



LICENSING AND GENERAL PURPOSES COMMITTEE

MONDAY 6 MARCH 2006
7.30 PM

COMMITTEE AGENDA

COMMITTEE ROOMS 1&2
HARROW CIVIC CENTRE

MEMBERSHIP (Quorum 4)

Chair: Councillor Idaikkadar

Councillors:

Blann
Choudhury
Dharmarajah
Ann Groves (VC)
O'Dell
Ray

Arnold
Mrs Bath
Billson
Janet Cowan
Knowles
Vina Mithani
John Nickolay

Branch

(none)

Reserve Members:

(none)

(none)

(none)

(none)

Issued by the Democratic Services Section,
Legal Services Department

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***NOTE FOR THOSE ATTENDING THE MEETING:
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.
IT WILL BE COLLECTED FOR RECYCLING.***

HARROW COUNCIL

LICENSING AND GENERAL PURPOSES COMMITTEE

MONDAY 6 MARCH 2006

AGENDA - PART I

1. **Attendance by Reserve Members:**

To note that there are no Reserve Members currently appointed to this Committee.

2. **Declarations of Interest:**

To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Committee, Sub Committee, Panel or Forum;
- (b) all other Members present in any part of the room or chamber.

3. **Arrangement of Agenda:**

To consider whether any of the items listed on the agenda should be considered with the press and public excluded on the grounds that it is thought likely, in view of the nature of the business to be transacted, that there would be disclosure of confidential information in breach of an obligation of confidence or of exempt information as defined in the Local Government (Access to Information) Act 1985.

4. **Minutes:**

That the minutes of the meeting held on 19 September 2005, having been circulated, be taken as read and signed as a correct record.

5. **Public Questions:**

To receive questions (if any) from local residents or organisations under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).

6. **Petitions:**

To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).

7. **Deputations:**

To receive deputations (if any) under the provisions of Committee Procedure Rule 16 (Part 4B of the Constitution).

Enc. 8. **Summary of Concluded Licensing Appeals:** (Pages 1 - 10)
Report of the Director of Legal Services.

Enc. 9. **Compromise of Licensing Appeals in the Magistrates' Court:** (Pages 11 - 16)
Report of the Director of Legal Services.

- Enc. 10. **Outline Report on The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001:** (Pages 17 - 30)
Report of the Head of Community Safety Services.

AGENDA - PART II - NIL

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Meeting:	Licensing and General Purposes Committee
Date:	6 March 2006
Subject:	Summary of Concluded Licensing Appeals
Responsible Officer:	Director of Legal Services
Contact Officer:	David Galpin, Senior Lawyer – Litigation and Licensing, extension 7500
Portfolio Holder:	Councillor Philip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

That the Committee note the attached Schedule, which contains a summary of concluded licensing appeals brought pursuant to the Licensing Act 2003, section 181 and Schedule 5.

Reason for report

To inform members as to how decisions of the Licensing Panel are being treated following appeal to the Harrow Magistrates' Court.

Benefits

Members will gain an understanding of how decisions of the Licensing Panel are being treated following appeal.

Cost of Proposals

There are no costs associated with the proposed decision.

Risks

The risk of failing to note how decisions of the Licensing Panel are being treated on appeal is that an opportunity to learn from past experience may be lost.

Implications if recommendations rejected

As for "Risks".

Section 2: Report

2.1 Brief History

2.1.1 The first appeal against a decision of the Council as licensing authority under the Licensing Act 2003 was commenced in September 2005. Since that time there have been a total of nine appeals. Six of the appeals have now been concluded.

2.1.2 In each licensing appeal, the decision appealed against is a decision of the Licensing Panel. This is not surprising, given that applications under the Licensing Act 2003 not determined by the Panel are those in which there have been no relevant representations. In those cases, the Licensing Act requires that the Council as licensing authority grant the application as sought.

2.1.3 The Licensing Panel is comprised of members of the Committee, who will likely be interested in how decisions of the Licensing Panel have fared on appeal.

2.2 Options considered

2.2.1 The attached Schedule contains details of the six appeals that have been concluded. In summary, the appeals have been dealt with as follows –

2 Determined by the Harrow Magistrates' Court following contested hearing (Bar Room Bar, Vine).

3 Determined by the Harrow Magistrate's Court following agreement between the parties (Club 2000, Moon on the Hill, Club Mehfil).

1 Appeal withdrawn (Castle).

2.2.2 In respect of the two appeals determined following contested hearing, one appeal was upheld and the other was dealt with in accordance with s181(b) of the Licensing Act 2003, the decision was substituted. In the case of Bar Room Bar, the appellant complained about seven conditions. The Court deleted one condition, left one condition untouched and made minor changes to five conditions. In the case of Vine, the appellant (a resident) asked the court to import a condition in force under the 1968

Licensing Act. The Court substituted a separate additional condition and kept the original conditions imposed by the Panel.

2.2.3 In respect of the three appeals dealt with by the Court following agreement between the parties, one was remitted to the Panel for rehearing (Club Mehfil) and two were remitted for the issue of amended licences in accordance with agreed directions (Club 2000, Moon on the Hill). In the case of Club 2000, the agreed direction was for the deletion from the licence of seven extra, non-standard, days on which the premises would otherwise have been able to supply alcohol for extended hours. In the case of Moon on the Hill, the agreed direction was for the reduction in the standard hours for the supply of alcohol.

2.2.4 In respect of the three compromised appeals, two were compromised before the difficulty with instructions was identified. The third matter (Club Mehfil) was compromised after instructions were obtained by urgent non-executive action.

2.3 Consultation

2.3.1 There has been no external consultation in respect of this report.

2.4 Financial Implications

2.4.1 There are no costs or financial implications associated with the proposed decision.

2.5 Legal Implications

2.5.1 A separate report has been prepared dealing with the compromise of licensing appeals. No other legal implications arise.

2.6 Equalities Impact

2.6.1 No equalities issues appear to arise from the disposal of the six licensing appeals dealt with in the Schedule.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The prevention of crime and disorder is one of the four licensing objectives. The extent to which this was an issue in any appeal is indicated in the attached Schedule.

Section 3: Supporting Information/Background Documents

Supporting Information: Attached Schedule.

**SCHEDULE OF LICENSING APPEALS
LICENSING ACT 2003, SECTION 181 AND SCHEDULE 5**

PREMISES:	CASTLE, 30 WEST STREET, HARROW ON THE HILL
Nature of premises:	Public house
Appellant:	Allan Lunn
Original Application:	Application by Fullers, Smith and Turner Plc to convert an existing licence to a premises licence, with simultaneous variation. The applicant sought opening hours of 1000 – 0030 (Mon – Thurs), 1000 – 0130 (Fri – Sat) and 1000 – 0000 (Sun). The applicant sought the following licensable activities, to conclude half an hour prior to closing time: live music; facilities for dancing; late night refreshment (starting at 2330); and supply of alcohol. The applicant also sought to open for a 24 hour period on New Years Eve.
Panel hearing:	6 September 2005
Panel decision:	The Panel granted the conversion and variation subject to 7 additional conditions.
Issue on appeal:	The Appellant stated that a very large number of local residents, including customers, were against the extension of hours and expressed a concern that the operator must be seeking customers from outside the local area. The appellant was concerned that alcohol related problems would be experienced in the residential neighbourhood in which the premises are situated.
Magistrates' Court hearing:	N/A
Decision on appeal:	Appeal withdrawn 30 December 2005
PREMISES:	CLUB 2000, 427 – 431 RAYNERS LANE, HARROW
Nature of premises:	Proprietary club
Appellant:	Metropolitan Police
Original Application:	Application by Narshi Jashwani Chudasama and Hemendra Chunnidhai Patel to convert existing licence to premises licence with simultaneous variation. The applicant sought opening hours of 0700 – 0100 (Mon – Thurs), 0700 – 0200 (Fri – Sat) and 0900 – 0200

(Sun). The applicant sought the following licensable activities at times coincident with the opening hours (although ceasing at 0100 on Sundays): films; indoor sporting events; live music; recorded music; performances of dance; similar activities (quiz nights and comedians); provision of facilities for making music; provision of facilities for dancing; similar facilities (live band/karaoke with audience participation); late night refreshments (starting at 2300); and supply of alcohol. The applicant sought extended hours on nominated special days.

Panel hearing: 1 September 2005

Panel decision: The Panel granted the conversion and variation with amended hours and subject to 8 additional conditions. The amended hours were as follows: supply of alcohol 1000 – 0030 (Mon – Thurs), 1000 – 0100 (Fri – Sat), 1000 – 2300; an extra 7 days per annum with hours for sale of alcohol of 0900 – 0230.

Issue on appeal: The metropolitan police objected strongly to the grant of extended hours on the 7 extra, or non-standard, days per annum and appealed on the basis that the Panel was wrong to grant those hours.

Magistrates' Court hearing: 8 December 2005 (pre-hearing directions)

Decision on appeal: By consent, matter remitted to London Borough of Harrow for issue of licence in accordance with the following direction: to remove the grant of an extra 7 non-standard days per annum with licensed hours for the sale of alcohol between the hours of 0900 and 0230 hours.

PREMISES: **MOON ON THE HILL, 373-375 STATION ROAD, HARROW, MIDDLESEX**

Nature of premises: Public house

Appellant: Mr Stefan Szulc and Mrs Shelagh Szulc (objectors)

Original Application: Application by J D Weatherspoon Plc to convert existing licence to premises licence with simultaneous variation. The applicant sought the following licensable activities and hours –

- Supply of alcohol, 0900 – 0030 (Sun – Thurs), 0900 – 0100 (Fri – Sat).
- Late night refreshment, 2300 – 0030 (Sun – Thurs), 2300 – 0100 (Fri – Sat).
- Opening hours, 0700 – 0130 (Sun – Thurs), 0700 – 0200 (Fri – Sat).

The applicant sought additional hours on nominated days (some of these additional days were abandoned by the applicant at the Panel hearing).

Panel hearing: 4 August 2005

Panel decision: The Panel granted the conversion and variation as amended (by abandonment of some additional hours, see above) and subject to the following additional conditions: (1) Appropriate signage to be displayed requesting patrons to leave the premises quietly; (2) The premises be provided with fully operational CCTV; (3) Children only be allowed in designated areas.

Issue on appeal: The appellants raised six grounds of appeal: (1) The Panel failed to explain at the beginning of the hearing the procedure that it proposed to follow; (2) The Panel paid insufficient regard to the appellants' representations; (3) The Panel paid insufficient regard to the representations of the environmental health officer and of police; (4) The local authority failed to provide relevant representations to the Panel; (5) The local authority failed to advise parties of their right to appeal; (6) The Panel failed to state its reasons for decision.

Magistrates' Court hearing: 11 January 2006 (in the absence of the parties)

Decision on appeal: By consent, matter remitted to London Borough of Harrow for issue of licence in accordance with the following agreed terms: (1) Supply of alcohol, 0900 – 0000 (Sun – Thurs), 0900 – 0030 (Fri – Sat); (2) In all other respects the decision of the Panel to stand.

PREMISES: **BAR ROOM BAR, THE VICTORY, HIGH STREET, PINNER**

Nature of premises: Public house

Appellant: Spirit Group Ltd (the original applicant)

Original Application: *Application by Spirit Group to convert existing licence to premises licence with simultaneous variation. The applicant sought the following licensable activities and hours –*

- Live music, 1000 – 0100 (Mon – Sun)
- Recorded music, 1000 – 0100 (Mon – Sun)
- Live entertainment and karaoke, 1000 – 0100 (Mon – Sun)
- Dancing, 1000 – 0100 (Mon – Sun)
- Late night refreshment, 2300 – 0200 (Mon – Sun)
- Supply of alcohol, 1000 – 0100 (Mon – Sun)
- Opening hours, 0900 – 0200 (Mon – Sun).

The applicant sought additional hours on nominated days.

Panel hearing: 13 September 2005

Panel decision: The Panel granted the conversion and variation with amended hours and subject to 11 additional conditions.

Issue on appeal Appellant did not dispute hours, but objected to 7 of the 11 additional conditions. The conditions complained of were: (4) Staff to patrol inside and outside of the premises to monitor noise levels; (5) Garden cleared of customers and glasses by 2300; (6) No drink promotions to commence after 2100; (8) Doors and windows must be closed during any form of entertainment; (9) Three SIA registered door supervisors (one female) to be employed on the premises from 1900 to closing time on Fri-Sun; (10) No entry or re-entry after 0000 on Friday and Saturday; (11) CCTV equipment to be installed, operated and maintained to the police's satisfaction.

Magistrates' Court hearing: 1 February 2006

Decision on appeal: Appeal allowed. Condition 6 unchanged. Condition 10 deleted. Conditions 4, 5, 8, 9 and 11 varied as follows: (4) Staff will regularly patrol to monitor noise levels within and outside the premises when regulated entertainment is being provided to ensure no noise nuisance is being caused; (5) Garden to be cleared of customers and glasses by 2320 hours; (8) A minimum of 3 SIA registered door supervisors (one of whom must be female) to be employed on the premises from 2000 hours until closing time on Friday and Saturday. A minimum of 2 SIA registered door supervisors (one of whom must be female) to be employed on the premises from 2000 hours until closing time on Sunday; (11) CCTIV cameras to be installed, operated and maintained to the Police's reasonable requirements. The tapes to be retained for a period of 31 days to enable Police to inspect them if necessary.

PREMISES: CLUB MEHFIL, 32 STATION APPROACH, WEALDSTONE

Nature of premises: Nightclub

Appellant: Dawn Robson

Original Application: Application by Dawn Robson to convert existing licence to premises licence with simultaneous variation. The applicant sought opening hours of 2100 – 0300 (Sun – Thurs) and 2100 – 0400 (Fri – Sat) with the following coincident licensable activities: Live music; Recorded music; Dance performance; Dancing facilities; Late night refreshment (starting at 2300); and Supply of alcohol. The applicant sought additional hours on nominated days.

Panel hearing: 18 August 2005 (applicant not present for hearing)

Panel decision: The Panel granted the application with amended hours and subject to 5 additional conditions. The Panel reduced the hours for supply of

alcohol to 2100 – 0230 (Sun – Thurs) and 2100 – 0330 (Fri – Sat) and deleted the extended hours sought on nominated days, with the exception of an extra 1 hour on Christmas Eve. The 5 additional conditions were: (1) No entry or re-entry to the premises to be permitted after 12.30 am on Mondays to Thursdays and Sundays; (2) No entry or re-entry to the premises to be permitted after 1.00 am on Fridays and Saturdays; (3) Front and rear doors to remain closed other than for usage for entry and egress; (4) The front door to remain closed, apart from in an emergency, with the rear doors being closed for egress after the hours listed in conditions 1 and 2; (5) Appropriate signage to be in place to request patrons to leave the premises quietly.

Issue on appeal Appellant contended that she did not attend at the Panel hearing because she did not receive notification until after the hearing. The appellant complained of the additional conditions 1, 2 and 4. The appellant expressed confusion about the hours granted for licensable activities.

Magistrates' Court hearing: 21 January 2006 (in the absence of the parties)

Decision on appeal: By consent, matter remitted to London Borough of Harrow for rehearing.

PREMISES: **VINE, 154 STANMORE HILL, STANMORE**

Nature of premises: Public House

Appellant: David Jonathon Gottler

Original Application: Application by Punch Taverns Plc to convert existing licence to premises licence with simultaneous variation. The applicant sought opening hours of 1000 – 0030 (Mon – Thurs), 1000 – 0130 (Fri – Sat) and 1200 – 0100 (Sun). The applicant sought to provide the following licensable activities, terminating half an hour prior to closing each day: films; live music; recorded music; karaoke; late night refreshment (starting at 2300); and supply of alcohol. The applicant sought to have licensable activities terminate at 0100 on Christmas Eve and Boxing Day.

Panel hearing: 22 August 2005

Panel decision: The Panel granted the application subject to seven additional conditions: (1) All doors and windows to be closed whilst music is being played; (2) External areas not to be used after 2300; (3) Notices to be placed in prominent positions requesting patrons to leave the premises quietly; (4) No children allowed on the premises after 2100; (5) Registered door supervisors to be present after 2300; (6) Amplified sound equipment to be governed by a sound-limiting

device set at a level approved by the Licensing Authority; (7) AWP machine to be booted or emptied daily.

Issue on appeal The appellant contended that the Panel's decision was against the weight of the evidence and that the hearing was conducted contrary to the rules of natural justice.

Magistrates' Court hearing: 15 February 2006

Decision on appeal: Appeal not allowed. The Court decided not to import a condition making the provision of food ancillary to the sale of alcohol, as per the Appellant's request. However, the Court imposed an additional condition "No new entry to the premises after 11.00pm". The existing conditions imposed by the Licensing Authority were not deleted. All parties to bear their own costs.

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Meeting:	Licensing and General Purposes Committee
Date:	6 March 2006
Subject:	Compromise of Licensing Appeals in the Magistrates' Court
Responsible Officer:	Director of Legal Services
Contact Officer:	David Galpin, Senior Lawyer – Litigation and Licensing, extension 7500
Portfolio Holder:	Councillor Phillip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

That the Committee delegate to the Director of Legal Services the power to compromise licensing appeals, to a magistrates' court under the Licensing Act 2003, in circumstances where:

1. It is not practicable to bring the matter before the Committee to obtain instructions; and
2. It is in the Council's interests to compromise the appeal, for example by saving costs; and
3. The effect of the compromise is either that the subject matter of the appeal will be remitted to the Licensing Panel for rehearing, or that the relevant license, certificate, notice or order will be amended in a way that reduces the potential for conflict with the licensing objectives, for example by reducing hours of operation.

Reason for report

At the time of writing there have been nine licensing appeals from decisions of the Council as licensing authority under the Licensing Act 2003. More appeals are expected. On the limited experience to date, it seems that the parties to licensing appeals will frequently come to a commonsense and unobjectionable resolution of the appeal "on the court house steps". The present mechanisms for obtaining instructions to agree the settlement or disposal of these appeals are decision of the Committee or urgent non-executive action, both of which may be too time consuming for practical resolution of cases.

Benefits

A delegation to officers to compromise licensing appeals in limited circumstances will enable appropriate cases to be resolved speedily and avoid the risk of unnecessary costs to the Council or adverse costs orders against the Council.

Cost of Proposals

Nil. There is the potential to avoid costs if the proposal is adopted.

Risks

Officers may make assessments as to whether a particular compromise will reduce the potential for conflict with the licensing objectives.

Implications if recommendations rejected

If there is no mechanism in place for responding speedily to offers of compromise, then opportunities to compromise may be lost. Council may be exposed to unnecessary costs in licensing appeals and to adverse costs orders. Adverse costs orders are particularly likely if proceedings have to be delayed and adjourned to enable the Council to instruct its legal representatives.

Section 2: Report

2.1 Brief History

2.1.1 The Licensing Act 2003 gives rights of appeal to a magistrates' court from decisions made by the Council as Licensing Authority: section 181 and Schedule 5. This includes appeals against decisions made by the Licensing Panel.

2.1.2 At the time of writing there have been nine appeals to the Harrow Magistrates' Court in which the Council is a respondent, all from decisions of the Licensing Panel. At the time of writing, six appeals have been concluded as set out in a separate report to the Committee. Three of those appeals have been compromised.

2.1.3 In each of the three compromised appeals, the Harrow Magistrates' Court has, by consent, remitted the case to the Council for determination in accordance with the Court's direction. The relevant circumstances may be summarised as follows –

Premises	Appellant	Circumstances
(a) Club 2000	Police	Operating hours reduced. Premises operator agreed to forego a number of discretionary "special event" days in accordance with police request.
(b) Moon on the	Residents	Operating hours reduced. Premises

Hill

operator agreed to reduce standard hours for sale of alcohol by half an hour each day.

(c) Club Mehfil

Applicant

Matter remitted to the Licensing Panel for rehearing. The Applicant did not appear at the Licensing Panel hearing the first time because, she says, she did not receive notification.

- 2.1.4 On the limited experience to date, it seems that the parties to licensing appeals will from time to time come to a commonsense and unobjectionable resolution of the appeal “on the court house steps”.
- 2.1.5 As set out above, the magistrates’ court appeals involving the Council are all from decisions of the Licensing Panel. The consequence is that, whilst Legal Services takes instructions from licensing officers when conducting appeals, there is a limit to the instructions that any officer can give, because he or she did not make the decision appealed. There is no delegation to officers to compromise appeals.
- 2.1.6 It might be thought that the Licensing Panel, which meets relatively frequently, ought be able to compromise its own decisions on appeal. However, the relevant delegation to the Licensing Panel is limited to determining applications and making orders in respect of licenses, permits, registrations and certificates where objections have been received. There is no delegation to the Panel to make any decisions in relation to appeals and the view is taken that its power is spent once a matter enters a magistrates’ court.
- 2.1.7 The Constitution delegates to the Licensing and General Purposes Committee the powers and duties imposed on Council by legislation, regulations, orders, codes and similar provisions for all activities under the Licensing Act 2003. The delegation to the Committee is considered broad enough to include the compromise of appeals to a magistrates’ court. Unfortunately, however, the Licensing and General Purposes Committee meets with a frequency of approximately once every quarter. The Committee meetings are too infrequent to be timely in the compromise of appeal proceedings.
- 2.1.8 Urgent matters may be dealt with in accordance with the procedure for urgent non-executive actions, but this will involve: preparation of a report and consultation with the chair of the Committee and leaders of the two other main political parties. The timing of proposals to resolve licensing appeals will generally be in the hands of parties other than the Council. In circumstances where the resolution of an appeal is proposed on the court house steps, or in the context of impending action in the litigation, it will often be the case that it is not practicable either to bring the matter back before the Committee for further decision or to proceed by way of the urgent non-executive action procedure. The solicitor attending at

court will be called upon to indicate the Council's position with limited time to obtain instructions.

2.1.9 In respect of the three appeals compromised to date, two were compromised before the difficulty with instructions was identified. The third matter (Club Mehfil) was compromised after instructions were obtained by urgent non-executive action.

2.2 Options considered

2.2.1 An appropriate delegation to compromise licensing appeals could be made to either the Group Manager Community Safety Services, or to the Director of Legal Services. It is suggested that the delegation be made to the Director of Legal Services, because it fits with, and further elucidates, the existing delegation to the Director of Legal Services to "institute, defend and conduct any legal proceedings".

2.2.2 The delegation could be achieved either by amending the Constitution, or directly from the Committee. The latter course is recommended, as it will bring about the quickest resolution of the issue. It is important to resolve the process for compromising licensing appeals as soon as possible to avoid the identified risks.

2.2.3 A delegation is proposed to permit licensing appeals to be compromised in limited circumstances. The Director of Legal Services should be able to compromise licensing appeals only where all the following are satisfied: –

- (a) It is not practicable to bring the matter before the Committee to obtain instructions.
- (b) It is in the Council's interests to compromise the appeal, for example by saving costs.
- (c) The effect of the compromise is either that the subject matter of the appeal will be remitted to the Licensing Panel for rehearing, or that the relevant license, certificate, notice or order will be amended in a way that reduces the potential for conflict with the licensing objectives, for example by reducing hours of operation.

2.2.4 The delegation would give discretion to officers to decide whether a compromise will reduce the potential for conflict the licensing objectives. However, the three cases that have been compromised to date are indicative of the circumstances in which the delegated power could or would be exercised.

2.2.5 It is proposed to continue to report to the Committee on the results of licensing appeals, as in the accompanying report, so there will be an opportunity for oversight of the delegation.

2.3 Consultation

2.3.1 There has been no external consultation.

2.4 Financial Implications

2.4.1 There are no costs associated with this report. There is a potential to avoid costs, primarily legal costs, if the proposal is adopted.

2.5 Legal Implications

2.5.1 If there is no mechanism in place for responding speedily to offers of compromise, then opportunities to compromise may be lost. Council may be exposed to unnecessary costs in licensing appeals and to adverse costs orders. Adverse costs orders are particularly likely if proceedings have to be delayed and adjourned to enable the Council to instruct its legal representatives.

2.6 Equalities Impact

2.6.1 No equalities issues appear to arise from the proposed delegation.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The prevention of crime and disorder is one of the four licensing objectives. The proposal is that officers will only compromise appeals in circumstances where there is a reduction in the potential for conflict with the licensing objectives, for example by reducing hours of operation.

Section 3: Supporting Information/Background Documents

Background Documents: None.

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Meeting:	Licensing and General Purposes Committee
Date:	6 March 2006
Subject:	Outline Report on The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001
Responsible Officer:	Gareth Llywelyn-Roberts, Head of Community Safety Services
Contact Officer:	P Sivashankar, Licensing Service Manager, ext 5605
Portfolio Holder:	Councillor Phillip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

To approve the proposed action in accordance with the Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001 to draw up detailed proposals to designate an alcohol exclusion zone in Harrow Town Centre.

To instruct officers to provide a detailed report to the next L&GP for approval for full consultation.

Reason for report

To inform Members of the procedure to be followed by the Council to designate an Alcohol Exclusion Zone and agree the identified course of action based on the evidence available to support the decision.

Benefits

The Council is obliged to take steps to ensure that the consumption of alcohol in public places is managed sensibly. One of the tools, which can be used is the implementation of an Alcohol Exclusion Zone. This allows the consumption of alcohol in a public place to be prohibited if the Council is satisfied that nuisance, disturbance or disorder affecting members of the public has been associated with the consumption of alcohol.

Implementation of such a zone will create a safer environment for the public to go about their business without being subject to anti-social behaviour, nuisance or disturbance, as well as improving perception to provide a direct and tangible reduction in Fear of Crime through enabling activities to be controlled to reduce the visible presence of public consumption of alcohol in public.

Cost of Proposals

A detailed costing will be provided once the zone is determined and will be reported to the Committee. The matters that are to be considered are listed under para.2.4.2.

Risks

The formation of a Designated Alcohol Exclusion Zone may displace street drinking and other problems associated with the consumption of alcohol in public areas, requiring the Council to undertake new or further extension of such Zones, where evidence is presented to support this process.

The potential lack of Police resources to enforce the Exclusion Zone against competing priorities may render the order void.

The Zoning applied must be based on evidence provided by the Police and Crime Reduction Partnerships. Selecting areas outside the evidentially supported area/s will render the procedure invalid and subject to challenge.

Implications if recommendations rejected

The Metropolitan Police have requested that the Council should adopt this part of the Regulations to assist in reducing alcohol consumption in public places.

If the Alcohol Exclusion Zone is not implemented the ability to address street drinking and other disturbing behaviours associated with the consumption of alcohol in public places will not be available to enforcement agencies.

Section 2: Report

2.1 Brief History

- 2.1.1 The Council is committed to making Harrow a safe, attractive place for everyone who lives, works or visits the Town. This includes encouraging the development of a range of facilities to suit all tastes that as part of their business to sell alcohol.
- 2.1.2 On 1st September 2001, sections 12-16 of the Criminal Justice and Police Act 2001 come into force. These provide local authorities with a power to restrict anti-social public drinking in designated public places and they provide the police with the power to enforce this restriction. Also on 1 September the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 come into force. These set out the procedures to be followed by local authorities in designating public places for this purpose. A copy of the relevant section of the Regulations is provided at appendix 1.
- 2.1.3 These new statutory powers will replace the Home Office model byelaw relating to the consumption of intoxicating liquor in designated public places. From 1st September 2001 local authorities who wish to place a restriction on public drinking within their area, where this is associated with nuisance or annoyance to members of the public, or disorder, should consider whether to make an order under section 13 of the Act rather than proceeding with a byelaw.
- 2.1.4 Section 12 of the Act provides new police powers to deal with anti-social drinking in areas that have been designated for this purpose by the local authority. The police will have the power to require a person, in such a place, not to drink alcohol in that place where the officer reasonably believes that the person is, has or intends to do so, and to surrender any alcohol or alcohol containers (other than sealed containers) in the person's possession. It will not be an offence to drink alcohol in a designated public place, but failure to comply with an officer's requirements in respect of public drinking or surrender of alcohol, without reasonable excuse, will be an arrestable offence.
- 2.1.5 There is no intention that the provisions of the 2001 Act should lead to a comprehensive ban on drinking in the open air. Accordingly, section 13 allows local authorities to designate areas for this purpose only where they are satisfied that nuisance or annoyance to the public or disorder have been associated with public drinking in that place. Where there have been no such problems, a designation order under section 13 will not be appropriate.
- 2.1.6 It is for the local authority to be satisfied that public nuisance, annoyance or disorder has been associated with public drinking in the area concerned and that a designation order under section 13 is appropriate. The Local Authorities (Alcohol Consumption in Designated Public

Places) Regulations 2001 do not place a requirement on the local authority to conduct a formal assessment, over a given period, of the nature of the problem, as was the case with the byelaws procedure. Whether or not a designation order is appropriate will be a matter for local judgement, based on the circumstances and evidence available.

- 2.1.7 The Council will need to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion, which could be the case if there is not substantial evidence to support a designation order. Clearly there should be evidence of an existing ongoing problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted. Against this background, a single, serious incident will be insufficient to justify adoption of the powers.
- 2.1.8 The Regulations require local authorities to consult with the police prior to making a designation order (Regulation 3(1)(a)). This is to seek the views of the police on the nature of the problem and the appropriateness of adopting the section 12 powers to respond to it, in recognition of the fact that it will be the police who will have the responsibility for enforcing the resulting restrictions on public drinking.

Regulation 3 sets out the other bodies who must be consulted before a designation order is made. These are:

- Any parish or community council covering all or part of the public place to be designated. In addition, local authorities should be open to receive representations from parish or community councils in their area, relating to the designation of a public place within the area of the parish or community council;
 - The police and neighbouring local authorities, parish or community councils, where a designation order covers an area on the boundaries with that neighbouring authority. This is to allow for consideration to be given to the consequences of the designation order on the neighbouring authority (such as the possible displacement of anti-social public drinking problems) before the designation order is made;
 - Licensees within the area and licensees who may be affected by the designation order;
 - The owners or occupiers of any land that may be identified in a designation order. There may well be occasions when it is impossible to identify or find the owners of particular land or property, so Regulation 3(2) does not place an absolute requirement on local authorities in this instance. It requires local authorities to take all reasonable steps to consult landowners e.g. through open public advertisement.
- 2.1.9 Regulations 5-9 cover publicity requirements. Regulations 5 and 6 are concerned with advance publicity. By virtue of regulation 4, local authorities will be under a duty to consider any representations received

as a result of this publicity. It is proposed that a Licensing Panel would consider these formally.

- 2.1.10 Regulation 7 concerns publicity once a decision has been made to designate an order under section 13 of the Act. Regulation 8 sets out the requirement to erect signs to ensure that the public (including visitors to the area) are made aware that restrictions on public drinking may apply. As was previously the case under the Home Office byelaws guidance, signs to indicate the effect of a designation order should be clear and unambiguous and not conflict with or obscure traffic signs. They should be placed at the approaches to designated areas and repeated within them, and the local highway authority should be consulted.
- 2.1.11 Regulation 10 makes an amendment to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The effect of this is that this function will not become a function of the executive under the terms of the Local Government Act 2000 but will be one that remains with the council. In all normal circumstances, the local authority may wish to ensure that decisions relating to designation orders are made by full council or a committee of the council, as opposed to being delegated to an officer of the council. This has already been dealt with through the Council Motion and authority delegated the Licensing and General Purposes Committee.
- 2.1.12 By virtue of section 15 of the 2001 Act, existing public drinking byelaws will cease to have effect once the area is designated in accordance with section 13. The practical effect will be to enable the police to enforce the public drinking restriction through the use of the powers conferred by section 12 of the Act, once the area is designated.
- 2.1.13 Any relevant local authority byelaw which is not replaced by a section 13 designation order will, by virtue of section 15 of the Act, lapse after a period of five years commencing on 1 September 2001.
- 2.1.14 To ensure that the public have full access to information about designation orders made under section 13 of the Act, Regulation 9 requires all local authorities to send a copy of any designation order made to the Secretary of State. These should be sent to Home Office.

2.2 Options considered

- 2.2.1 There have been two options identified and considered. The provision of an Exclusion Zone for the entire borough and the provision of a zone for an identified area surrounding and including the Town Centre.
- 2.2.2 Whilst the Council Motion proposed the creation of a Zone to cover the whole of the Borough. In assessing the likely evidence to support this proposal we have considered the evidence available from the Police and Council data in terms of violent against the person, drunkenness and Ambulance data. See Appendix 2. It is clear, and this is confirmed

following discussion with the borough commander, that the evidence does not support the provision of a borough wide Exclusion Zone.

2.2.3 The evidence is however, very clear in identifying that disturbance and disorder, associated with the consumption of alcohol in public areas, is concentrated in the Town Centre, The evidence supports the provision of an Exclusion Zone for a designated area of the Town Centre, and this need is fully supported by the Police. This is in line with Paras; 2.1.5; 2.1.6 and 2.1.7. relating to the evidence on which the decision must be based and the fact that police must be consulted and agree the proposal.

2.3 The Proposal

2.3.1 It is therefore proposed that:

- Officers draw up detailed proposals and clearly identify the area to be identified as designated zone.
- Consult with Police and other Partners to agree that the proposal is based on the evidence provided.
- Draw up proposals for the public consultation process, posters, newspapers etc.

2.3 Consultation

2.3.1 the consultation process is set out in Para 2.1.8.

2.4 Financial Implications

2.4.1 It is anticipated that the costs of implementing an Alcohol Exclusion Zone will be met from the existing budget of the relevant Head of Service. However the situation will be monitored as part of the planning process and if significant costs are likely to be incurred the matter will be re-considered and brought to the attention of members when the final decision on the Exclusion Zone is made.

2.4.2 The financial implications arising to the Council identified at present are as follows:

[a] Placement of advertisements in a Local newspaper; as part of the statutory Consultation Process and management of the process itself.

[b] Consultation/mail shot to owner/occupiers of properties in the area concerned and to licensees;

[c] The placement and replacement of street signs to advertise the Alcohol Exclusion Zone;

[d] The costs to the council and/or police for any prosecution and general enforcement costs. Responsibility for enforcement of the powers remains

primarily with the Police but other agencies would be required to assist; [e] any legal costs associated with the review of the Alcohol Exclusion Zone as a result of objections to the process;

Detailed costings need to be calculated and, once available, will be presented in a further report.

2.5 Legal Implications

2.5.1 The Regulations set out the procedure to be followed by local authorities in connection with orders designating a public place under section 13 of the Criminal Justice and Police Act 2001. The Regulations set out the consultation requirements before making an order and the publicity requirements before and after making an order. Once an order is made under section 13 in relation to a public place in their area, the police powers under section 12 of the Act (to require a person not to consume intoxicating liquor and to surrender opened containers of such liquor) will be available.

2.6 Equalities Impact

2.6.1 As part of the implementation of the zones it will be critical to the work with local agencies to reach, in particular, street drinkers, and offer assistance and referral to support agencies.

2.6.2 There are no other Equal Opportunities implications arising directly from this report.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The provision of an alcohol exclusion zones will have a positive effect on the local environment and with the associated promotion, education and enforcement would help reduce incidents of broken glass, litter as well as the visible negative impact of street drinking and related ASB and fear of crime.

2.7.2 The use of such orders would assist in tackling alcohol related crime and disorder and anti social behaviour as well as providing support for the Licensing Policy through reducing under age drinking, reducing public drunkenness and preventing alcohol related crime.

2.7.3 In this manner it would directly deliver against key corporate priorities and the Priority of Reducing Drug and Alcohol related harm and under the Crime and Disorder Reduction Strategy 2005-8

Section 3: Supporting Information/Background Documents

Background Documents: Regulations.

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Appendix 1

Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001

1.1. Section 13 [2] of the Criminal Justice and Police Act 2001 states:

“ A Local Authority may for the purposes of subsection [1] by order identify any public place in their area if they are satisfied that:

[a] nuisance or annoyance to members of the public or a section of the public; or

[b] disorder has been associated with the consumption of intoxicating liquor [alcohol] in that place.”

1.2. Section 13 [4] further states:

“ The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under subsection [2].”

1.3. The Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001 came into force on 1st September, 2001.

1.4. The Regulations prescribe the process of consultation, and publicity which must be followed before a Local Authority takes action to make an order creating a designated public place.

2. THE REGULATIONS

2.1. Regulation 3 [1] states:

“ Before making an order, a local authority shall consult:

[a] the Chief Officer of Police for the area in which the public place proposes to be identified in the order is situated;

[b] the parish or community council in whose area the public place is situated;

[c] the chief officer of police, the local authority and the parish or community council for any area near to the public place which they consider may be affected by the designation; and

[d] the licensee of any licensed premises in that place or which they consider may be affected by the designation.”

2.2. Regulation 3 [2] goes on to require the Local Authority to take reasonable steps to consult the owners or occupiers of any land proposed to be identified.

2.3. Wider publicity to a proposed order is required under Regulation 5 which states:

“Before making an order, a Local Authority shall cause to be published in a newspaper circulating in their area a notice:

[a] identifying specifically or by description the place proposed to be identified:

[b] setting out the effect of an order being made in relation to that place: and

[c] inviting representations as to whether or not an order should be made.”

2.4. No order shall be made until at least 28 days after the publication of the notice referred to in Regulation 5 [detailed in paragraph 3.3 above.

2.5. After making an order and before it takes effect the Local Authority must “cause to be published in a newspaper circulating in their area a notice:

[a] identifying the place which has been identified in the order;

[b] setting out the effect of the order in relation to that place; and

[c] indicating the date on which the order will take effect.”

2.6. Regulation 4 provides:

“ A Local Authority shall consider any representations as to whether or not a particular public place should be identified in an order whether made as a result of consultation under Regulation 3, in response to a notice under Regulation 5, or otherwise.”

2.7. If the Local Authority make an order and before that order has effect the Local Authority must erect in the place identified in the order such signs as they consider sufficient to “draw to the attention of members of the public in that place to the effect of the order”. There is essentially a requirement to have signs that specify that it is an offence to consume alcohol in the designated area. Additionally the Local authority must send a copy of any order made to the Secretary of State.

3. EFFECT OF DESIGNATING A PUBLIC PLACE

3.1. Designation of a Public Place in accordance with the Regulations invokes sections 12 and 14 of the Criminal Justice and Police Act 2001. Section 12 States:

“12. 1 Subsection [2] applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor [alcohol] in a designated public place or intends to consume intoxicating liquor [alcohol] in such a place.

12.2 The constable may require the person concerned:

[a] not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor [alcohol];

[b] to surrender anything in his possession which is, or which the constable reasonably believes to be , intoxicating liquor [alcohol] or a container for such liquor [alcohol].

12.3 A constable may dispose of anything surrendered to him under subsection [2] in such manner as he considers appropriate.

12.4 A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection [2] commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale [£500].

12.5 A constable who imposes a requirement on a person under subsection [2] shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.”

3.2. Section 14 provides for places which “are not public places”. Such places are exempted from the impact of an order made by the Council:

[a] a licensed premises or a registered club;

[b] a place within the curtilage of any licensed premises or registered club;

[c] a place where the sale of intoxicating liquor is for the time being authorised by an occasional permission or was so authorised within the last twenty minutes;

[d] a place where the sale of intoxicating liquor is not for the time being authorised by an occasional licence but was so authorised within the last twenty minutes;

NB. The above description relate to the provisions of the Licensing Act 1964. They are altered when the Licensing Act 2003 takes full effect later this year.

[e] a place where facilities or activities relating to the sale or consumption of intoxicating liquor [alcohol] are for the time being permitted by virtue of a permission granted under section 115E of the Highways Act 1980.

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LONDON BOROUGH OF HARROW

LICENSING AND GENERAL PURPOSES COMMITTEE - MONDAY 6 MARCH 2006

Reference from the Meeting of Council held on 20 October 2005 - Harrow Borough Controlled Drinking Zone

1. At the meeting of Council held on 20 October 2005, the following Motion was adopted:

“This Council notes the success of controlled drinking zones in other London boroughs, in particular Westminster where it has been adopted for the whole borough, and calls for an officer report to be made to the Licensing and General Purposes Committee on the required processes and consultation necessary for the introduction of a controlled drinking zone to cover the whole of Harrow, thereby giving the police power to act against anti-social drinking”.

2. **Therefore, the Licensing and General Purposes Committee is requested to receive and consider the officer report referred to in the Motion.**

FOR CONSIDERATION:

Background documents:

1. Minute 363 of the Council meeting held on 20 October 2005.

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