

**MINUTES OF A MEETING OF THE  
LICENSING AND APPEALS COMMITTEE  
HELD ON THURSDAY 3 JUNE 2010 FROM 7PM TO 7.45PM**

*Present:- Barrie Patman (Chairman), Chris Bowring (Vice Chairman), Mike Gore, Kate Haines, Kirsten Miller, Sam Rahmouni, Chris Singleton, Malcolm Storry, Dee Tomlin and Bob Wyatt*

*Also present:-*

*Julia O'Brien – Principal Environmental Health Officer (Licensing)  
Steve Richardson – Health and Protection Manager  
Madeleine Shopland – Senior Democratic Services Officer*

**PART I**

**5. MINUTES**

The Minutes of the meetings of the Committee held on 7 April and 20 May 2010 were confirmed as a correct record and signed by the Chairman.

The resolution of Item 47 of the minutes of the meeting held 7 April was clarified. It was also noted that Councillor Miall's name had been misspelt in the minutes of the meeting of 20 May.

**6. APOLOGIES**

Apologies for absence were received from Councillors Gilder, Helliard-Symons and Miall.

**7. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**8. PUBLIC QUESTION TIME**

There were no public questions.

**9. MEMBER QUESTION TIME**

There were no Member questions.

**10. LICENSING ACT 2003 – POLICY REVIEW**

The Health and Protection Manager presented the draft Licensing Act 2003 – Policy Review.

During the discussion of this item the following points were made:

- The Council was required to review its Licensing Policy at least every 3 years. It could however choose to review the policy after a shorter period of time.
- The current policy was due to expire in September 2010. The Council was required to consult formally on the policy.
- No adverse consultation responses had been received when the policy had been sent out for consultation 3 years previously.
- Members examined the draft proposed Licensing Policy. It remained unchanged from previous years. The Health and Protection Manager commented that the Enforcement Policy referred to in the document was now called the Corporate Services Enforcement Policy. Also, the scheme of delegation would need to be updated if the Committee delegated decisions relating to minor variation applications and the

removal of the requirement for a Designated Premises Supervisor in certain community premises later in the meeting.

- There had been some discussions regarding whether a Special Policy should be adopted for a specific area of the Borough. However, this was no longer being sought.
- The Committee considered the organisations which the Council was required to consult with. It was noted that there were no bodies which represented personal licence holders based in the borough. A Citizens Panel was consulted as representatives of residents and the Chamber of Commerce was consulted with as representatives of local businesses.
- A Member requested that the format of the policy be improved.
- With regards to the licensing objective Prevention of Public Nuisance, a Member noted that since the Policy was first implemented, premises' hours of operation had generally increased. He questioned whether the prevention of public nuisance was therefore now potentially a greater issue.
- The Committee expressed concern regarding the delegation to officers of all decisions regarding whether a complaint was irrelevant, frivolous or vexatious. The Health and Protection Manager emphasised that this was recommended by the statutory guidance and that whilst such decisions were delegated to him he would not take such decisions lightly. Members commented that should such a situation arise it might be useful for the Health and Protection Manager to consult with ward members who might be able to provide useful local knowledge.

**RESOLVED:-** That the draft policy be sent to the statutory consultees for consultation.

#### **11. MINOR VARIATIONS UNDER THE LICENSING ACT 2003**

The Committee examined a report on Minor Variations under the Licensing Act 2003.

During the discussion of this item the following points were made:

- Government guidance recommended that decisions relating to applications for minor variations be delegated to licensing officers.
- It was noted that the licensing authority must process and determine any applications for minor variations within 15 working days. Representations could be received from Interested Parties within the first 10 working days (determination could therefore not be made during this period). Whilst any representations received needed to be taken into account there was no right to a hearing. The Committee emphasised that it was important that anyone submitting a representation were informed of the final decision and the reasons why it had been reached. Members were assured that a requirement of the Council's Enforcement Concordat was that parties were informed of decisions made and the reasons behind them.
- The Committee noted the 4 main types of minor variation application and variations which could not be made using the minor variation process such as changing the named Designated Premises Supervisor. If it was thought that the variation applied for would impact negatively on the licensing objectives the application should be refused.
- A Member expressed concern regarding the wording of changes which could not be made under the minor variation process.
- The Committee were informed of the administrative process that applications for minor variations would entail.
- The Committee agreed that it would be helpful to be kept informed on a six monthly basis of decisions taken by officers.

**RESOLVED:-** That decisions relating to minor variation applications be delegated to the Principal Environmental Health Officer (Licensing).

**12. REMOVAL OF THE REQUIREMENT FOR A DESIGNATED PREMISES SUPERVISOR IN COMMUNITY PREMISES UNDER THE LICENSING ACT 2003**

Members received a report on the removal of the requirement for a Designated Premises Supervisor in Community Premises under the Licensing Act 2003.

During the discussion of this item the following points were made:

- Government guidance recommended that decisions relating to the removal of the requirement for a Designated Premises Supervisor in certain community premises, be delegated to officers.
- Councils could, in some circumstances, allow certain community premises that had or that were applying for a Premises Licence that authorises the sale of alcohol, to apply that the requirement that there should be a Designated Premises Supervisor be removed and an alternative condition put on the Licence that all sales of alcohol be supervised and authorised by the licence holder (a management committee or board).
- It was noted that the Council as licensing authority must be satisfied that the management committee arrangements were sufficient to ensure the adequate supervision of the supply of alcohol on the premises.
- Members were informed that the Police could object on the grounds of crime and disorder and that any Responsible Authority could seek reinstatement of the conditions through licence review.

**RESOLVED:-** That decisions relating to the removal of the requirement for a Designated Premises Supervisor (DPS) in certain Community Premises applications be delegated to the Principal Environmental Health Officer (Licensing).

*These are the Minutes of a meeting of the Licensing and Appeals Committee*

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**TITLE** Licensing Act 2003 – Policy Review

**FOR CONSIDERATION BY** Licensing and Appeals Committee on 6 September 2010

**WARD** None Specific

**GENERAL MANAGER** Mark Moon – Place and Neighbourhoods

**OUTCOME**

A recommended licensing policy for submission to Council for adoption.

**RECOMMENDATION**

The Licensing and Appeals Committee is recommended to agree that the draft policy attached to this report be put before the Council for adoption.

**SUMMARY OF REPORT**

The Council must have a current licensing policy against which to judge applications. The current policy expires in September 2010. This report sets out the consultation undertaken and introduces a draft policy for recommendation to Council for adoption.

## Background

It is a requirement of the Licensing Act that the licensing authority has a current policy against which to assess applications. A policy under this Act must be reviewed at least every three years. It is a requirement of the mandatory guidance that a consultation exercise be undertaken before the policy is reviewed.

Earlier this year this Committee agreed that the existing policy be used as the consultation draft. The statutory consultees were asked for any comment they may have.

The policy must be adopted by Council before the existing policy expires at the end of its three year term. The original policy was adopted in 2004, and reviewed in 2007 with only minor updating.

### Analysis of Issues

One response was received from the consultation exercise, from the British Board of Film Classification, asking that the mandatory condition relating to film classification be emphasised.

The section on conditions on the final page of the draft policy attached to this report has been amended to reflect this.

In addition there have been minor updating changes, such as the names of departments etc. Beyond that the policy remains unchanged.

The Home Office White Paper (see report elsewhere on this agenda) proposes that the three year requirement to review a policy be removed. A circular from the Home Office has indicated that although this is a proposal, no changes will be made before this round of licensing policy reviews and commending licensing authorities to review their licences on schedule.

<b>Reasons for considering the report in Part 2</b>
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Not applicable
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<b>List of Background Papers</b>
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Amended Guidance issued under section 182 of the Licensing Act 2003 e-mail response from BBFC
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<b>Contact</b> Steve Richardson	<b>Service</b> Place and Neighbourhoods
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<b>Telephone No</b> 0118 974 6378	<b>Email</b>
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steve.richardson@wokingham.gov.uk
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<b>Date</b> 25 August 2010	<b>Version No.</b> One
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# **Wokingham Borough Council**

## **Licensing Policy**

**September 2010**

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# 1

## **The Four Licensing Objectives**

All the Council's actions under the Licensing Act 2003 will be carried out in order to achieve the licensing objectives. Only these matters may be taken into consideration, and no others, when determining a course of action. Each objective is of equal importance.

The four licensing objectives are:-

- 1 The prevention of crime and disorder
- 2 Public safety
- 3 The prevention of public nuisance,  
and
- 4 The protection of children from harm



## **2 Terminology**

Throughout this Policy the following terms are used which are defined in the Licensing Act 2003. For simplicity, abbreviated meanings are given below; although these meanings should not be used as a replacement for the legal definitions:

**Licensable Activity** – One or more of:-

- a) The sale by retail of alcohol
- b) The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- c) The provision of regulated entertainment
- d) The provision of late night refreshment

### **Licence**

A Premises Licence, Club Premises Certificate or a Personal Licence

### **Licensee and Licence Holder**

A person or organisation that holds a Premises Licence, Club Premises Certificate or a Personal Licence.

### **Regulated Entertainment**

Entertainment provided for the public, members of a qualifying club and their guests, or for profit; and being:-

- a) A performance of a play
- b) An exhibition of a film
- c) An indoor sporting event
- d) A boxing or wrestling entertainment
- e) A performance of live music
- f) Any playing of recorded music
- g) A performance of dance
- h) Activities similar to e, f or g above

### **Late Night Refreshment**

The supply to the public of hot food or drink after 23.00 and before 05.00.

### 3 General Considerations

3.1 The Council recognises that licensed activities are an important part of the cultural life in our community and they make an important contribution to the economy of the Borough. By regulating activities under this legislation it acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. A balance must be struck between these, often conflicting, positions and all views will be taken into account when making licensing decisions or determining a course of action.

3.2 This policy relates to the provisions of the Licensing Act 2003 and subordinate legislation made under that Act and nothing in this policy is intended to indicate that the requirement of any other enactment is superseded or duplicated.

3.3 It is the responsibility of the applicant to ensure that they comply with all relevant legislation. Examples of other areas where legislation may apply to licence holders and potential licence holders are:-

- Building Regulations
- Disability Discrimination
- Environmental Protection
- Food Safety
- Health and Safety At Work
- Fire Safety Legislation
- Town and Country Planning
- Working Time Legislation

3.4 It is acknowledged that public concern over disorder in particular may be thought to be a result of licensing legislation only. The council can only have regard to the provisions of the Licensing Act 2003 when determining an application. However the Council also realises that other mechanisms exist to control bad and unlawful behaviour, e.g. planning controls, town centre management arrangements, and Police enforcement powers.

3.5 It is the responsibility of the licence holder to ensure that staff are sufficiently trained to fulfil their duties and to fully comply with the requirements of the licence.

3.6 Under this policy, each application will be considered on its individual merits.

3.7 In imposing conditions to any licence, the Council recognises that the

licensee is only responsible for those matters under the licensee's control and that conditions can only be imposed, as a result of relevant representations. Any conditions set will be proportionate and necessary to secure the licensing objectives.

3.8 The Council recognises the need to encourage and promote live music, dancing and theatre and is aware of the need to avoid measures which deter these activities. To this end the Council, as the Licensing Authority, will consider applications for publicly owned land and buildings, to facilitate their use by performers and entertainers, without the need for them to individually apply for a licence or give a temporary event notice.

3.9 The Council is conscious of Race Relations legislation and when considering licensing matters will give due regard to the elimination of unlawful discrimination, the promotion of equality of opportunity and good relations between persons of different racial groups. In all its work the Council has regard to its race equality scheme.

3.10 For advice on the application of the Licensing Act 2003, or for assistance in determining whether or not an activity requires a licence, please contact the Licensing Team within the Place and Neighbourhoods Service.

Contact details:-

By telephone: 0118 974 6358

By e-mail: [Licensing@wokingham.gov.uk](mailto:Licensing@wokingham.gov.uk)

By fax: 0118 974 6401

By letter: Licensing Service  
Wokingham Borough Council  
PO Box 155  
Shute End  
Wokingham  
Berks RG40 1WW

Website: [www.wokingham.gov.uk](http://www.wokingham.gov.uk)

## **4. Activities Regulated by this Policy**

This Policy sets out the Council's position regarding regulation of activities under the Licensing Act 2003. The following are covered by this Policy:-

### **Premises Licences**

i.e. A premises where one or more of the following takes place:-

- The sale of alcohol by retail
- The provision of regulated entertainment
- The provision of late night refreshment

### **Club Premises Certificates**

i.e. A club premises is a premises which is occupied by and habitually used for the purposes of a club, which has met the criteria to become a 'qualifying club'

### **Permitted Temporary Activities**

i.e. Use of premises for licensable activities for:-

- a period of less than 96 hours, and for
- fewer than 500 persons

### **Personal Licences**

i.e. A licence which authorises an individual to supply alcohol, or authorise the supply of alcohol

## **5 Licensing Objective 1**

### **The Prevention of Crime and Disorder**

5.1 The Council is committed to work in reducing crime and disorder in the Borough and will consider these matters when fulfilling its functions, as required by the Crime and Disorder Act 1998. When applying conditions, the Council will be mindful of the local Community Safety Strategy.

5.2 The Council acknowledges that its duties, under the Licensing Act 2003, are a key way of reducing crime and disorder in the Borough and through this mechanism, will seek to bring about improvements, with particular emphasis on alcohol-related disorder and anti-social behaviour.

5.3 Licence Holders play a key role in the prevention of crime and disorder and will be expected to address these issues in their Operating Schedule.

5.4 The Council encourages the use of Closed Circuit Television (CCTV) surveillance as a deterrent to crime and disorder. The Council may require the installation of a suitable CCTV system to the specification of the Thames Valley Police if it is believed that this will reduce the incidence of crime and disorder.

5.5 The Council encourages the usage of community watch schemes. The active membership of schemes such as 'Pubwatch' and the like, will be seen as an indicator of attempts to reduce crime and disorder.

5.6 When considering new or proposed premises, the Council will expect the building design to be agreed with the Police Prevention & Design Officer and/or Crime Reduction Advisor with a view to 'designing out' crime.

5.7 The Council supports the establishment and implementation of an enforcement protocol, agreed with the Thames Valley Police, for the reduction of crime and disorder associated with any licensed activities.

## **6 Licensing Objective 2**

### **Public Safety**

6.1 The Council is committed to ensuring public safety in licensed premises by working in partnership with the Royal Berkshire Fire and Rescue Service and other responsible authorities.

6.2 Conditions relating to public safety measures may be attached to a

licence in order to meet any requirement identified by the Royal Berkshire Fire and Rescue Service or other responsible authority. These conditions may include an occupancy limit which would enable one or more of the licensing objectives to be met.

6.3 The Council encourages measures to promote anti-drink/driving campaigns.

6.4 Special effects, such as smoke, lasers, or foam may be controlled by the use of conditions.

NB There is an overriding legal duty to comply with the provisions of Health and Safety at Work legislation, including risk-assessment and control.

## **7 Licensing Objective 3**

### **The Prevention of Public Nuisance**

7.1 The Council is committed to minimising the adverse impact of licensable activity, whilst not unduly restricting the reasonable provision of licensed activity. In considering applications the Council will seek to ensure that personal and public amenity are maintained.

7.2 The nuisances which the Council will seek to control are, amongst others:-

- Noise and vibration
- Light
- Odour
- Litter
- Anti-social behaviour
- Unreasonable disturbance from customers arriving and leaving premises
- Impact of customer parking

## **8 Licensing Objective 4**

### **Protection of Children from Harm**

8.1 For the purposes of this Policy, a child is a person who has not yet reached their 18<sup>th</sup> birthday.

8.2 'Harm' is taken to mean activities that may damage the moral, psychological or physical wellbeing of a child. Activities that have the potential to cause harm to children include:-

- Entertainment or services of an adult or sexual nature
- Underage sales or drinking of alcohol
- Drug taking or dealing
- A strong element of gambling
- The consumption of alcohol on a premises where this is the exclusive or primary purpose of the premises
- Tobacco smoking
- Excessive noise
- Particular hazards, such as falls from height

8.3 It is expected that any operating schedule will demonstrate how the licensee will ensure that no harm comes to any child by virtue of the licensable activities. These may include:

- Limiting the hours that children may be present
- Excluding children when particular specified activities are taking place
- Limiting the parts of the premises to which children have access
- Age limitations
- Excluding under 18's from the premises when licensable activities are taking place
- Requiring that an accompanying adult be present
- Arrangements for restricting children from viewing age-restricted films
- Arrangements to ensure that sufficient adult staff are present to ensure that the children are protected from harm

8.4 The Council may impose conditions to ensure that no harm comes to any child by virtue of the licensable activities, although conditions cannot require that children be admitted, this is a matter for the licensee to determine.

8.5 To ensure that a licensee complies with this requirement, the Council encourages the use of 'Proof of Age' schemes.

8.6 The Council commends the work done by the Portman Group and supports the application of their Code of Practice which seeks to control the Naming, Packaging and Promotion of Alcoholic Drinks in a manner which may appeal to or attract minors.

8.7 In respect of Licensing matters the Council, as the Licensing Authority, recognises the Wokingham Safeguarding Children Board as the Responsible Authority in relation to the protection of children.

## **9 Operating Hours**

9.1 The Council recognises that one important aspect of the Licensing Act 2003 provisions, is the abolition of national operating times for premises selling alcohol. The Council is mindful of the view that longer licensing hours for the sale of alcohol will help ensure that the problems arising when large numbers of customers leave premises simultaneously are avoided.

9.2 With regard to shops, stores and supermarkets selling alcohol, the norm will be that they may sell alcohol at any time they are open for trading, unless there are good reasons for restricting those hours.

9.3 The Council will only determine the operating hours of any licensable activity, if there is the belief that by limiting the operating hours, one or more of the Licensing Objectives will be met.

9.4 The licensing hours for each case will be considered on the individual merits of the application.

## **10 Cumulative Impact**

10.1 The Council recognises that the commercial demand for another premises in an area is not a matter for Licensing considerations. This matter is properly a matter for the planning process and the market.

10.2 The Council also recognises that where there are several premises providing licensable activity in the same vicinity, the cumulative impact may have an adverse effect on the community; in particular from nuisance and disorder. Accordingly, the Council may refuse additional applications if it believes that to grant a licence would undermine one or more of the Licensing Objectives, and/or representations have been received from a responsible authority or an interested party. In addition, the Council has to be satisfied that the criteria set out in the legislation are met. Reference to the General Considerations section of this Policy will demonstrate that each application will be considered on its own merits.

10.3 If the Council considers that a 'Special Policy' is needed to deal with the cumulative impact of licensed premises, it will only do so following consultation as specified in the Licensing Act 2003 and following the proper process.

10.4 The Council will expect licensees and potential licensees within an area, to communicate with each other and prepare their Operating Schedules so that they complement each other and collectively meet the Licensing Objectives.



## **11 Licensing and Appeals Committee**

11.1 Arrangements will be made for the Licensing and Appeals Committee to receive information on:-

- Crime Prevention
- Planning Strategies
- Transport Strategies and Plans
- Tourism Strategies
- Race Equality Schemes
- Cultural Strategies
- Employment in the Borough
- Arts Development

11.2 In addition the Licensing and Appeals Committee will provide information to the Planning Committee regarding the situation with licensed premises in the Borough, and in particular alcohol related crime and disorder.

11.3 To avoid duplication and inefficiency, the planning, building control and licensing regimes will be properly separated. It is expected that planning consent for a particular undertaking would normally be received prior to consideration of a licence application.

## 12 Licensing Decisions

12.1 The Council will seek to carry out its responsibilities under the Licensing Act 2003 speedily, efficiently and cost-effectively. To do this, functions are delegated from the Licensing and Appeals Committee to either Sub-Committees or officers, as appropriate. Licensing decisions will be delegated in the following manner, however the definitive delegations are included within the Council's Scheme of Delegations which can be found on the Council's website – [www.wokingham.gov.uk](http://www.wokingham.gov.uk):

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Policy Decisions	All cases		
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

## **13 Licensing Conditions**

13.1 Many licences are issued subject to conditions. These conditions are applied to a licence to ensure that one or more of the Licensing Objectives are met. The conditions applied to a licence will relate to that particular licence and will not be simply a standard set of conditions.

13.2 The Council will apply conditions following the guidance issued by the Secretary of State in addition to the mandatory conditions as laid down in the legislation and associated guidance. Notwithstanding this, other conditions may also be applied to specific licences.

13.3 It must however be noted that the attachment of conditions, or the compliance with them, will not relieve anyone of their statutory duties under other legislation, see section 3 – General Considerations.

## **14 Enforcement**

14.1 Enforcement by the Council will be in accordance with the Corporate Services Enforcement Policy and in compliance with the National Enforcement Concordat.

14.2 The Corporate Services Enforcement Policy is available at the Council offices and can be found on the Council's website at [www.wokingham.gov.uk](http://www.wokingham.gov.uk)

14.3 The Enforcement Concordat is based on the principles that businesses should:

- Receive clear explanations from enforcers on what they need to do and by when;
- Have opportunities to resolve differences before enforcement action is taken – unless immediate action is needed;
- Receive an explanation of their rights of appeal.

## **15 Policy Review**

15.1 The Council's Statement of Licensing Policy will be published every three years.

15.2 During this period, the Policy will be kept under review and the Council may make such revisions as it considers appropriate. The Policy, complete with revisions, may be viewed on the Council's website [www.wokingham.gov.uk](http://www.wokingham.gov.uk) , and is available at the Council's offices.

<b>TITLE</b>	<b>Consultation Response on the Home Office White Paper on Licensing 'REBALANCING THE LICENSING ACT'</b>
<b>FOR CONSIDERATION BY</b>	Licensing and Appeals Committee on 6 September 2010
<b>WARD</b>	None specific
<b>GENERAL MANAGER</b>	Mark Moon – Place and Neighbourhoods

**OUTCOME**

A consultation response to the Home Office giving the Council's view on the proposed changes to licensing legislation and guidance identified in the White paper issued on 28 July 2010.

**RECOMMENDATION**

The Licensing and Appeals Committee are recommended to agree the consultation response attached to this report as an appendix.

**SUMMARY OF REPORT**

A white paper was issued for consultation on 28 July 2010, with a final response date of 8 September. A response has been drafted following informal consultation with Members which is attached as an appendix to this report.

The white paper poses a series of consultation questions and the response is formatted as a series of comments on each point.

The white paper sets out a series of proposals which are designed to give effect to: 'empowering individuals, families and local communities to shape and determine local licensing'.

**Background**

The Licensing Act 2003 is widely perceived to be bureaucratic, costly for local authorities and to have failed in addressing many of the problems of alcohol created crime and disorder.

In the Coalition Agreement the government set out a programme of reform around alcohol licensing to tackle the crime and anti-social behaviour that is associated with binge drinking. This White Paper covers five of the commitments contained in the programme:

- We will overhaul the Licensing Act to give local authorities and the Police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for underage alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.
- We will ban the sale of alcohol below cost price.

## Analysis of Issues

The following is an extract from the White Paper:

The Police are fighting a constant and expensive battle against alcohol fuelled crime and anti-social behaviour. The last 5 years have introduced a new drinking culture in our towns and cities. The promised "café-culture" from 24 hour licences has not materialised, instead in 2009/10 almost one million violent crimes were alcohol-related and 47% of all violent crime was fuelled by alcohol. A fifth of all violent incidents took place in or around a pub or club, and almost two-thirds at night or in the evening. There are 6.6 million alcohol-related attendances at hospital accident and emergency (A&E) per year at a cost of £645 million. In addition, 1.2 million ambulance call outs each year costing £372 million are alcohol related. The total costs of alcohol-related crime and disorder to the taxpayer are estimated to be between £8bn and £13bn.

The majority of people drink responsibly, but not enough has been done to enable local communities to take action against those that don't. It is vital that local communities – the public and their elected representatives – have the powers they need to tackle alcohol-related crime and anti-social behaviour whilst promoting local business and ensuring that those that drink responsibly are not unduly penalised. This challenge has to be achieved within the toughest economic climate for both the public sector and business that has been seen for decades.

In the past few years, legislation through the Licensing Act 2003, Violent Crime Reduction Act 2006 and Policing and Crime Act 2009 has been introduced to try and tackle the harms that arise from the misuse of alcohol. This legislation has not achieved the previous Government's objectives and has simultaneously introduced unnecessary additional burdens and bureaucracy in the system.

<b>Reasons for considering the report in Part 2</b>
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Not applicable
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<b>List of Background Papers</b>
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White paper – Rebalancing the Licensing Act issued 28 July 2010
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<b>Contact</b> Steve Richardson	<b>Service</b> Place and Neighbourhoods
<b>Telephone No</b> 0118 974 6378	<b>Email</b> steve.richardson@wokingham.gov.uk
<b>Date</b> 30 July 2010	<b>Version No.</b> 0.1

## **Draft Response - Wokingham Borough Council**

• **Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?**

Response – The majority of complaints about licensed activities are initially addressed to the licensing service of the Licensing Authority. It has proved difficult for persons to accept that without a formal representation a review cannot be initiated. Interested Parties in particular are concerned about the cost and responsibility of lodging a call for Review, but would be happy to support a Review initiated by another body. This power would also enable a series of minor concerns to be brought together by the Licensing Authority to form a whole, whereas each individual matter may not be thought significant for a Review by the individual parties.

• **Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?**

Response – This reduction would be welcomed. Councillors have an interest in the promotion of the licensing objectives and sometimes feel bound by the parameters set out in the legislation and the requirement for ‘necessity’ to be proven. The ability to consider the local area, not just the premises alone, would definitely be welcomed.

• **Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?**

Response – A statement on the form saying that the Licensing Authority will consider the impact of their activities on the area, and a question asking the applicant how they have considered that issue. An additional question asking how they will coordinate their activities with other licensed premises in the area and details of their contact with other licensees would also help.

• **Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?**

Response – This is generally our practice anyway. The relevant test of accepting matters is whether they are enforceable and reasonable; the same test we apply for any condition.

• **Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?**

Response - In areas which are parished the Licensing Authority should consult with the parish and town councils and they should have the status of Interested Parties. There should be a requirement for Licensing Authorities to publish details of all applications etc on their website.

• **Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?**

Response - This is welcomed. The Licensing members are able to attach appropriate weight to a representation depending on their view of the impact on the interested party.

• **Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?**

Response – The proposal to designate health bodies as Responsible Authorities is welcomed. It will be important to specify which tier of the health service is the Responsible Authority, but in any event clarity over whether a GP could make a specific representation as an Interested Party would be useful. Specific guidance to health bodies would be necessary to clarify their roles and target their responses.

• **Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?**

Response - There is no doubt about the severe negative impact of alcohol abuse on the health of our population and the tools to address this would be welcomed. Guidance would be helpful on how this could be applied to reduce/eliminate premises which are designed to maximise alcohol consumption and binge drinking, e.g. excessively loud music, absence of tables/shelves, and what have become known as 'Vertical Drinking Establishments'.

• **Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?**

Response – We agree with the sentiment that views from the broadest possible spectrum should be welcomed. The organisations listed are agreed, and as set out in Question 5 above, parish and town councils should also be included.

• **Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?**

Response – This seems sensible, however there should be the proviso that the appeal should be considered by different members than those who considered the case initially. If the Licensing Authority reaches the same decision however the appeal can still be heard by the Court. Will this merely mean that the burden on the Licensing Authority increases, and that cases will be heard by the Court anyway? Is this not an increase in bureaucracy rather than a reduction?

• **Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.**

Response – It is accepted that this could lead to fewer spurious appeals, however it will leave the Licensing Authority open to claims for loss of profit. Would an alternative be for a two tier process based on risk assessment, where the authority has the option to apply their decision immediately in cases with higher risk, and deferred for other less pressing matters.

• **Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?**

Response - The residents of our Borough have told us that they do not feel that the Licensing Act extension of hours facility has improved matters in any way, in fact the exact opposite is reported to us. The ability to limit opening hours based on local concerns would be welcomed by this Council. It is likely that were this power to be enacted there would be considerable pressure to shorten opening hours for the majority, if not all of our licensed premises.

• **Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?**

Response – This authority has considered ADZs and reached the opinion that they were not fit for purpose.

• **Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?**

Response – This change would enable the authority to better respond to the wishes of local people who are adversely affected by the activities, and fall-out from licensed premises.

• **Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?**

Response – Whilst agreeing that a levy would go some way to reducing the burden on the public purse of licensed activity, we experience considerable problems related to alcohol induced crime and disorder at times earlier than midnight. The most notable situation in our Borough is activity related to the Henley Regatta where alcohol related crime and disorder starts in the early evening hours. The additional cost of policing and monitoring currently falls on the Responsible Authorities and others. It is considered that all additional costs be the subject of this levy and that the public purse generally should not be drained by these activities. The levy should be capable of audit and should cover the actual increased costs of all agencies, local authority, police, fire and rescue, ambulance, environment agency etc.

Guidance would be helpful indicating which costs can be recovered, e.g. salary, on-costs, support costs etc.

• **Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?**

Response – We agree that those premises which adopt best practice should have a reduced levy, provided that the total cost is recovered. Therefore one reduced levy would result in increased levy for others.

• **Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?**



Response – The levy should cover all additional costs, the local authority and others should only bear the costs they would have borne if the premises were not there/event were not taking place.

• **Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?**

Response – Definitely. The ‘flexibility’ introduced by the Licensing Act has only achieved an extension of hours. Local opinion is that extended hours have caused crime and disorder issues, as well as noise and other disturbance. By giving authorities the ability to set licensing hours appropriate to their area the Council can affect the nature and character of the area and thereby meet residents’ wishes.

• **Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:**

**a. All the responsible authorities can object to a TEN on all of the licensing objectives?**

Response – This approach is sensible and mirrors the other aspects of the legislation and seeks to address all of the licensing objectives.

**b. The police (and other responsible authorities) have five working days to object to a TEN?**

Response – This too is sensible, particularly if other agencies are to be able to make representations as they are not all 24-hour services.

**c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**

Response - Increasing the notification period is sensible, however it is unclear why it should be longer for premises that already hold a premises licence. The opposite could be argued (i.e. shorter) as we already have a track record for these premises and they are familiar with the legislative requirements.

**d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?**

Response – this is sensible given that the existing conditions are designed to address the licensing objectives, and the same requirement applies to TEN activities.

• **Consultation Question 20: What would be the consequences of:**

**a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**

Response - We have no experience of problems associated with TENs in this regard and therefore have no response.

**b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?**

Response – This is a sensible restriction which could alleviate the problems that arise from the repeated use of TENs.

• **Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?**

Response – Yes, this reflects the seriousness with which society regards selling alcohol to children.

• **Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?**

Response - At least one month. This period will allow children to realise that they are no longer going to be able to purchase alcohol at the premises and that these sales are unacceptable.

• **Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?**

Response - It would be taken more seriously by the trader and give the opportunity to the Licensing Authority to hear the circumstances and reach a view on whether a continuation of trade is warranted.

• **Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.**

**a. Simple and effective ways to define the ‘cost’ of alcohol**

Response – Relating the sale price to what the premises paid for it further erodes the ability of the small trader to compete with the large businesses which can negotiate large discounts and bulk purchases. Relating the cost to units would have the effect of creating a level playing field for traders, and perhaps make the units contained in a product more evident to the consumer. This may also reinforce the units message, particularly regarding the multiple units contained in a ‘glass’ of wine, or in a ‘bottle’ of beer or lager.

**b. Effective ways to enforce a ban on below cost selling and their costs**

Response – This seems to be an issue for Trading Standards who, as an existing Responsible Authority can make representation leading to a review of the licence.

**c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

Response – Using the Mandatory Code of Practice seems the appropriate way of implementing a minimum pricing regime, accompanied by a mandatory condition.

• **Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?**

Response - Yes. The fee should be set at a level which would cover all costs associated with the application and enforcement of all agencies. i.e. The cost of policing and monitoring currently falls on the Responsible Authorities and others. It is considered that all costs be the subject of this fee and that the public purse generally should not be drained by these activities. The fee should be capable of audit and should cover the actual costs of all agencies,

local authority, police, fire and rescue, ambulance, environment agency etc. (See response to question 15 above, in particular the reference to guidance on recoverable costs)

• **Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?**

Response – Undoubtedly yes. Currently we can only recover this as a civil debt which is time consuming and costly. It is our normal practice to allow a period of grace before taking action such as revocation; therefore we would seek to recover interest on late payment as well as the power to revoke.

• **Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?**

Response – It is too early to say, but mandatory conditions generally are welcomed.

• **Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?**

Response – No. They seem sensible and having them attached to all licences as conditions removes any doubt that they must be considered by the licensee.

• **Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?**

Response – The application form is lengthy, but when completed it is clear what the applicant is applying for. The TEN form is as short as it can reasonably be, although it is appreciated that it must lengthen if all Responsible Authorities are to address it.

The requirement for the Licensing Policy to be reviewed every three years is somewhat artificial. As long as the Policy remains fit for purpose it could easily remain unchanged for longer. A parallel here would be our Enforcement Policy, which is always applicable and under constant review, even though it does not have a maximum period for formal review.