicinity of the premises. The rules governing who can object are the same for both types of application. Individual notification of an application does not take place for minor variations or for full variation applications.

- Minor Variations

The minor variations process can only be used to deal with applications that are considered unlikely to have a detrimental impact on the four licensing objectives. In view of this the notification process is not as stringent as that for a full variation and does not require a notice to be placed in a local newspaper, limiting public notification to a notice placed on site for the duration of the period for representations. Comment can be made by Ward Councillors on minor applications.

Borough Councillors, Parish and Town Councils and Residents' Associations are currently notified of any new or full variation applications received during the week by means of a table of applications sent out every Friday. This notification exceeds the requirements of the act but was considered essential, by the members of the then Licensing Committee when the Licensing Act 2003 came in to force, to keep members informed of matters within their wards. It is suggested that this be extended to include details of any minor variations received. It should be noted however that because of the very tight timescales there may be occasions when the table is sent out only a few days before the end of the period for objections.

- Attendance of Witnesses at Minor Variations

There is no mechanism for an opposed minor variation application to be reported to the Licensing Sub-Committee and therefore Councillors and/or residents are not able to address the Sub-Committee on a minor variation. If an objection is received to a minor variation application, the Licensing Manager must determine whether the objection is valid and whether to grant the application or not. In the case of an opposed application, where the objection is deemed valid, the application will be refused. The applicant, if they wish to proceed, must then apply again using the full variation application process. In this way, if a valid objection is lodged as part of that process, the matter can proceed

to a full hearing by the Licensing Sub-Committee. The specific case mentioned in Councillor Spyvee's letter referred to a full variation application where different rules apply and this matter has been dealt with separately.

5. Proposals

- 5.1 It is proposed that the draft review of the Licensing Policy be approved and submitted to full Council for final approval and adoption on 12 February 2011.

6. Strategic Plan References

- 6.1 The draft review of the Statement of Licensing policy attempts to strike a difficult but reasonable and proportionate balance between the different and often competing aspirations of licensed businesses and residents. This Policy recognises the importance of widening the choice and appeal of licensed premises and the development of cultural and social activities while at the same time offering reasonable protections to local residents, visitors and other non-licensed businesses. The policy is in line with the Council's vision for Colchester to develop as a prestigious regional centre. The Council and Licensing Authority wish to discourage anti-social behaviour, especially alcohol related anti-social behaviour and to encourage the effective and responsible management of licensed premises in a way that will proactively promote the four Licensing Objectives outlined in the Act.

7. Consultation

- 7.1 The draft revised Policy has been the subject of a consultation process as required by the Licensing Act 2003. A copy of the draft revised Policy has been placed on the Council's web site under the Licensing home pages and will therefore also be available for public scrutiny, although it will not be available for any further public comment at this time.

8. Publicity Considerations

- 8.1 The three year revision of the Statement of Licensing Policy has been publicised to all of the statutory consultees, responsible authorities, organisations, voluntary groups and interested persons who were invited to take part in the consultation process. There is no other requirement contained within the Licensing Act 2003 that requires the Licensing Authority to give wider publicity to this process.

9. Financial Implications

- 9.1 Other than the as yet unknown costs of seeking a Barrister's opinion on the proposed draft revised Policy, there are no other direct financial implications for the Council in adopting and publishing the three year review of the Licensing Authority's Statement of Licensing Policy.

10. Equality, Diversity and Human Rights Implications

- 10.1 The draft revised Policy has been prepared in accordance with, and has taken account of, all relevant legislation and strategy. This may include the Human Rights Act 1998, Equalities Act 2010, Crime and Disorder Act 1998, Violent Crime Reduction Act 2006, Alcohol Harm Reduction Strategy and the Anti-Social Behaviour Act 2003 where it has been relevant or appropriate to do so.

11. Community Safety Implications

- 11.1 The Licensing Policy is a key component in the Council's strategy to tackle crime and disorder and anti-social behaviour, particularly alcohol related anti social behaviour and as such it will contribute significantly towards improving overall community safety.

12. Health and Safety Implications

- 12.1 There are no known direct public health and safety issues arising from the adoption of the draft revised Licensing Policy.

13. Risk Management Implications

- 13.1 A flexible yet robust revised Statement of Licensing Policy will continue to provide both the Council and the Licensing Authority with a sound basis for decision making in relation to licensed premises and a secure platform from which to promote the four Licensing Objectives as outlined in the Licensing Act 2003.
- 13.2 In order to minimise the potential risks and costs associated with defending the adopted and published version of the next three year Licensing Policy against any legal challenges or actions that may be brought against it, legal opinion/advice has again been sought by the Licensing Authority from a barrister who is a national authority on Licensing matters to ensure that the draft review is both lawful and robust within the terms and spirit of the Licensing Act 2003 and the Section 182 Guidance that accompanies the Act.

Background Papers

List of consultees

Consultation letter

Proposed draft revised Statement of Licensing Policy

Licensing Committee

From: Wivenhoe Town Council [wivenhoe_council@btconnect.com]
Sent: 23 December 2010 12:26
To: Licensing Committee
Subject: RE: Consultation on the Council's Draft Statement of Licensing Policy 2011-2014

The Town Council has no major comments on the current Licensing Policy only its concern that enforcement could be better. The strain on emergency services caused by under-age drinking and drinking to excess is also of concern.

Antoinette Stinson
 Town Clerk
 Wivenhoe Town Council

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-----Original Message-----

From: Licensing Committee [mailto:Licensing.committee@colchester.gov.uk]
Sent: 09 December 2010 09:16
Subject: Consultation on the Council's Draft Statement of Licensing Policy 2011-2014

You may be aware that the Licensing Authority is required to review its Statement of Licensing Policy every three years. As part of that review the Licensing Authority is required to consult as widely as possible with a variety of different authorities, agencies, businesses, residents' groups and licence holders that are representative of the area covered by the Licensing Policy.

The Licensing Authority would therefore welcome your views on the current Policy which can be viewed on the Council's website www.colchester.gov.uk under the environment area. I would be grateful to hear your views on how you feel the current Licensing Policy has operated to date, whether you feel it needs changing, what changes you would like made to the Policy and why you would like these changes.

All written comments will be placed before the Council's Licensing Committee for its consideration in formulating the new Policy. However, the Licensing Authority is unable to guarantee that your views or comments will definitely be included in the new three year Policy.

The draft review Policy and the final Statement of Licensing Policy will be subject to all necessary and appropriate legal and Council scrutiny required to ensure that the Policy is not only lawful, reasonable and proportionate, but that it is also sufficiently robust in content to ensure it remains a viable and practical document to be used by all stakeholders that have an interest in the Licensing Act 2003 within the Colchester Borough Area as expressed by the Licensing Act 2003.

All comments must be made in writing and must be received by the Licensing Authority by no later than Friday, 31 December 2010.

You can submit your comments either by email to licensing.committee@colchester.gov.uk or by letter to the address shown above.

I look forward to hearing from you in due course and while writing may I take this opportunity to thank

you for participating in this consultation.

Kind regards,

Simon Harvey
Licensing Manager
Licensing Specialist Unit
Environmental & Protective Services
Colchester Borough Council
PO Box 889
Rowan House
33 Sheepen Road
Colchester
CO3 3WG

Tel: 01206 506420/506167

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Licensing Committee

From: stanwayparishcouncil [stanwayparish@btconnect.com]
Sent: 23 December 2010 11:42
To: Licensing Committee
Subject: Consultation on the Council's Draft Statement of Licensing Policy 2011-2014

Dear Simon Harvey

I write in reply to your e-mail of the 9th December 2010, regarding the above consultation.

Unfortunately, there was not time within the timescales allowed for the Parish Council to make a formal decision, as it does not meet again until January 2011.

However, in consultation with the Parish Council's Chairman, I am able to respond that it is felt that the draft policy really builds upon the policy currently in force and there does not appear to be anything in it that gives cause for concern.

Its very long winded, but then it has to cover a lot of issues.

It is felt that the Parish Council would support the Draft Policy.

Regards

Colleen Moss
Clerk to Stanway Parish Council

Victory Hall
Villa Road
Stanway
Colchester
CO3 0RH

Tel: 01206 542221

Licensing.Committee

From: Henry Spyvee
Sent: 21 December 2010 12:06
To: Licensing.Committee
Cc: Nick Barlow; William Frame; Barrie Cook
Subject: Draft Statement of Licensing Policy 2011 - 2014

Dear Simon,

Our Licensing Policy is of necessity heavily affected by statutory legislation with which it must not conflict. Within that remit our existing and draft policies have stood the test of time and do a good job in regulating licensed activities as evidenced by the conduct of hearings. My comments are thus at the margin of the subject. If I am in error in what I say I blame the need to refer to a large policy document available online.

Advertising Applications on the Premises

I cannot see any reference to the need to do this in the policy. If I am right I assume it is because this is a statutory requirement. All applications are advertised on the premises including Minor Variations. As a result they are seen by people, some of whom have no right to object. This needs to be made clear in or with notices. In the case of Minor Variations the only valid objectors, as I understand it, are people who will have individual notification.

Minor Variations

These were introduced recently as a simplified system and exclude notification to or comment by Ward Councillors (who have a duty to their electorate) and also local residents. I believe both should be notified as they have a role to play. It would need to be made clear that their objections, if any, have limited validity. They would have to be vetted by statutory consultees and taken up by them if thought to have merit.

Attendance of Witnesses at Minor Variations

Policy needs to be clarified. At present Councillors and local people have no right to be consulted and no right to be regarded if they do make an objection. Yet an applicant at a recent hearing was able to call a local resident as a witness when he was in favour of the variation sought. This is inequitable and needs to be resolved.

Regards,

Cllr Henry Spyvee

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk