

**ITEM 8**

# **LICENSING REVIEW**

**GENERAL LICENSING COMMITTEE  
CROSS PARTY WORKING GROUP**

**MARCH 2009**

## **1. Background**

- 1.1 At the full Council meeting on 15 July 2008, Councillor Hickson put forward a motion calling on the Licensing Committee to launch an urgent and major review of the Licensing Policy of the Council and to involve the relevant Overview and Scrutiny Commission in the review.
- 1.2 Councillor Hickson's motion expressed concerns about:
  - The problem of binge drinking
  - Extended licensing hours
  - The impact on Police resources which it is suggested are stretched to the limit
  - Problems of antisocial behaviour and crime caused by the excess use of alcohol
  - The ability of young people to get alcohol when they should not be entitled to do so
  - The poor management of some licensed premises
  - The enforcement of the legislation and the suggestion that this could be more stringent.
- 1.3 In response to Councillor Hickson's motion, Council resolved to call upon the General Licensing Committee to review the Council's Licensing Policy and to involve the relevant Overview and Scrutiny Commission in its review.
- 1.4 Council's response to Councillor Hickson's motion was considered by the General Licensing Committee at its meeting on 15 October 2008.
- 1.5 Councillor Hickson attended the meeting and expanded upon the concerns that had prompted his motion to Council. At the meeting Councillor Hickson and several other members referred to the need to improve the enforcement of the Licensing Policy.
- 1.6 Having considered the matter, the General Licensing Committee resolved to conduct a review of the Council's Licensing Policy and to ask the Scrutiny Management Commission (SMC) to review the enforcement of the Policy.

## **2. Remit of the Cross Party Working Group**

- 2.1 At its meeting on 15 October 2008, the General Licensing Committee confirmed that it would set up a Cross Party Working Group (CPWG) comprising Councillors Redfern, Berry and Winter to conduct the review of the Council's Licensing Policy.
- 2.2 This report details the findings of the review conducted by the CPWG.

### **3. Meetings of the Group**

- 3.1 The CPWG met twice, once on 17 December 2008 and again on 22 January 2009.

### **4. Enquiries Undertaken**

- 4.1 At its meeting on 17 December 2008, the CPWG acknowledged that a review of the Licensing Policy had been carried out in late 2007 in accordance with the Statutory Guidance issued under the Licensing Act 2003. Furthermore, it noted that the Council had not received any comments at the time from any of the prescribed Responsible Authorities set out in the legislation.
- 4.2 The CPWG agreed that officers should contact all the Responsible Authorities to seek their views on the current Licensing Policy. All the Responsible Authorities were sent a letter on 19 December 2008 requesting their comments by 19 January 2009.
- 4.3 The CPWG also agreed that officers would write to Councillors Hickson and Poulter asking them to identify what specific weaknesses there were in the existing policy, how they manifested themselves and what improvements they would like to see. A letter was sent to each of them on 19 December 2008 requesting this information by 19 January 2009.
- 4.4 At its meeting on 22 January 2009, the CPWG examined the responses that had been received. They considered these and other matters which are set out in Section 6.
- 4.5 For completeness, the CPWG have also commented on SMC's Recommendations which are set out in Section 7.

### **5. Scope of the Information Received**

- 5.1 Two sets of comments were received. One of these was from the Police who are a Responsible Authority. None of the other Responsible Authorities responded. The other was from a representative of the Derby Community Safety Partnership.
- 5.2 No comments were received from either Cllr Hickson or Cllr Poulter.

### **6. Matters Considered**

- 6.1 The obvious starting point was to consider the representations received. The CPWG began by looking at the comments received from Sgt. Stocks. A copy of his response is included within this report at Schedule 1.

#### The Police

- 6.2 In summary, Sgt. Stocks was of the view that the Council's policy is sound. Where he had concerns was in relation to the absence of consistency between conditions inserted into licences by licensing authorities around the county. It should be remembered that the Derbyshire Constabulary's role is county-wide and therefore what he says is perhaps not surprising.
- 6.3 It is understood that the Derbyshire guidance document which Sgt. Stocks referred to is only at draft stage presently. Clearly, in the event that the guidance comes into being, it would be necessary to ensure that there are no inconsistencies between it and any of the conditions contained within the Council's adopted pool of conditions. Alternatively, where there may be scope for such conflict to arise, then in the interest of the effective enforcement/administration of the four licensing objectives within the city, as well as to ensure that licensees are not left confused about the order of priority between the conditions contained in the guidance and those in the Council's pool, it would need to be made clear which assumes precedence over the other. There is of course a further alternative, that the guidance is adopted so as to replace the Council conditions or, conversely, retaining the status quo.
- 6.4 In summary, the CPWG acknowledged the principle behind the adoption of county-wide best practice guidance and considers that the merit of its application to the administration of the licensing system within Derby should be reviewed at such time as the final version of the guidance is available and ready for adoption.

#### The Derby Community Safety Partnership

- 6.5 A copy of Mr. Frost's response is included within this report at Schedule 2. In summary, Mr. Frost was of the view that there is a problem with excessive consumption of alcohol within Derby, which in turn leads to an unacceptable rate of violent crime and hospital admissions within the city. In his view, improved joint working in the licensing field by stakeholder partners would be a starting point in beginning to look for ways to address these issues.
- 6.6 The CPWG acknowledged the points made. It also acknowledged that nationally, and not just within Derby, there is a drinking culture linked predominantly, though not exclusively, to the night-time economy.
- 6.7 The CPWG considers the role of committee in addressing problems that arise from the drinking culture relies heavily on other stakeholders making proper and effective use of the licensing process and being more proactive in the discharge of their responsibilities. The CPWG believes the Council's Licensing Policy is clear about this. Neither the committee nor the Council's licensing team are statutorily permitted to initiate a review of licences.
- 6.8 The CPWG was informed that the Licensing Act 2003 contains provisions that make it clear that the sale of alcohol to persons who are already intoxicated constitutes a criminal offence. The CPWG was concerned that with such provisions in place, and mindful that there appears to be an acknowledged

view that sale of alcohol in breach of that provision is rife within drinking establishments across the city, it did not appear that any of the responsible authorities [or other stakeholders] had actively enforced the provision by initiating a prosecution in appropriate cases or assisted by providing relevant information to inform the enforcement of the legislation by others.

Fundamentally, the CPWG was of the view that where evidence of breach exists, it should generate a referral to the committee for the review of a licence. The referral must of course be supported by tangible evidence.

- 6.9 The CPWG's position is that in the event of any such referral, the committee should robustly ensure that appropriate sanctions are brought to bear against personal or premises licence holders. Only by sending out the strong message that alcohol abuse and breach of the legislation will not be tolerated will proper and effective change come about.
- 6.10 To that end, the CPWG accepts the point made by Mr. Frost, that the introduction of effective joint working measures between licensing stakeholders would be a useful tool in securing better enforcement of licensing principles. The limitations of the committee's ability to actively participate in such measures must however be understood. That said, the CPWG is confident that there are other departments of the Council that are able to participate in any such initiative.

#### Provision of Information to Applicants and/or Persons Making Representations

- 6.11 The CPWG discussed the availability of access to the licensing system by persons who may otherwise feel disenfranchised from it. This includes at one extreme those for whom the system may be viewed as cumbersome or bureaucratic, and at the other extreme persons who may be unable to access the system due to some other disability, for example illiteracy.
- 6.12 While it is clear that sufficient information is provided, within a pack, to licence applicants, the same could not easily be said about the availability of information to the public. The CPWG is of the view that the position needs to be redressed by the introduction of some form of guide to making representations, which should be made available to interested parties and other third parties.

#### Experience of Members' Sitting on Licensing Sub-Committee Panel's

- 6.13 The CPWG members have over the years since the introduction of the Licensing Act 2003 sat together, at times with each other but more often with a cross-section of other members' from the list of 14 able to sit on such panels.
- 6.14 The CPWG members were all familiar with the parameters within which their role as decision makers operates. They were also aware of the different roles that the Council plays within the licensing process, as decision makers (their role), as responsible authorities (Planning, Pollution, Food Health and Safety

Unit & Trading Standards) and as Licensing Act administrators (Licensing Team). They also acknowledged that they always have legal assistance at panel hearings to ensure that their decisions, so far as is reasonably possible to secure, are lawful.

- 6.15 Each member is required to undergo training, both when they first become members of the committee as well as by way of refresher training. Training is usually held annually post-Mayor making, when any newly elected members of the committee are required to attend. Established members also routinely attend for refreshers. The CPWG felt strongly that members who had not received training should not be allowed to sit on Licensing Sub-Committees.
- 6.16 The CPWG members therefore felt confident that they are aware of the technicalities of the legislative framework within which their remit as members of the committee operates. In particular, they acknowledged the reality that decisions made have to be objectively justified and supported by the weight of the evidence put before them. This has not always proved to be the case, not just in relation to representations made by interested parties but also in relation to representations that have been known to be made by responsible authorities. Indeed it was noted that there are a nucleus of responsible authorities who appear continually not to make any representations whatsoever in response to applications, where perhaps a representation would be warranted. Others make representations of such general nature that what they say bears little relevance to the substance of the applications being determined. It was agreed by the CPWG members that neither approach is helpful.
- 6.17 The CPWG members consider that the committee panels would be assisted in their decision making role by better, relevant, reasoned and timely representations tailored to each application, and supported by evidence. In this regard, they note that representations need not always be by way of objection to an application but could also be in support of or by way of general information. In all cases, the prime requirement is that the representation has got to be relevant.

#### Other Considerations

- 6.18 Overall, the CPWG members were disappointed by the absence of responses from the vast majority of responsible authorities, including the in-house authorities, to its letter of invitation to them to participate in its review. Bearing in mind also the express wording of the motion giving rise to this and other related review currently ongoing that “...it seems clear that the Licensing Policy is currently too weak to deal with these issues satisfactorily and needs to now be reviewed so that it is far more robust and so that it gives the Licensing Committee stronger and more easily defined powers...”, the CPWG members commented at the absence of a response, or even an acknowledgment, to its invitation by Cllr Hickson and Cllr Poulter, both of whom had been expressly invited to assist with the review process.

## **7. Comments on SMC’s Recommendations**

- 7.1 Following the release of the second draft of the Scrutiny Management Commissions report and recommendations, the CPWG members wish to make the following observations about those recommendations.
- 7.2 Recommendation 1 – The caveat needs to be made however that the responsible authorities do not all have enforcement powers under the Licensing Act. What some do have are separate enforcement powers under primary legislation governing their area of practice e.g. the fire service will have powers to prosecute for the abuse of fire safety measures within licensed premises, which may also amount to a breach of a relevant licence condition. The two responsibilities do not overlap but are there to complement each other.
- 7.3 In its application, what in practice should happen is for one authority, responding to a complaint made to it or within the course of routine enforcement activity, to take enforcement action within its own primary legislation and then notify the other of the existence of a trigger for action, so as to enable the other to initiate its own complementary response. What currently appears to be the case however is the one seeking to pass enforcement obligations onto the other.
- 7.4 Recommendation 2 – Agreed in principle that regular meetings could be useful but would advise that, as a group, the Responsible Authorities set their own frequency. The comment has got to be made that at source there appears to be a misunderstanding of the role of the policy, which is not a policy that is capable of being ‘enforced’. In fact, the policy is merely a guide to members and officers to assist them with the effective discharge of their statutory roles. It is also a guide for other stakeholders within the licensing process to provide them with a legitimate expectation of what they can reasonably expect to secure from the licensing process.
- 7.5 The CPWG would ask for clarification of how the process is to be initiated, mindful of the need to exercise caution by avoiding the risk of a conflict of interest arising.
- 7.6 Recommendation 3 – Agreed that an investigation would be useful to establish how much more could be done but the CPWG were informed that Licensing Officers from both the Council and the Police already work closely together. The CPWG would ask the Assistant Director – Environmental Health & Trading Standards to organise an exploratory meeting.
- 7.7 Recommendation 4 – Agreed.
- 7.8 Recommendation 5 – Agreed. The CPWG also acknowledge the re-structure proposals currently being considered in Environmental Health & Trading Standards, including the provision of some Underage Sales Officer posts, but also recognise that some out of hours work beyond the period 0700-1900 hours already takes place albeit on a more informal basis.

- 7.9 Recommendation 6 – Noted.
- 7.10 Recommendation 7 – The principle behind the need for information to be made available to committee is understood. This is a process that works generally well within the normal local authority committee system. However, the CPWG members have been informed that a process of systematic and/or regular reports to Licensing Committee by trading standards and police personnel outside of the review or variation processes prescribed within the Licensing Act 2003 and regulations is likely to result in members' impartiality being called into question.
- 7.11 While the CPWG cannot therefore support the recommendation in its existing format, it is not averse to recommending to committee that where trading standards have information of the nature and quality to enforce failed test purchases, they should be tasked to more readily exercise their own statutory review powers so that the matter can then work its way through the system to members to make a determination upon..
- 7.12 Recommendation 8 – Noted.
- 7.13 Recommendation 9 – Subject to the deletion of the phrase "...the Licensing Committee and...", and the insertion of the word "...appropriate..." between the words 'the' and 'RA's' at paragraph 32, agreed.
- 7.14 Recommendation 10 – The CPWG has been informed that it would create a conflict of interest for the Licensing Committee to seek the views of either the Derby Community Safety Partnership, the Derby Primary Care Trust or indeed the views of any [relevant] stakeholder on individual premises matters.
- 7.15 Recommendation 11 – Government's approach to alcohol harm reduction is set out in its strategy document "Safe, Sensible, Social: Next Steps for the government's national alcohol strategy". Local Authority Licensing Policies should complement national and local alcohol policies but are not intended as mechanisms to change 'the drinking culture'. It should be noted that alcohol sales in on-licensed premises are falling whilst sales of alcohol for home consumption are increasing. CPWG recognises that this is an important area of work and General Licensing Committee may wish to discuss how our current Licensing Policy supports the wider Alcohol Strategy for Derby.
- 7.16 Recommendation 12 – All Responsible Authorities enforce a wide range of primary legislation in their own professional areas. These Responsible Authorities should only report formally to the Council on specific premises where they are making a representation or requesting a review of the licence. Where the actions taken by the Responsible Authority (e.g. Derbyshire Fire and Rescue Service) either relate to a breach of an existing licence condition or legislation enforced by another Responsible Authority, they should notify the Licensing Team or the other Responsible Authority accordingly. This information exchange process will be clarified by regular meetings with Responsible Authorities.

## **8. Findings**

- 8.1 The CPWG find no evidence to suggest the Licensing Policy is unsound or weak.
- 8.2 The CPWG acknowledge there are weaknesses in the enforcement of the Licensing Act 2003. Responsible authorities and other stakeholders do not appear to take timely active enforcement, and in some cases no enforcement whatsoever. Such action would result in cases being referred to committee for appropriate action to be taken.
- 8.3 The CPWG is of the view that stakeholders involved in the licensing process appear to be working disjointedly, hindering the progress of effective enforcement of the licensing principles. It is this, rather than any specific failing of the policy itself, that has led to the concerns addressed within this report and that from the SMC.
- 8.4 The CPWG felt that better information sharing processes are required to ensure that responsible authorities have the confidence to work together with each other more efficiently with a common purpose of securing the effective enforcement and preservation of the four licensing objectives.
- 8.5 The CPWG also felt that better information provision measures need to be introduced for the benefit of non-professional stakeholders, in particular members of the public, to ensure that the public becomes more readily aware of how to make effective use of the rights and powers they have under the Act. It is hoped that this will lessen the feeling of disenfranchisement that the public may at times feel.
- 8.6 The CPWG accepts the enforcement roles of all the responsible authorities and other stakeholders need to be more clearly defined to ensure the Licensing Act 2003 is administered and enforced in the most effective way possible.

## **9. Recommendations**

- 9.1 Recommendation No. 1 – to support the principle of the introduction of standardised county-wide licensing guidance and conditions, so far as is lawfully permissible and to the extent that doing so does not create a conflict with the need to secure that the terms of any such guidance or conditions remain relevant to the Council's corporate objectives.
- 9.2 Recommendation No. 2 – that the Assistant Director (Environmental Health and Trading Standards) be instructed to undertake investigations, with a view to identifying practical measures to bring about improved joint working in the licensing field by stakeholder partners.
- 9.3 Recommendation No. 3 – that a guide to making representations for non-licence applicants be drawn up and made readily available for distribution, along similar principles to the guide that has been prepared for the use of

elected members who are called upon to make representations on behalf of residents of their ward.

- 9.4 Recommendation No. 4 – that additional funding be made available to secure that effective enforcement of the Council's statutory obligations can take place, including but not limited to securing that an after-hours enforcement service is created. Part of the funding should also be earmarked to secure that relevant staff are trained, and have their training regularly reviewed.
- 9.5 Recommendation No. 5 – that a report be brought to committee at a future date to initiate discussions about the Council's Licensing Policy can support the wider Alcohol Strategy for Derby.
- 9.6 Recommendation No. 6 – that training for Licensing Committee members be scheduled into the Member Training Programme like Planning Committee training and that members should not be allowed to sit on Licensing Sub-Committees unless they have received the training.

**Comments Received from Sgt Stocks**

**From:** Nev.Stocks.74@derbyshire.pnn.police.uk [mailto:Nev.Stocks.74@derbyshire.pnn.police.uk]  
**Sent:** 16 January 2009 17:52  
**To:** Bailey, Leanda  
**Subject:** FW: Review of current licensing policy

Leanda,  
Would you please be so kind as to pass this on to Mike Kay? I tried by sending it to the group email on his letter to us but the email was returned undelivered.

Thanks.

Mike.

I have read the policy document that appears comprehensive in my opinion.  
To strengthen it, I would ask that it be considered to add a 'best practice' conditions guide, to be used as a standard pool for suitably individually risk assessed reviews of applications and amendments to licences.

By this I mean the wording and usage would be standardised and although suit some premises and potential problems, they would not be used in all cases.

At today's Derbyshire Licensing Practitioners meeting it was suggested that all the responsible authorities consider such a proposal.

It would not be an attempt to have standard mandatory conditions, as I gather that may not be lawful or within the spirit of the act. Rather it would give a reasoned and achievable expectation of licensees and the way their premises are run. All that said I have to admit that I currently don't have the full document but I will forward it as soon as I can early next week.

I am able to say that the document does not replace or add anything to what is already covered within the policy but it would support and clarify what is already in place.  
All the other practitioners are to review the document that I refer to and therefore there may be a brief delay in any agreement on what should and shouldn't be suitable for the county as a whole.

Thanks.

**Nev Stocks Sgt74**  
**Licensing Team**

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Comments Received from Mr Frost

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Redfern, Margaret

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**From:** Frost, Howard  
**Sent:** 23 December 2008 15:02  
**To:** Redfern, Margaret  
**Cc:** Romaine, David; Murray, Michael; Thomas, Andy  
**Subject:** Licensing Scrutiny  
**Attachments:** DRAFT 08-09 Alcohol Action plan 01 09 08.doc; Violent Crime Action Plan.doc; Violent Crime Strategy.doc; Alc strategy low res version.pdf

Margaret,

I would like to re-introduce myself to you. You may remember me from my time as Littleover Inspector, a good few years ago. I am currently seconded to the CSP.

I understand from colleagues in the police that you are conducting a Scrutiny in relation to Licensing in the City. I was aware that the Scrutiny was to be done and that Ray Cowlshaw had agreed that the CSP would be involved in the consultation, ( SSCC Exec. Board meeting 12 Sept ). The city's Alcohol Harm Reduction Strategy and Violent Crime Strategy and attendant Action Plans, (attached) have been published by the CSP after consultation and agreement with all the relevant Agencies. The strategies and plans all advocate joint working in the licensing field. The 2 strategies are monitored by the Alcohol and Violent Group which next meets early in January. I am also aware of a County – wide multi-agency Alcohol Related Violence Strategy currently being prepared by Derbyshire Police, which also involves joint licensing plans and actions. In addition to the work contained in the strategies, the CSP are currently commissioning some work around city centre licensing issues, which is obviously relevant to your Scrutiny

Derby City has a violent crime rate that is 29% above the 'family' average and the second worse alcohol related hospital admissions rate in the East Midlands, both of which are key performance areas that our strategies are seeking to address. There can be no doubt that implementation of a robust licensing policy is key to achieving the changes that are needed in Derby.

The leads at CSP for these areas of work are myself, for Violent Crime and Mike Murray for Alcohol Harm Reduction. Mike and I would be pleased to contribute to the Scrutiny at your convenience.

Regards (and best wishes for Xmas)

Howard Frost, Head of Crime Reduction  
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**Derby Community Safety Partnership – Building Stronger and Safer Communities**

22/01/2009