

TITLE	Licensing Act 2003 – Policy Review
FOR CONSIDERATION BY	Licensing and Appeals Committee on 17 September 2013
WARD	None Specific
STRATEGIC DIRECTOR	Paul Anstey, Joint Service Delivery Manager for Environmental Health & Licensing

<p>OUTCOME / BENEFITS TO THE COMMUNITY</p>

<p>A recommended licensing policy for submission to Council for adoption.</p>

<p>RECOMMENDATION</p>

<p>The Licensing and Appeals Committee is recommended to agree that the draft policy attached to this report be recommended to Council for adoption.</p>
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<p>SUMMARY OF REPORT</p>

<p>The Council must have a current licensing policy against which to judge applications. The current policy expires in September 2013. This report sets out the consultation undertaken and introduces a draft policy for recommendation to Council for adoption.</p>

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 and 2010 with only minor updating.

During the consultation process one parish council stated that as they did not have a meeting until after the consultation deadline they would be unable to comment – it was therefore agreed that any amendments suggested by them would be made verbally at the Full Council meeting on 19th September.

Recommendation

Members are asked to agree the draft policy attached to this report be put before Council for adoption.

Analysis of Issues

One response was received from the consultation exercise, from the Thames Valley Police in relation to clarification of a couple of points in section 5.4 and 5.6.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Not Applicable		
Next Financial Year (Year 2)	Not Applicable		
Following Financial Year (Year 3)	Not Applicable		

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications (how does this decision impact on other Council services and priorities?)

Not Applicable

Reasons for considering the report in Part 2

Not Applicable

List of Background Papers

Amended Guidance issued under section 182 of the Licensing Act 2003
e-mail response from TVP

Contact Julia Waymouth	Service Licensing Service
Telephone No 01189 746353	Email Jobrien@westberks.gov.uk
Date 5 September 2013	Version No. One



**WOKINGHAM
BOROUGH COUNCIL**

Licensing Policy

September 2013⁰

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REF

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

Live unamplified music taking place between 08.00 hours and 23.00 hours and live amplified music taking place between 08.00 hours and 23.00 hours before audiences of no

more than 200 people on premises authorised to supply alcohol on the premises or in workplaces is not regulated entertainment by virtue of amendments made to the Licensing Act 2003 by the Live Music Act 2012

Late Night Refreshment

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

REF

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, confiscation of alcohol from adults and children in designated areas, and Police enforcement powers.

3.5 It is the responsibility of the licence holder to ensure that staff are sufficiently trained to ~~fulfill~~fulfill 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 appropriate 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

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

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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~~168 hours, and for
- no more than 499 ~~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 ~~(remove the word - suitable)~~ Digital CCTV system which is capable of retaining recording images for a period of 31 days from the date of an event and to an identifiable standard ~~(remove - to the specification of the Thames Valley Police)~~ if it is believed that this will assist in reducing the incidence of crime and disorder.

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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 Advisor ~~(remove - Officer)~~ and/or Crime Prevention and 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 18th 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 other person ~~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.

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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:

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 an <u>an</u> -police objection to a temporary event notice		All cases	
Determination of <u>minor variation application</u>			<u>All cases</u>
Decision whether to consider other <u>responsible authorities on minor variation application</u>			<u>All cases</u>
Determination of application to vary premises licence at community premises to include alternative licence condition		<u>If police objection</u>	<u>All other cases</u>

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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 West Berkshire Corporate Services Enforcement Policy and in compliance with the National West Berkshire Enforcement Concordat.

14.2 The West Berkshire Corporate Services Enforcement Policy is available at the Council offices and can be found on the Council's website at www.westberks.gov.uk 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

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fivethree 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, and is available at the Council's offices.

16.0 Early Morning Restriction Orders (EMROs)

16.1 The Licensing Act sets out powers conferred on licensing authorities to make early morning alcohol restriction orders. These powers are designed to help licensing authorities address specific problems caused by late night supply of alcohol in their areas allowing licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between 12 midnight and 6am. Licensing Authorities may make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives. At the time of writing this policy the Licensing Authority has no plans to make an EMRO in any part of the Wokingham Borough Council area, however, the situation will be kept under review and should evidence emerge that suggests that the sale of alcohol between 12 midnight and 6am is creating specific problems the Council will consider whether the introduction of an EMRO is appropriate. In considering the appropriateness of an EMRO the licensing authority will consider evidence from partners, including responsible authorities and local Community Safety Partnerships or other sources. If a proposal to implement an EMRO arises in the future the Licensing Authority will advertise and consult about its proposal in accordance with legislation and national guidance.

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17.0. The Late Night Levy (LNL)

17.1 Late night levy powers will allow licensing authorities to raise a contribution from late opening alcohol retailers (12 midnight to 6am) towards policing the late night economy. This is a power that licensing authorities can choose whether to adopt for their areas. If adopted the powers must apply to the whole of the licensing authority's area. Income from the net levy is to be split between the Police and the Licensing Authority on the basis of a minimum 70% allocated to the Police and a maximum 30% allocated to the licensing authority. At the time of writing this policy the Licensing Authority has no plans to collect a LNL, however the situation will be kept under review and prior to making a decision to implement a LNL, the licensing authority would have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce a LNL. If a proposal to implement a LNL arises in the future, the licensing authority will consult the PCC, the police, licence holders and others about its proposal.