

Decision Maker: General Purposes and Licensing Committee

Date: 7 April 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: REVISION TO LICENSING POLICY 2008 - 2011 -
ENFORCEMENT.
RESULTS OF PUBLIC CONSULTATION

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Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

To report the results of public consultation on the revised wording for the enforcement section of the Licensing Policy 2008 - 2011 as agreed by Members on 2 November 2009.

To consider the need for further amendments to the proposed wording in light of the consultation exercise and agree the final version to be adopted by Council on 28 June 2010.

105 Responses were received – 89 in support, 3 against and 13 neutral

Appendix A - Respondents Comments

Appendix B – Enforcement section wording as agreed by Members on the 2 November 2009

2. **RECOMMENDATION(S)**

Members are asked to

1. Consider the results of the public consultation exercise and whether further amendments are required to the proposed enforcement section of the Licensing Policy.

2. Agree a final version of the enforcement policy for approval by Council at the meeting on 28 June 2010

Corporate Policy

1. Policy Status: Existing policy. Statement of Licensing Policy 2008 - 2011
 2. BBB Priority: Safer Bromley.
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Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Clive Davison / Public Protection
 4. Total current budget for this head: £3.5 m
 5. Source of funding: Existing Revenue Budgets
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Staff

1. Number of staff (current and additional): 62 (Licensing Service 8)
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory requirement. The Licensing Authority must adopt a statement of licensing policy and review it from time to time. Public consultation is required before the policy can be revised
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Over 800 licenced premises.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

Members agreed a draft revision to the enforcement section of the Licensing Policy at the meeting on 2 November 2009 and that it should be subject to a period of public consultation. That period concluded on 26 February 2010.

The proposals were sent to

1. All known licence holders
2. Known Residents Associations
3. Responsible Authorities
4. Ward Members

Approximately 900 people were consulted and 105 responses were received.

- 89 respondents supported the proposed enforcement section (71 businesses, 13 Residents/ Associations and 5 Councillors)
- 3 respondents were against it (all licensed businesses) and
- 13 were neutral (12 licensed businesses, 1 residents association)

Where comments were made by respondents these are included in Appendix 1.

The revised wording as agreed by Members on 2 November 2009 is set out in Appendix 2.

In light of the comments in Appendix 1, Members are asked if they wish to make any further alterations to the enforcement section of the Policy before referring it to Full Council for adoption on 12 May 2010.

4. POLICY IMPLICATIONS

The Council is required to have a Statement of Licensing Policy and to keep it under review and make alterations as appropriate. Public consultation is required before making any changes. The Policy must be approved by Full Council.

5. LEGAL IMPLICATIONS

See Policy implications

Non-Applicable Sections:	FINANCIAL IMPLICATIONS PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	Statement of Licensing Policy 2008 – 2011, Report to GP&L 2 November 2009 ES 09139 & Consultation responses,

Responses in support of the draft wording			
Number	Respondent Group	Verbatim Comments	Officer Response (If appropriate)
1	Club	Happy to provide any information or help. Drink driving laws have changed the drinking habits of members. Those that drink, walk to the club.	Comments not really relevant to the enforcement section of the Councils Licensing Policy
2	Residents Association	We fully support the Licensing Authority Officers in adopting a zero tolerance to offences and breach of licence conditions	
3	Residents Association	Members were fully supportive of the amendments at a recent meeting	
4	Resident	The use of the word 'substantial ' next to 'risk' will allow legal representatives for licensed premises to argue that although there might be a 'risk' it is not substantial enough to qualify. It could be that very few things would qualify as 'substantial risk'	Substantial Risk relates to breaches of licence conditions where formal action would be appropriate, if the risk were not substantial informal action would be more appropriate. The inclusion of Substantial is designed to ensure a proportional approach
5	Club	One would think that breaches of clauses 3, 4, 6,7 & 8 would lead to an immediate removal of a licence. Items 1 & 2 similarly. – 'persistent' is the key word. Item 5 is sometimes a little more difficult. Certainly 'disorderly conduct' should never be tolerated – but sometimes it is hard to stop	The most immediate action to secure the removal of a licence is by 'Review'
6	Club	As a licensee we have a duty to maintain high standards and I agree with your proposals	
7	Resident	From time to time we clear discarded beer bottles from the nature strip fronting our homes	Comments not really relevant to the enforcement section of the Councils Licensing Policy

8	Councillor	I particularly agree with the new proposed policy on selling to underage customers and delivering alcohol to children	
9	Retail shop	I agree, however you need to consider the circumstances (of the) business. Abuse, threatening behaviour we as shop keepers go through on a daily basis and the lack of support from the authorities. There is no penalty for underage persons who drink and smoke on the streets. Why cant the authorities start punishing them too who obtain cigarettes alcohol through other willing adults	Officers will arrange to visit this trader to discuss his / her concerns
10	Licensed Premises	Are not these amendments already covered by the 2003 Act? If so, isn't this a waste of tax payers time and money? If not why has it taken seven years to realise this?	Items 1 – 8 in the draft enforcement section are offences. The policy sets out how we will approach these type of matters consistently
11	Late Night food shop	I agree with the amendments after all it is to the benefit of the shopkeeper and also the public using these premises	
Responses against the draft wording			
1	Licensed Premises	I would like to see more help for those who need the law on their side and having more change and confusion. Already have a lot to do to survive the recession	Officers will arrange to visit this trader to discuss his / her concerns The enforcement section only has any bearing on a business if they are not complying with the Act or licence conditions. Officers are always available to offer help if contacted
2	Licensed Premises	We think that the whole idea of licensing is a waste of time and waste of money	No Comment
3	Club	I believe that the law as it stands is sufficient to carry out the requirements of the Act i believe regulations should always be left to a minimum – the licensing trade have already enough rules	The enforcement section only has any bearing on a business if they are not complying with the Act or licence conditions.

		and regulations to content with	This amendment to a statutory policy does not impose any addition requirements of any businesses
Neutral Responses			
1	Residents Association	Have spoken to local road Steward, local residents aware and appear to have no objections or problems with this establishment	Comments not really relevant to the enforcement section of the Councils Licensing Policy
2	Late Night food shop	We do not sell any alcohol from our premises	Premises still licensed under the Act as a Late Night Refreshment

Draft wording for Enforcement Section of Licensing Policy as agreed by Members on 2 November for consultation

Variation from existing policy is shown in bold italic and underline

Draft Enforcement Section for Statement of Licensing Policy

Once licensed, it is essential that premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the 2003 Act. **We will support businesses to comply with the law but view offences and breaches of licence conditions seriously.**

The Licensing Authority will make arrangements to monitor premises and take appropriate enforcement action to ensure this. The Licensing Authority will work closely with the Police to establish protocols to ensure an efficient deployment of Police and Licensing Officers engaged in enforcing licensing law and inspecting licensed premises, in order to ensure that High-risk premises receive the highest priority.

The enforcement action will be:

- Targeted toward those premises presenting the highest risk
- Proportional, to the nature and seriousness of the risk those premises present
- Consistent, so that we take similar approaches in similar situations
- Transparent, so those who are subject to enforcement action know what to expect
- Accountable, so that we take responsibility for our actions.

The Licensing Authority has instructed its officers to adopt a zero tolerance approach to offences and **breaches of licence conditions**. In practice this means that licensing officers will investigate all complaints alleging breaches of the Act or licence conditions and act on all sources of reliable intelligence (including local residents and businesses) with a view to establishing if offences have been committed.

Such matters may include:

- Unauthorised licensable activities or breach of licence conditions
- Allowing disorderly conduct on licensed premises
- Sale of alcohol to children and the consumption of alcohol by children
- Sale of alcohol to a person who is drunk

Where licensing officers have such evidence they have a range of enforcement options including:

- Offering advice /guidance (verbal or written)
- Informal written warnings
- Formal cautions
- Prosecutions
- Review of Premises Licences where there are problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm
- Closure of premises that are experiencing disorder or causing a nuisance.

The Licensing Authority encourages a graduated approach to enforcement as set out in the Environmental Health & Trading Standards generic enforcement policy however in the cases of offences relating to :-

1. The deliberate and persistent provision of unlicensed activities especially the sale of alcohol
2. The breach of licensing conditions resulting in substantial risk to the promotion of the licensing objectives(crime and disorder, public safety, public nuisance or protection of children from harm)
3. Persistent underage sales
4. The use of licensed premises in connection with organised criminal activity
5. Allowing disorderly conduct on licensed premises
6. Delivering alcohol to children
7. Allowing the sale of alcohol to children
8. Sending a child to obtain alcohol

It is the expectation that Formal Action (including Fixed Penalty Notices, Formal Cautions, Reviews and / or Prosecution) will be the preferred approach.

Where Members of the Licensing sub-committee are required to hear an application to 'Review' a licence they will be guided by the decision of the High Court in *Bassetlaw District Council v Worksop Magistrates Court 2008 EWHC 3530 (Admin)*, that deterrence is an appropriate consideration when dealing with Reviews where that has been activity in connection with criminal activity.