

# TAUNTON DEANE BOROUGH COUNCIL

## LICENSING COMMITTEE

16<sup>th</sup> January 2006

### REVIEW OF LICENSING ACT 2003 IMPLEMENTATION.

(This matter is the responsibility of Executive Councillor Edwards)

### JOINT REPORT OF CHIEF ENVIRONMENTAL HEALTH OFFICER, LICENSING MANAGER and CHIEF SOLICITOR

#### 1. PURPOSE

- 1.1 The purpose of this report is to review the implementation of the Licensing Act 2003 by Taunton Deane Borough Council, and to raise lessons learnt from the events of 2005 with a view to further improving the administration of the Licensing Act 2003 by the Council.

#### 2. EXECUTIVE SUMMARY

The implementation of the Licensing Act 2003 by Taunton Deane Borough Council over the last year has generally been successful. The Council has performed well in many areas of the transitional activities receiving national recognition and praise for some aspects of this work. However some issues have been identified where the service can continue to improve. With the transitional work completed there are a range of tasks and responsibilities that arise from the Licensing Act 2003 that will continue to engage officers and members alike.

#### 3. BACKGROUND

- 3.1 The Licensing Act 2003 introduced a fundamental change in the way premises and activities are regulated. The Act transferred the responsibility for alcohol related licensing from the local justices to the local authority. The Act is deregulatory in nature and seeks to implement a new alcohol and entertainment culture by relaxing previous restrictions on these activities. Protection of local communities is afforded by pursuance of the four licensing objectives, which underpin local authority considerations in implementing the new regime.
- 3.2 The Council published a Licensing Policy following an extensive consultation process, on 14<sup>th</sup> December 2004. The policy outlines the Council's position on how it will determine all applications to supply alcohol, provide regulated entertainment and operate late night refreshment. It seeks to provide assistance and clarity to applicants, interested parties and responsible authorities at a local level, incorporating the fundamental principles of the Act and associated guidance.
- 3.3 Since the creation of the Licensing policy in late 2004, the transitional period from the old to new arrangements has taken place. In addition, the second appointed day in November 2005 has now passed, which resulted in all new licenses going live and the new legislation coming fully into force.

- 3.4 During 2005 the Council has undertaken a massive task in implementing the Licensing Act 2003. The activity has primarily fallen to the Licensing Unit within Environmental Health, but with significant support from Legal Services and Member Services and of course significant contributions from members. Most of this transitional work is now completed, so it is appropriate to review this activity, take stock and consider issues that might arise in the future from these new responsibilities.

#### **4. LOCAL PUBLICITY**

- 4.1 Following the issue of the licensing policy there was a need to publicise the change in the legislation to local traders. The transitional period started with the first Appointed Day in February 2005. All applications to convert existing licences to the new regime needed to be submitted by the 6<sup>th</sup> August 2005.
- 4.2 It was important to ensure that the highest possible level of conversion applications were received before the deadline. This was to avoid the potential for many premises to have to cease trading if conversions were not made correctly, resulting in a significant enforcement issue for the Council and local Police. In addition it was desirable to encourage a reasonable spread of conversion applications through the six-month period to avoid a significant peak in administration, if all applicants left making their applications until the last minute.
- 4.3 Extensive efforts were made to communicate with the local trade. Information was available on the Council's website, letters were sent to known premises, workshops were undertaken in the Council offices on the new arrangements including surgeries where applicants could talk through their specific application with a licensing officer. Visits were also undertaken to premises where requested to discuss applications, and visits were also undertaken proactively to some types of premises, for example takeaway food outlets, that had not been subject to licensing previously and may therefore have been unaware of the changes.
- 4.4 In addition, the local media was used extensively with the assistance of the Council's Public Relations Officer to regularly raise the issue on local TV, radio and especially local newspapers.
- 4.5 This approach was very successful, at the end of the transitional period the Council had received 95% of the premises licence applications that it was anticipating. This figure was later confirmed by the Department for Culture, Media and Sport as the highest level of applications in the country.
- 4.6 Throughout the transitional period the Council's website was continually refined and utilised by applicants. In particular the addition of sample completed application forms was particularly well received. This work culminated in Taunton Deane Borough Council being specifically praised for its website by the Department for Culture, Media and Sport, who in turn signposted other local authorities to the Council's website as an example of best practice.

## 5. PREMISES LICENSES

- 5.1 To date 406 premises licences have been issued. This number is made up from the following types of business.

Premises Type	Number
Village/Church Halls	37
Schools/Colleges	9
Pubs/Clubs	128
Hotels	14
Off-licences	58
Takeaways/Restaurants/Cafes	77
Sports Venues	26
Club Premises Certificates	19
Other	38
<b>Total</b>	<b>406</b>

- 5.2 Many premises have taken advantage of the opportunity to maximise their trading potential in the new regime by, for example, extending their trading hours. However only 18 premises have been granted 24 hour licences. These 18 premises include 5 off-licences (4 supermarkets and 1 garage), 1 pub and 12 hotels (where trade relates to hotel residents only).
- 5.3 Many premises' applications resulted in concerns being raised in the form of representations either from Interested Parties (usually local residents) or Responsible Authorities. Where these concerns, or in the case of Responsible Authorities suggested conditions, could be resolved by discussion with the applicant, then this route was pursued. If all parties were in agreement the issue could then be included as a condition on the licence, and the licence issued. However, where issues could not be resolved by informal discussion a Licensing Sub Committee was required to determine the application.
- 5.4 To date a Licensing Sub Committee has been convened on 22 occasions to determine premises licence applications. This process has generally worked effectively and has been well received by all participants. Both applicants and interested parties have welcomed the opportunity to voice their respective positions. This in turn has allowed the Sub Committee to make a balanced decision on the basis of presentations made.
- 5.6 The Sub Committee hearings have also demonstrated that three separate Council departments, i.e. Licensing, Legal Services and Member Services can work closely and effectively together and with members to deliver a specific goal.

## 6. LICENSING SUB COMMITTEE DECISION APPEALS.

- 6.1 Following Sub Committee decisions on premises licence applications, six appeal notifications were lodged at Taunton Magistrates Court. Subsequently two of these appeals were withdrawn, two were resolved by reaching a compromise agreement and two cases went to a full hearing in front of the Magistrates.
- 6.2 The Council instructed external solicitors to represent it in connection with these appeals and a Barrister with specific expertise was subsequently appointed. The hearings proceeded with the Council's evidence consisting of submissions from officers of Licensing, Environmental Protection and from the Avon and Somerset Police.

- 6.3 Both cases mostly considered the specific matter of the Councils' decision to impose a last time of entry and/or re-entry of 00.30 hours. Each case was considered in some detail and both resulted in the Council's original decisions being upheld by the court. During one of the hearings the Council was praised for the way it had worked effectively in partnership with Avon and Somerset Police and how it had considered local issues and specific local circumstances when making licensing decisions.

## **7. PERSONAL LICENCES**

- 7.1 The Council has currently issued 493 Personal Licences, which allow persons to sell alcohol in licensed premises.

## **8. LESSONS LEARNT**

- 8.1 The process of implementing the Licensing Act 2003 has been a major challenge for Taunton Deane Borough Council and has on the whole been very successful. However, there are some matters that with hindsight may have been done differently. Some of these matters are worthy of consideration now because even though the vast majority of premises are now licensed, some issues may necessitate amendment of the licensing policy that will impact on any future new premises applications and guide the ongoing reviews of existing licences. Three such issues are described below:

### **1. Noise Conditions**

The Environmental Protection Team within Environmental Health as a Responsible Authority frequently raised concerns in relation to noise arising from a premises. This resulted in officers recommending a suitable condition to limit the potential impact of this noise. Depending on the specific circumstances, one of three different conditions may have been proposed, some incorporating a drawn circle on a plan and some not.

Whilst the reasons for choice of noise condition may have been technically sound, feedback from discussions with applicants and interested parties suggested that this approach was confusing, hard to understand and appeared inconsistent. The Secretary of State's guidance on the Licensing Act 2003 does not recommend the use of standard conditions and encourages licensing authorities to judge each case on its own merits. Therefore it would not be desirable to create a "standard" noise condition. However, where noise conditions are recommended as part of future applications, they should be accompanied by a suitable explanation as to why that specific condition has been used.

### **2. Last Time of Entry/Re-entry**

For many town centre, high volume, alcohol led venues, a condition was imposed that resulted in no entry or re-entry to the premises after 00.30 hours. This condition was imposed following representations from the Police as a part of their approach to reducing crime and disorder. This is achieved by this condition reducing the movement of large numbers of people from venue to venue late at night, having potentially consumed large volumes of alcohol and therefore leading to disorder.

This specific issue resulted in the main concern in the two Magistrates Court Appeal hearings described above. This issue is not specifically dealt with in the Council's Licensing Policy, however on review it may be worthy of inclusion.

### 3. Extending Opening Hours

Paragraph 4.2.5 of the Council's Licensing Policy states:-

*“So as to avoid the need for repeated service of temporary event notices, the Council encourages applicants for premises licences/club premises certificates to include in their operating schedules provision for the following:*

*(1) Extending their operating hours by up to three hours beyond the normal terminal hour on 24 occasions per calendar year.*

*(2) Early opening on special occasions such as sporting events being played outside normal operating hours to a maximum of 12 occasions in a calendar year, with opening to be no more than 30 minutes prior to the start of such an event.”*

Some applications not only took advantage of standard extended hours for late operation to, for example, 3am but then also took advantage of point (1) above and applied for operation extended by a further 3 hours on 24 occasions.

It was not the intention that this provision be used in this way but that this provision would be used by premises that were operating traditional pub hours and could open until 2am, for example, on a limited number of occasions as they were previously able to do by applying for a licence extensions. Again this section of the policy may require review.

## 9. FUTURE ISSUES

9.1 There are a number of issues that are currently being addressed by the Licensing Unit now that the transitional work is completed.

### 1. Enforcement

The Council was previously responsible for around 100 licensed premises comprised of public entertainment, theatres, cinemas and late night refreshment, it is now responsible for over 400 premises, all featuring bespoke conditions. This will require an effective enforcement approach to operating premises. The Licensing Unit has a good record of enforcement, and incorporates a contractual out of office hours commitment from key officers. This capacity is particularly useful to monitor late night venues during their operating times. Visits are already being made to monitor compliance with new conditions, with many visits being undertaken jointly with the Police.

However the primary avenue for concerns from interested parties or responsible authorities to be raised is by one of these parties seeking a review of a licence. Where a review is requested a report will be presented to a specifically convened Licensing Sub Committee on the subsequent investigation undertaken by the Licensing Unit. The Sub Committee is able to amend the licence and associated conditions or

withdraw the licence completely if appropriate. To date there have not been any requests for reviews of licences.

## **2. Public Register**

The Licensing Act 2003 and subordinate Regulations contain extensive requirements for public registers of relevant information. Officers are currently working to provide the information prescribed, that will be available mostly through the Council's website.

## **3. Collection Of Annual Charge For Premises Licences**

A premises licence can be granted for unspecified time frame, that is to say the licence may remain in force without the need for it to be renewed. There is however an annual charge, which is meant to cover the costs of the licensing process. The only method of collecting the annual charge if payment is not forthcoming is by way of a Sundry Debt. The Licence continues to remain in force even if the annual charge is not paid.

## **10. GOVERNMENT SCRUTINY PANEL**

- 10.1 Taunton Deane Borough Council has been asked to be one of only ten local authorities in England and Wales, that will act as Scrutiny Councils to the Government on the progression and effectiveness of the licensing reforms. This initiative will run for the first six months of 2006 and is being led by the Department for Culture, Media and Sport, but will also include the Home Office and Office of the Deputy Prime Minister (ODPM).
- 10.2 The nominated officers for Taunton Deane Borough Council are James Barrah and Jim Hunter who will be working with a policy officer from DCMS to provide a view from local government and seek to make suggestions for amendment of the Licensing Act Guidance and implementation.

The full list of participating council's is a follows:-

- |              |                 |
|--------------|-----------------|
| - Birmingham | - Havering      |
| - Blackpool  | - Manchester    |
| - Brighton   | - Newcastle     |
| - Bristol    | - Nottingham    |
| - Cardiff    | - Taunton Deane |

- 10.3 This initiative is a unique opportunity for a small borough council to influence national policy. It also allows views from all levels of the organisation to be fed back to Government.

## **11 ONGOING ACTIVITY**

- 11.1 The Licensing Committee and more especially its Sub Committees can expect to be involved in deciding any new applications for a premises licences, (where relevant representations are received), along with contentious temporary event notices and in carrying out reviews of premises licences where relevant representations have been received. There will also be the need to determine other licensing matters, such as taxi fares and other contentious licensing matters. We will review the Members training requirements in connection with all these matters

## **12. RECOMMENDATIONS**

- It is recommended that the Committee notes the report and progress made to date with implementation of the Licensing Act 2003 and the licensing reforms.
- The Committee may wish to consider and debate the areas for future work and review identified in the report, and raise any issues that they have experienced during the process so far. It is considered particularly important to raise issues that may warrant an amendment to the Council's Licensing Policy.

### Contact Officers:-

- James Barra, Chief environmental Health Officer. Extension 2460
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- Ian Taylor, Chief Solicitor. Extension 2303