

Meeting: **LICENSING AND GENERAL PURPOSES COMMITTEE**

Date: **29 NOVEMBER 2004**

Subject: **LICENSING ACT 2003**

**LICENSING POLICY AND CONSULTATION, FURTHER UPDATE ON THE LICENSING POSITION**

Responsible Officer: **CHIEF ENVIRONMENTAL HEALTH OFFICER**

Contact Officer: **ANDY APPLEBY**

Portfolio Holder: **COUNCILLOR PHIL O'DELL**

Key Decision: **NO**

## **Section 1: Summary**

### **1. Summary**

- 1.1 The Licensing Act 2003 created a new statutory duty for local authorities to licence premises and persons for the sale of alcohol. This Report considers the Draft Licensing Policy for approval. Following consideration by this committee and review by specialist Counsel, Full Council must approve the Policy.
- 1.2 This committee considered reports on the 4<sup>th</sup> March 2003, 29<sup>th</sup> September 2003 and most recently on the 16<sup>th</sup> June 2004. These reports covered the provisions of the legislation in some detail. The licensing regulations that accompany the Act were issued for consultation in October with the draft fees regulations following in early November.
- 1.3 The Licensing Service Manager is now in post and has started the detailed planning and procedures for the new Team and the new duties.

## Decision Required

### 2. Recommendations (for decision by Licensing and General Purposes Committee)

- 2.1 To consider responses to the Draft Licensing Policy and refer the Policy to Full Council for approval.

## Reason for report

**REASON:** In order to meet the legislative requirement to approve and publish the Licensing Policy by the statutory deadline of the 7<sup>th</sup> January 2005.

## Implications if recommendations rejected

**The Council must approve the Licensing Policy by the statutory deadline or it will be unable to exercise its statutory duties with regard to the Licensing Act 2003.**

## Section 2: Report

### 3. Consultation with Ward Councillors

- 3.1 The changes affect the whole Borough. Briefings for elected members in the form of bespoke training events took place in October 2004.
- 3.2 Additional training is scheduled for early February 2005 for those members who are likely to sit on Licensing Panels and determine applications for licences. Officers are currently working on the programme and syllabus, but it is anticipated this can be completed within 5 hours. Prior to sitting on a Panel, members must complete the training to comply with the Licensing Act.. The training will be targeted at the needs of this committee, but would be open to other members with an interest in the subject.

### 4. Policy Context

- 4.1 The report to this committee on the 4th March 2003, agreed the initial approach to the then Licensing Bill 2002. The report to this committee on the 29th September 2003, considered the Act, agreed the consultees for the Draft Licensing Policy and arrangements for the approval of the Draft Licensing Policy.
- 4.2 At the September 2003 meeting it was expected that the final Statutory Guidance and the Regulations were imminent, based on information issued by DCMS. It is now apparent that the DCMS decided to wait for publication of the Alcohol Harm Reduction Strategy before proceeding with licensing implementation. The Alcohol Harm Reduction Strategy was published in March 2004 and the licensing Statutory Guidance was submitted for the approval of Parliament in April 2004.
- 4.3 At the meeting on the 16th June 2004, this committee received an update on the Act and the work that had been achieved so far in meeting the requirements of the new statutory duties. The statutory guidance to local authorities on the content of Licensing Policies was finally issued on the 17th July 2004.

## 5. **Relevance to Corporate Priorities**

- 5.1 The prevention of crime and disorder, public safety, the prevention of public nuisances and the protection of children from harm are the stated Licensing Objectives in the Act. Additionally the DCMS expects that the changes to opening hours and the availability of a wide range of customer-oriented premises with a greater flexibility in the sale of alcohol, will assist tourism and the local economy. All these issues are central to Corporate Priorities and have a particular relevance to a Safer Harrow.

## 6. **Licensing Policy**

- 6.1 The Licensing Policy establishes the basis for applications under the Act, and the way these are determined. Hence the Policy must be complete and approved prior to the commencement of applications to the licensing authority. The Policy is for a three-year period and must be kept under review during this period. In drawing together its Licensing Policy the authority has to:
- Comply with the requirements of the Licensing Act.
  - Have regard to the Statutory Guidance issued to authorities by the Secretary of State under Section 182 of the Act.
  - Consider responses made to the Draft Policy as a part of the consultation.

- 6.2 The Statutory Guidance was issued in July 2004. Officers revised the draft Policy, which was then issued for consultation. Consultees included statutory organisations such as the Metropolitan Police, London Fire and Emergency Planning Authority, Area Child Protection Committee, Harrow Licensing Justices and Harrow Primary Care Trust.
- 6.3 Additional consultation was undertaken with the occupiers of all premises likely to require licensing, residents' representatives including Residents' Associations, Ward Councillors, those groups and persons who responded to the Council's initial awareness raising publicity in May 2003, business representatives, including the Chambers of Commerce, Harrow Town Centre Forum, Harrow in Business.
- 6.4 Internal consultation was undertaken with People First, Planning, Transportation, Crime and Disorder, Drug Action Team, Youth Offending Team. Copies of the Draft Policy were distributed through Libraries and the Council Website.
- 6.5 In total 28 responses to the Draft Policy were received by the deadline. Additional responses were received after the deadline which will be taken into account in due course and on review of the Policy. The following table gives a break down of the responses:

Type of Consultee	Number of Responses	Percentage of Total
Individual resident	7	25%
Residents' Association	4	14%
Business	14	50%
Statutory Organisations	3	11%

- 6.6 To assist consultees with their comments on the Policy, a Reply Form was produced and distributed with the policy. While comments could be submitted in any format, all respondents used the Form. The form provided space for comments on each of the sections of the policy and highlighted a selection of key policies for particular comment or analysis. A copy of the revised Policy is at appendix A. A tabulated summary of the substantive responses is attached at appendix B.

## **7. Approval by Full Council**

- 7.1 On the 14th September LACORS published the DCMS Order that appointed the 7th February as the start of the transitional period for the conversion of existing licences. Guidance issued with this notification stated that the Policy must now be published by the 7th January 2004, in

accordance with the Order, which is contrary to earlier guidance from LACORS.

- 7.2 To clarify the position Harrow has sought the advice of specialist Licensing Counsel as to whether the Policy can be published by 7<sup>th</sup> January 2005 as a draft, but subject to approval in accordance with the earlier guidance. Counsel has confirmed that in his opinion the Policy must be approved by Full Council prior to publication and that following the Order by DCMS there is no choice in this matter.
- 7.3 DCMS have stated that the approval of the Licensing Policy is to take place at full Council and further, "there should be no delegation of the function to the local authority's Executive." There is no discretion in this respect.
- 7.4 It will be necessary for the recommendation from Licensing and General Purposes Committee to be confirmed at a special meeting of Council to be held before the 7th January 2005. This is required by the Regulations. Discussions will take place as to how this can best be achieved.

## **8. Consultation**

- 8.1 This Committee considered the issue of consultation in detail at the meeting of the 29th September 2003 and agreed the approach to consultation on the Licensing Policy.

## **9. Finance Observations**

- 9.1 The funding for the initial three years (2003/4, 2004/5 and 2005/6) of the new statutory duty was approved by Cabinet on the 18th February 2003. The ongoing revenue costs are intended in the legislation to be offset by income from licensing fees and charges. However, the Government will set these fees and charges centrally and final details are still awaited.
- 9.2 The expenditure plans and projected income have been reported through the Medium Term Revenue Budget Strategy planning process and will be considered by Cabinet as part of the review of the Council's Budget.

## **10. Legal Observations**

- 10.1 Legal matters are covered in the body of the report.
- 10.2 It is advised that specialist Licensing Counsel reviews the Policy and the way it reflects the comments arising from the consultation. This review is to take place as soon as practicable.

## **11. Conclusion**

- 11.1 The Licensing Act creates a new system of personal and premises licensing out of existing systems of public entertainments, night café and liquor licensing. A part of these changes will be a liberalisation of licensing hours, whilst retaining safeguards for local residents and the community. Fundamental to the approach of licensing authorities will be the statement of Licensing Policy, which will also provide the baseline for decisions on individual applications.
- 11.2 Officers will continue to review the proposals regarding the extent of the new powers as they become clear and report these to the Committee for decision.

## **Section 3: Supporting Information/ Background Documents**

- 11.1 Licensing Act, available on the Stationery Office web site at:

<http://www.legislation.hmso.gov.uk/acts/acts2003/20030017.htm>

- 11.2 Explanatory Notes to the Licensing Act, available at:

<http://www.legislation.hmso.gov.uk/acts/en/2003en17.htm>

- 11.3 Statutory Guidance, available at:

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/default.htm](http://www.culture.gov.uk/alcohol_and_entertainment/default.htm)

- 11.4 Alcohol Harm Reduction Strategy for England

<http://www.strategy.gov.uk/su/alcohol/index.htm>