

LICENSING COMMITTEE AGENDA



Wednesday 14 April 2010

at 2.00 p.m.

**in Committee Room B,
Civic Centre, Hartlepool**

MEMBERS: LICENSING COMMITTEE:

Councillors Aiken, S. Akers-Belcher, Atkinson, R W Cook, Fleet, Fleming, Griffin, Hall, Jackson, Laffey, London, McKenna, Morris, Rogan and Tumilty

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 20 January 2010
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Recent Amendments to the Licensing Act 2003 – *Assistant Director, Community Safety and Protection*
 - 4.2 Sex Establishments – *Assistant Director, Community Safety and Protection*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

LICENSING COMMITTEE

MINUTES AND DECISION RECORD

20th January 2010

The meeting commenced at 2.00pm in the Civic Centre, Hartlepool

Present:

Councillor Victor Tumilty (In the Chair)

Councillors: Martyn Aiken, Rob Cook, Mary Fleet, Sheila Griffin, Gerard Hall, Pauline Laffey and Frances London

Officers: Alison Mawson, Assistant Director (Community Safety and Protection)
Tony Macnab, Solicitor
Jo Wilson, Democratic Services Officer

Also Present: Sergeant Alan Ions

17 Apologies for Absence

Apologies were received from Councillors Stephen Akers-Belcher, Reuben Atkinson, Tim Fleming, Peter Jackson and George Morris.

18 Declarations of interest by members

None

19 Confirmation of the minutes of the meeting held on 21st October 2009

The minutes were confirmed as a true record, subject to the addition of Councillors Rob Cook and Pauline Laffey to the list of apologies for absence.

20 Designated Public Places Order – Evidence for Phase 3 *(Director of Regeneration and Neighbourhoods)*

Purpose of report

To provide the Licensing Committee with evidence, on a ward by ward basis, of anti-social drinking and nuisance across the Borough, in order that members could decide on locations to include within the Phase 3 Designated Public Places Order consultation.

Issue(s) for consideration by the Committee

At a meeting of the Licensing Committee on 29th July 2009 Members considered a report and evidence on the possible introduction of a borough wide Designated Public Places Order (DPPO). Officers had highlighted Home Office guidance which stated that DPPOs should only be used in areas that had experienced alcohol related disorder or nuisance. While Borough wide orders were not prohibited the DPPO must be proportionate, only targeting those areas where there is evidence of alcohol related anti-social behaviour. Displacement could also be taken into account and these areas included within the DPPO boundary.

Although at that time a borough wide DPPO had not been supported members had agreed that areas showing evidence of incidents of alcohol fuelled anti-social behaviour would be included in a third DPPO. Evidence of crimes and incidents recorded by the Police during April 2006-March 2009 was duly collated and presented to members on a ward by ward basis. The Neighbourhood Managers for North, Central and South areas had been consulted and their suggestions incorporated into the proposed boundaries. Members were advised that although the King Oswy play area had been agreed for inclusion in the phase 2 DPPO it had been mistakenly omitted from the publicised list of locations and would therefore be included in phase 3.

The Assistant Director informed members that public drinking in residential areas tended to be associated with terraced houses as people with front gardens were unlikely to consume alcohol on the public highway. This had been taken into consideration when determining which areas should be designated. Sergeant Alan Ions highlighted to members that this was not a ban on drinking in public but gave police greater powers to deal with people behaving in an anti-social manner as a result of excess alcohol consumption. Whether or not alcohol was confiscated was a matter for the individual officer on the day. A member commented that a town-wide DPPO was still the best way forward given potential displacement of these problems to areas not currently covered. However Sergeant Ions advised that if a street was not covered by a DPPO there were other powers which police could use covering public order, disorderly conduct and breach of the peace, for example

In terms of a town-wide DPPO a member asked which other towns had introduced these and how this had impacted upon the image of the town as an attractive place to visit. The Assistant Director reported that Brighton, Hull, Portsmouth and Bournemouth had all introduced town-wide DPPOs and had not suffered a negative image as a result.

Members considered the evidence for those locations proposed for inclusion with phase 3 DPPO on a ward by ward basis:

St Hilda

There were no new areas proposed for inclusion. This was supported by

members. There was no ward member available for comment.

Brus

Members had previously noted the mistaken omission of King Oswy Play Area from phase 2 as agreed by members. It was agreed that this would be included in phase 3. The Neighbourhood Manager had also suggested that the area of open space adjacent to St John Vianny School and Gilberti Place/King Oswy Drive be included. There was some uncertainty as to whether this was public land or privately owned. The Assistant Director to clarify this.

Hart

There were no new areas proposed for inclusion. Members supported this, however the ward member indicated he would be unable to support this as he would prefer to see a town-wide DPPO introduced.

Dyke House

The following areas had been recommended for inclusion by the Neighbourhood Manager:

- Avondale Gardens
- Parton Street
- Wharton Terrace

The Ward member asked that Raby Gardens and associated streets and open land off Raby Gardens also be included. This was supported by members pending receipt of evidence.

Throston

The inclusion of Everett Street was recommended. This was supported by members. There were no ward members in attendance.

Burn Valley Ward

The following areas were recommended for inclusion:

- Oxford Road (Caledonian Road to Dorset Street)
- Baden Street
- Brinkburn Road
- Kimberley Street
- Colenso Street
- Rydal Street
- Keswick Street
- Grasmere Street
- Thirlmere Street
- Ellison Street

Members supported these proposals however the Ward member indicated he would prefer to see all the side streets off Elwick Road included due to possible displacement. This was felt to be supportive of a town-wide DPPO as there was a possibility of displacement anywhere in the borough. Members asked that the following be added to phase 3 for Burn Valley:

- Burn Valley Road
- Bangor Street
- Powell Street
- Leyburn Street
- Alston Street
- Penrhyn Street

Foggy Furze

The following areas were recommended for inclusion:

- Stockton Road (Bum Road to Stratford Road)
- Melrose Street
- Wolviston Road
- Barton Avenue
- Borrowdale Street
- Patterdale Street
- Wensleydale Street
- Kathleen Street
- Worcester Gardens
- Kent Avenue
- Hereford Street
- Sydenham Road
- Kendal Road

Members supported the recommendations. It was highlighted that a number of these locations were in various stages of demolition however members felt that boarded up areas were also susceptible to anti-social behaviour. The Solicitor indicated that streets must be named in a DPPO to allow police to take action. If street names changed in the future their status on the DPPO would need to be revisited.

Rift House

Officers were recommending Waverley Terrace and Kipling Road for inclusion. This was supported by members who asked that Wordsworth Avenue and Burns Avenue also be included. Officers highlighted that Summerhill had been considered but residents would be less affected by anti-social behaviour there so it had not been included. There were no ward members in attendance.

Park

There were no new areas proposed for inclusion. This was supported by members. The ward member queried whether Tunstall Court could be

included but was advised that it could not as this was privately owned land

Elwick

There were no new areas proposed for inclusion. This was supported by members. The ward member was not in attendance.

Grange

There were no new areas proposed for inclusion. This was supported by members.

Stranton

Officers were recommending the inclusion of all streets and public spaces within Stranton Ward to west of the railway line. It was felt that Navigation Point could also be included despite its being privately owned as there was public access to it and an open invitation to public use. However Mandale would need to be heavily consulted. Members supported the recommendations. The Assistant Director suggested that given the large amount of consultation that would be involved in Stranton ward this be undertaken separately from all other wards as phase 4. This was supported by members. There were no ward members in attendance

Greatham

There were no new areas proposed for inclusion. This was supported by members. The Neighbourhood Manager had raised concerns with anti-social behaviour on school land. The Solicitor suggested that Estates be approached to clarify who owned the land and whether the Council would have a legal right to designate a DPPO. The ward member was not in attendance

Fens

There were no new areas proposed for inclusion. This was supported by members. There were no ward members in attendance

Seaton

There were no new areas proposed for inclusion. This was supported by members. There were no ward members in attendance

Owton

Officers were recommending the inclusion of Wynyard Mews. Members supported this but asked that Wynyard Road also be included as far as Fordyce Road. There were no ward members in attendance.

Rossmere

There were no new areas proposed for inclusion. This was supported by members. There were no ward members in attendance

Interested parties, including police, Parish Councils and residents, would be consulted on the draft list and the results brought back to a future Licensing Committee. Members queried whether ward councillors could be approached prior to the official consultation for any additions to the list. The Assistant Director reported that they would be consulted as part of the normal process and to engage in further consultation out with this would necessitate the draft list being brought back to committee for agreement prior to consultation. The Solicitor reminded members that they had been appointed to make decisions on licensing matters on behalf of the council as a whole. Members suggested that rather than delay the process further any amendments proposed by ward councillors be included as future phases.

Decision

That the following locations be included in the consultation process for Phase 3 Designated Public Places Order:

- King Oswy Play Area
- Avondale Gardens
- Parton Street
- Wharton Terrace
- Raby Gardens
- Jesmond Square
- Raby Square
- Challoner Square
- Chatham Square
- Chatham Gardens
- The Copse
- Everett Street
- Oxford Road (Caledonian Street to Dorset Street)
- Baden Street
- Brinkburn Street
- Kimberley Street
- Colenso Street
- Rydal Street
- Keswick Street
- Grasmere Street
- Thirlmere Street
- Ellison Street
- Burn Valley Road
- Bangor Street
- Powell Street
- Leyburn Street
- Alston Street

- Penrhyn Street
- Stockton Road (Bum Road to Stratford Road)
- Melrose Street
- Wolviston Road
- Barton Avenue
- Borrowdale Street
- Patterdale Street
- Patterdale Street
- Wensleydale Street
- Kathleen Street
- Worcester Gardens
- Kent Avenue
- Hereford Street
- Sydenham Road
- Kendal Road
- Waverley Terrace
- Kipling Road
- Wordsworth Avenue
- Burns Avenue
- Wynyard Mews
- Wynyard Road (up to Fordyce Road)
- Fordyce Road

That the following locations be included in the consultation process for Phase 4 Designated Public Places Order:

- All streets and public spaces within Stranton Ward to west of the railway line
- Navigation Point

21 Any other items which the Chairman considers are urgent

Middlesbrough Council Licensing

The Chair highlighted a report produced by Middlesbrough Council's Licensing Department detailing recent licensing prosecutions. He felt this was something HBC should also be producing.

22 Local Government (Access to Information) (Variation Order) 2006

Under Section 100(A) (4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraphs referred to below of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access

to Information) (Variation) Order 2006.

Minute 23 – Any other exempt items which the chairman considers are urgent (Para 3 - namely, information relating to the financial or business affairs of any particular person (including the authority holding that information (para 3)

23. Any Other Items which the Chairman considers are urgent

Previously Licensing Committee Members had requested officers schedule a meeting with representatives of the Magistrates Court in order to discuss recent examples of sub-committee decisions which had overturned or reduced by Magistrates on appeal. A meeting had duly taken place involving the Chair, Vice-Chair, representatives from licensing and legal and Magistrates. Details of this had been reported back to the previous Licensing Committee meeting however members had further questions relating to this meeting. More detailed information is provided in the closed section of the minutes.

The meeting concluded at 4.15pm

CHAIRMAN

Report of: Assistant Director, Community Safety & Protection

Subject: RECENT AMENDMENTS TO THE LICENSING ACT 2003

1. PURPOSE OF REPORT

- 1.1 To inform Members of recent amendments to the Licensing Act 2003.
- 1.2 To seek approval for the delegation of some minor licensing functions to officers.

2. BACKGROUND

- 2.1 The Licensing Act 2003 was implemented in 2005 and transferred the responsibility for alcohol and entertainment licensing from Magistrates Courts to local authorities.
- 2.2 As a response to national concerns about alcohol misuse and a recognition that some licensing processes were not functioning as well as they should, a number of amendments to the Act have been introduced.
- 2.3 **Mandatory Conditions**

The Act requires that a number of mandatory conditions be added to a premises licence where that licence authorises certain activities. For example, a licence that authorises the sale of alcohol must contain a mandatory condition that requires there to be a Designated Premises Supervisor and that all sales of alcohol must be authorised by a personal licence holder. Failure to comply with a mandatory condition is a criminal offence.

- 2.4 Due to ongoing concerns about alcohol misuse, and its impact on both individuals and society, a number of new mandatory conditions are to be introduced and will apply to all new and existing premises licences. The new conditions are: -

From 6th April 2010

- i) **A ban on irresponsible drinks promotions in on-licensed premises.** Irresponsible promotions are defined as anything carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public

safety, public nuisance, or harm to children. Examples of such activity include: -

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

ii) **A ban on the dispensing of drinks directly into the mouth of another person.**

iii) **A requirement for free tap water to be available to customers on request where it is reasonably available.**

From 1st October 2010

i) **A requirement for premises that sell alcohol to have an age verification policy.** This will require a premises licence holder to have a policy in place that requires anyone who appears to be under 18 to provide a recognised proof of age before an age restricted product can be supplied to them.

- ii) **Beer, cider, spirits and wine must be available to consumers in smaller measures** (half pint for beer/cider, 25 or 35ml for gin, rum, vodka and whisky and 125ml for wine).

2.5 **Enhanced Role for Councillors**

- 2.6 The Licensing Act provides for two key groups that have important roles to play in the context of licence applications and reviews. The first of these are Responsible Authorities such as the Police, Fire Authority, Trading Standards and other similar agencies. The second group – ‘Interested Parties’ – are the individuals or businesses that are located within the vicinity of the premises being licensed.
- 2.7 Previously, elected Members had only been recognised as an Interested Party if they themselves either lived or worked in the vicinity of the premises or had been specifically asked to represent other Interested Parties who lived or worked in that area.
- 2.8 A recent change to the Licensing Act has enhanced the role of all local councillors who may now make representations in their own right if they have concerns about *any* premises regardless of whether they live or work in the vicinity of the premises. Representations must still relate to the licensing objectives but it would now be possible for a councillor in any area of the town to object to a licence application if they believe it would have an impact in their constituency.

2.9 **Minor Variations to Premises Licences**

- 2.10 Premises licences may be varied at any time through the process of an application that involves consultation with all Responsible Authorities and the publication of an advertisement in a local newspaper. If there are no objections the variation must be approved. If there are objections, the matter is brought to a licensing sub-committee for consideration.
- 2.11 The Licensing Act has recently been amended to allow for a simplified process for ‘minor variations’ that will not impact adversely on the licensing objectives. Examples include minor changes to the structure or layout of the premises, small adjustments to licensing hours, the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions and the addition of certain licensable activities.
- 2.12 Under the simplified process the applicant is not required to advertise the variation in a newspaper or inform all Responsible Authorities.
- 2.13 The new minor variation procedure cannot be used for any variation that would extend licensing hours for the sale of alcohol between 2300 and 0700 hours or to increase the total amount of time that alcohol may be supplied.
- 2.14 In all other cases it will be for the licensing authority to determine whether an application is suitable to be processed as a minor variation and it may consult

with one or more Responsible Authorities in making its determination. If it is considered that granting the application would have an adverse impact on the licensing objectives it can be rejected and a full variation application would be required.

- 2.15 There is no provision for a formal licensing hearing to consider the merits of a minor variation application and, in all cases, a decision must be reached within 15 days of application.
- 2.16 The Government has recommended that decisions on minor variations should be delegated to officers.

3. ISSUES

3.1 Minor Variations

- 3.2 The Licensing Act has been in place for approximately five years and during this time a number of individual licence conditions have become irrelevant or outdated. In other cases additional conditions have been identified as desirable that cannot be placed onto a licence without the need to go through an expensive full variation procedure.
- 3.3 As the minor variation process will only be used to process applications that will not adversely impact on the promotion of the licensing objectives it is recommended that all functions related to this process be delegated to the Public Protection Manager.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.
- 4.2 That Members approve the delegation of all functions relating to minor licence variations to the Public Protection Manager.

Report of: Assistant Director, Community Safety & Protection

Subject: SEX ESTABLISHMENTS

1. PURPOSE OF REPORT

- 1.1 To inform Members of recent changes to the licensing of premises that offer live adult entertainment.

2. BACKGROUND

- 2.1 The provision of live adult entertainment from venues such as lap dancing and strip clubs is classified by the Licensing Act 2003 as a 'performance of dance' and, as such, must be licensed via that Act.
- 2.2 As a result, local authorities have no control over how such premises operate other than to impose licence conditions that have been agreed or requested by a Responsible Authority such as the Police. The provision of conditions must relate specifically to the promotion of one or more of the Act's licensing objectives.
- 2.3 There is no provision in the Licensing Act for a licensing authority to adopt a policy to prevent licences for such premises from being granted.
- 2.4 In 2008 a private members bill received Government support and, as of 6th April 2010, premises that offer live sexual performances for the entertainment of an audience will fall under a new licensing regime.
- 2.5 The new licensing controls have been introduced via the Policing and Crime Act 2009 which has added a new classification of premises – a Sexual Entertainment Venue - to the Local Government (Miscellaneous Provisions) Act 1982.
- 2.6 A Sexual Entertainment Venue is defined as a premises that offers the live display of nudity, directly or indirectly for the financial gain of the organiser, and solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.7 The following categories of entertainment are likely to be covered by the new controls: -
- a) Lap Dancing
 - b) Pole Dancing
 - c) Table Dancing

- d) Strip Shows
- e) Peep Shows
- f) Live Sex Shows

2.8 Licences may be refused on either mandatory or discretionary grounds.

2.9 Mandatory grounds are: -

- a) The applicant is under 18
- b) The applicant has been disqualified following a previous licence revocation
- c) Non-UK residence
- d) There has been a previous refusal at the premises

2.10 Discretionary grounds are: -

- a) The applicant is considered unsuitable
- b) The business would be for the benefit of a third party who would be refused a licence
- c) The number of sex establishments in locality equals or exceeds the number considered appropriate
- d) Granting a licence would be inappropriate having regard to: -
 - Character of locality
 - Use of premises in the vicinity
 - Layout, character, condition or location of premises

2.11 The duration of licences is a maximum of 12 months and there is provision for revocation.

2.12 It is possible to adopt a policy that states no Sex Entertainment Venue licences would be granted in Hartlepool.

2.13 Hartlepool currently has one premises that would require a Sex Entertainment Venue Licence – the 'Little Black Book' in Tower Street is a lap dancing club.

3. ISSUES

3.1 In order for the new licensing controls to take effect in Hartlepool the amended parts of the Local Government (Miscellaneous Provisions) Act 1982 must be formally adopted by full Council.

3.2 In addition to this it will also be necessary to adopt a licensing policy to:-

- Set out its approach, for the benefit of operators
- Guide and re-assure the public and other public authorities
- Ensure transparency
- Ensure consistency
- Guide and focus its committees.

- 3.3 It is proposed that a draft policy be prepared and consulted upon with a view to it being brought back to the Licensing Committee at a future date for consideration and recommendation to full Council.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.
- 4.2 That Members approve the preparation of a draft licensing policy for Sex Establishment Venues.