

LICENSING AND REGULATION COMMITTEE

5 OCTOBER 2004

LICENSING POLICY – CONSULTATION DRAFT

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Under the Licensing Act 2003, the City Council as licensing authority is required to publish a statement of licensing policy, which sets out the Council's approach to licensing issues under the Act. Prior to publishing the policy, a consultation exercise must be carried out.

A draft policy has been prepared, and is attached as Appendix 1 to this report. The report summarises the key points of the policy, and sets out the consultation process leading to adoption.

A separate report covers the proposed delegation arrangements.

RECOMMENDATIONS:

- 1 That the draft Statement of Licensing Policy attached at Appendix 1 be approved for publication as a consultation draft.
- 2 That the consultation process for the draft Statement of Licensing Policy set out in Section 4 of this report be agreed.
- 3 That the City Secretary and Solicitor (in consultation with the Chairman and Vice-Chairman) be authorised to respond to the draft procedural orders issued by the Secretary of State for consultation.

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DETAIL:

1 Introduction

- 1.1 Members will be aware of the changes in licensing which are being introduced under the Licensing Act 2003. Under Section 5 of the Act, the City Council is under a duty to prepare and publish a statement of licensing policy every three years. The policy must be in place before any applications are dealt with under the Act.
- 1.2 Prior to determining the policy, the Council must carry out a consultation exercise, and consider the views of various individuals and groups before the policy is published.

2 Update on Licensing Act 2003

- 2.1 The Act received royal assent in July 2003, and the statutory Guidance issued by the Secretary of State was published in June 2004. In July, the “First Appointed Day” was announced as 7 February 2005. The transition period (during which period applications can be submitted to convert or vary existing licences into the new Premises and Personal Licences, and Club Registration Certificates) will run from 7 February 2005 until the Second Appointed day. This date has not yet been fixed, although it is expected to be 7 November 2005.
- 2.2 The Statement of Licensing Policy runs for period of three years, and must be reviewed before the start of each three year period. The Secretary of State has made an order which means that the first Statement must be in place by 7 January 2005 (one month before the start of the transition period), thus allowing applicants to be able to take into account the licensing authority’s policy before submitting their applications.
- 2.3 Draft orders have been published for consultation, setting out proposed requirements for application forms, application procedures, and hearings. The draft order setting out the prescribed fees has not yet been issued, but it expected later in October 2004. Officers will be considering the terms of the draft orders and responding as appropriate, in consultation with the Chairman and Vice-Chairman.

3 Licensing Policy.

- 3.1 The full draft policy is set out in Appendix 1 to this report. It has been based on a model prepared by a group of officers from various Hampshire authorities, together with representatives from the Police and Fire Service. Whilst it is recognised that each council’s policy will be different, it is intended that the model should be used as a basis for such policies, so that there is a degree of consistency across the County. Many consultees (such as national trade representatives, the Police and Fire

Service) will be dealing with policies from across Hampshire, and having a policy which is based on the same model will clearly make this part of the process easier.

- 3.2 The Act brings in a completely new framework for licensing. Many concepts from the existing legislation (such as permitted hours, and the single justices' licence for both person and premises, etc.), will cease and be replaced by new mechanisms. In addition, the Secretary of State is authorised under the Act to issue guidance on the implementation of the Act. Licensing Authorities must have regard to the Guidance when exercising their licensing functions. This means that there are limitations on what can be included in a policy. For example, the Guidance makes it clear that licensing authorities should not set pre-determined fixed closing times for particular areas ("Zoning").
- 3.3 Section 3 of the Guidance deals with the preparation and contents of the licensing policy, and the draft policy in Appendix 1 takes account of this.
- 3.4 Part 1 of the Policy sets out the local background, and recognises the role which other enforcement systems play. It explains (in line with the Guidance) that licensing applications will not be treated as re-runs of applications under other legislation which have already been considered (e.g. planning applications). It is considered that the principal policy should be to balance what are often conflicting interests, and paragraph 1.10 of the policy sets out this balancing process as the key role for the new system.
- 3.5 Part 2 of the Policy explains what is covered by the new arrangements, sets out the consultation process that [will have taken] place, and promotes partnership working with other agencies and liaison with operators of licensed premises to promote good practice (paragraphs 2.5-2.6).
- 3.6 Paragraphs 2.9-2.11 sets out the primary focus for the licensing authority as being the direct impact of licensed premises, although it makes it clear that the Council would take into account problems which are attributable to particular premises where a link can be demonstrated. It also indicates that the availability of police resources will be taken into account when considering applications.
- 3.7 There are a number of strategies (such as Community Safety Strategy, Tourism Strategy, etc.) which will interrelate to the licensing policy. These are set out in paragraphs 2.12-2.17, which also indicate how the licensing policy will be integrated with these various strategies.

Cumulative Impact (Special Saturation Policy)

- 3.8 The Guidance provides that in certain situations, a "Special Saturation Policy" may be adopted. The effect of this would be to create a presumption against applications for new licences being granted in a given area, on the basis that the cumulative impact of existing premises was such that serious problems of crime and disorder, and nuisance, were occurring, and further licences would exacerbate these problems to an unacceptable level. The draft policy (paragraph 2.21) proposes that a special saturation policy is adopted for Jewry Street and part of Upper High Street (up to the Westgate), invites comments on this proposal and asks consultees whether such a policy should be adopted for any other areas. It should be noted that before such a policy can be adopted, there should be significant problems arising in a defined area, which are attributable to existing premises. Furthermore, the policy can only apply to applications for new premises (i.e. which do not already hold a licence). The policy

cannot prevent existing premises converting (on the existing conditions) to the new system, nor can the policy alone justify a refusal of an application from existing premises to extend the opening hours.

Licensing Hours

- 3.9 Paragraphs 2.33-2.35 deal with licensing hours. Unlike the current system, there will be no fixed hours, and the Act does not provide that every licensed premises is able to open 24 hours a day. Hours will be determined for each premises, based on the application and the operating schedule submitted, and taking into account representations which may be made in respect of the application. It is important to note that there is no requirement for the premises to remain open during the hours which are determined for those premises. The Government's view is that by allowing hours to be relaxed, problems associated with "binge drinking", and concentrations of people leaving premises as a result of the current restricted hours, will be reduced.
- 3.10 The draft policy emphasises that applicants who wish to extend hours will have to consider the impact which longer hours might have on the four licensing objectives, and show how they will address any adverse impact which might occur.

Other Considerations

- 3.11 The draft policy refers to the potential impact of licensed premises on the police and other agencies, and indicates that these will be considered as part of an application under the new provisions. The draft expressly asks applicants to demonstrate how any application for extended hours, or a new application for hours later than 11.00pm, would seek to address concerns on all the licensing objectives.
- 3.12 Paragraphs 2.40-2.44 sets out the review process, under which the police, environmental health officers, and local residents and businesses, will be able to seek a review hearing, whereby the licence for particular premises can be reconsidered.
- 3.13 The new arrangements envisage applications being heard by a sub-committee of three Members, rather than the full committee. Paragraph 2.59 and Appendix A set out the proposed delegation scheme, which is in accordance with the model scheme in the Guidance. A separate report on this agenda deals with this issue.
- 3.14 Part 3 of the Policy details the types of licence, and outlines the procedures to be followed when applying for a licence.
- 3.15 Part 4 sets out the matters which applicants should have regard to when preparing their operating schedules. Each licensing objective is considered in turn.
- 3.16 Section A of Part 4 deals with the prevention of crime and disorder. Applicants for premises opening between 2300 and 0800 are expected to consider in their operating schedules a number of measures to deal with crime and disorder, including CCTV (inside and outside the premises), risk assessments of drinks promotions, drug control measures, door supervisors, proof of age schemes, and no admissions after a specified time.
- 3.17 Applicants will be expected to sign up to the code of good practice (to be drawn up under the Alcohol Harm Reduction Strategy), and take steps to prevent sales to

children and young people, customers who are drunk, or where the sale may lead to crime and disorder.

- 3.18 Shops and supermarkets are expected to have measures in place to prevent underage sales, and intimidation of staff. Hours of operation will normally reflect the shop's opening hours, although they may be restricted where the police indicate that the shop is the focus of disorder and disturbance.
- 3.19 Section B of Part 4 covers public safety. Applicants will be expected to indicate a number of matters in their operating schedules, including the date of the last risk assessment on the premises, proposals to deal with the findings of such assessments, proposed occupancy numbers, a copy of the emergency plan for the premises, a drawing of the premises showing the escape routes, and details (with evidence) of fire safety equipment.
- 3.20 Section C deals with public nuisance. Applicants are expected to have regard to a number of matters when drawing up their Operating Schedules, including noise control, street furniture, sanitary accommodation and lighting.
- 3.21 Noise issues cover both noise from the premises themselves, and noise from customers. Stricter conditions can be expected in areas of denser residential accommodation, and schedules should demonstrate how the premises will be "good neighbours". Noise from the premises between 23:00 and 09:00 should be inaudible at all times inside all noise sensitive premises in the vicinity, and evidence of compliance will be required. Measures to contain sound leakage where appropriate (such as closure of doors and windows, sound limiting devices, etc) should be offered in the schedule.
- 3.22 Operating Schedules should include measures proposed to deal with noise from customers entering or leaving the premises. Queues should be properly managed, and other measures such as notices, door supervision, quieter music towards the end of the evening, and availability of transport should be considered.
- 3.23 Street furniture can lead to problems of disorder and nuisance if not properly managed. Accordingly, the policy requires operating schedules to show how applicants will deal with these issues, including preventing their use outside certain hours.
- 3.24 Adequate toilet facilities should be provided in the premises, and exterior lighting should be positioned to avoid disturbance to neighbours.
- 3.25 Part D of the Policy deals with the protection of children from harm. The Act makes specific provision for children, and therefore additional conditions will not be required to enforce this, although in certain circumstances, the nature of the premises or the activities taking place may be such that additional conditions controlling e.g. admission of children under 18 will be needed.
- 3.26 The Act makes it unlawful for an unaccompanied child under 16 to be present on any premises where the primary purpose is the supply of alcohol for consumption on those premises. It also prevents unaccompanied children under 16 being on any premises supplying alcohol for consumption on those premises, between the hours of Midnight and 5.00am. The effect of this is that:-

- *accompanied* children under 16 may be on any premises at any time, on the basis that they are being supervised by the adult accompanying them;
- *unaccompanied* children under 16 may be on premises where the supply of alcohol is ancillary (e.g. premises such as theatres, leisure centres, or restaurants, which serve alcohol, but whose primary purpose is not alcohol-related), but only between 5.00am and Midnight. Outside these hours, they are not allowed on these premises unless accompanied by an adult;
- *unaccompanied* children under 16 may NOT *at any time* be on premises where the supply of alcohol is the exclusive or primary use.

It remains an offence to serve alcohol to a child (i.e. a person under 18), or purchase alcohol for a child, even if they are lawfully in the premises in accordance with the above restrictions. The only exception to this provision is for children who are 16 years old (or over) who are accompanied by an adult and consume wine or beer as part of a table meal.

- 3.27 Neither the Act nor the policy requires licensees to permit children to enter licensed premises.
- 3.28 The policy takes a clear line on unlawful drinking by children, and indicates that additional controls may be necessary at certain premises, e.g. where there have been convictions for under-age drinking, association with drugs or gambling, or where adult entertainment is provided. Many premises in Winchester City Centre which open late at night have strict "over 18s only" policies, and the policy expects that in appropriate circumstances, such controls would be proposed by applicants in their operating schedules.
- 3.29 The policy also covers the need for venues providing adult entertainment to take steps to ensure that children are not admitted, and that they do not witness the entertainment or unsuitable advertisements for it.
- 3.30 The policy also requires premises showing films to include measures to prevent children viewing films except in accordance with the categories set out by the British Board of Film Classification.

4 Consultation Arrangements

- 4.1 The consultation arrangements are set out at the start of the draft policy. The Council is required to consult the Police and Fire Service, representatives of existing licences, and representatives of local residents and businesses. Letters have been sent to all existing licensees, parish councils, known residents associations, and chambers of commerce.
- 4.2 Following approval of the draft policy by this Committee, the policy will be published as a consultation draft, and sent to the Police, Fire Service, and those who specifically request a copy. It will also be made available on the website.
- 4.3 The consultation period will run until 15 November 2004, after which the responses will be collated and a report presented to the Committee on 14 December, for consideration. As the Policy must be adopted by the Council, all Members will be encouraged to attend this meeting, so that a final version can be presented for adoption to Council at its meeting of 5 January 2005.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

- 5.1 The Licensing Policy relates to the Key Priorities of Economic Prosperity and Cultural and Leisure Opportunities, and the drawing together of partnership resources in the community to address residents' needs.

6 RESOURCE IMPLICATIONS:

- 6.1 Provision of £60,000 has been made in the Licensing budget to cover the additional costs implementing the new licensing system, and the costs of the consultation exercise will be met from this budget.

BACKGROUND DOCUMENTS:

Guidance on Licensing Act 2003

APPENDICES:

Appendix 1 – draft Licensing Policy