



DERBY CITY COUNCIL

GENERAL LICENSING COMMITTEE

13 October 2010

Report of the Strategic Director of
Neighbourhoods

ITEM

SCRUTINY MANAGEMENT COMMISSION RESPONSE UPDATE

SUMMARY

- 1.1 Following a request from Scrutiny Management Commission in March 2009, a review of the enforcement of the Council's Licensing Policy was undertaken. The outcome of this review was reported to the General Licensing Committee who approved a number of recommendations. This report provides an update to Members on the actions that have been taken on those recommendations.

RECOMMENDATION

- 2.1 To note the contents of the report, in particular the update response provided to Scrutiny Management Commission set out at Appendix 2.

REASONS FOR RECOMMENDATION

- 3.1 To update Members on the actions that have been taken following the licensing review undertaken jointly by Scrutiny Management Commission and the General Licensing Committee.

SUPPORTING INFORMATION

- 4.1 At its meeting on 25 March 2009, Committee considered a report from the Chair of the Scrutiny Management Commission. This detailed the outcomes of the Scrutiny Management Commission's Review of the Enforcement of the Council's Licensing Policy and the recommendations that had been made by the Commission. A General Licensing Committee Cross Party Working Group also met to consider the recommendations of the Scrutiny Management Commission and made its own observations and recommendations in response.
- 4.2 Committee resolved to approve the amended recommendations of the Scrutiny Management Commission and the recommendations made by the Cross Party Working Group.

- 4.3 At the Scrutiny Management Commission meeting held on 29 June 2010, the Commission decided to discuss city centre alcohol licensing at its September meeting and requested that an update on the Commission's previous review be provided to members.
- 4.4 On 21 September 2010, the Chair of Licensing and the Head of Environmental Health and Licensing attended the Scrutiny Management Commission meeting to provide an update.
- 4.5 The update response provided to Scrutiny Management Commission is set out at Appendix 2.

OTHER OPTIONS CONSIDERED

- 5.1 None for this report, as it is to enable the Committee to be updated on the earlier joint review.

This report has been approved by the following officers:

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| Legal officer | Olu Idowu |
| Financial officer | n/a |
| Human Resources officer | n/a |
| Service Director(s) | John Tomlinson |
| Other(s) | n/a |

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| For more information contact: | Michael Kay, Tel. 01332 641940, e-mail michael.kay@derby.gov.uk |
| Background papers: | Scrutiny Management Commission's Review of Licensing Enforcement, General Licensing Committee, 25 March 2009, Item 7 |
| | General Licensing Committee Cross Party Working Group |
| | Review of Licensing, General Licensing Committee, 25 March 2009, Item 8 |
| List of Appendices: | Appendix 1 - Implications |
| | Appendix 2 - Update Response Provided to Scrutiny Management Commission |

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| IMPLICATIONS |
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Financial

- 1.1 None directly arising from this report.

Legal

- 2.1 None directly arising from this report.

Personnel

- 3.1 None directly arising from this report.

Equalities Impact

- 4.1 None directly arising from this report.

Health and Safety

- 5.1 None directly arising from this report.

Carbon commitment

- 6.1 None directly arising from this report.

Value for money

- 7.1 None directly arising from this report.

Corporate objectives and priorities for change

- 8.1 This links to the Corporate priorities that by 2020 Derby will be a city:
- where everyone feel safe and confident in their daily lives

Update Response Provided to Scrutiny Management Commission

| A. SMC review recommendations – the phraseology is as approved by Council. In each case the recommendation is followed by the Commission’s reasoning and then the comments of the Cross-Party Working Group | Note on Revisions | Progress to September 2010 |
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| <p>Recommendation 1. All Derby Responsible Authorities (RAs) should use their enforcement powers promptly and effectively and in conjunction with each other to deal with breaches of licence conditions and the licensees should be made aware that this will happen.</p> <p>Reasons To provide for and establish more effective control of licensed premises and of their impact on the environment and people of Derby.</p> <p>Cross-Party Working Group – Comments 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.</p> <p>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.</p> | | <p>The Derby RAs have agreed a licensing protocol which sets their relevant enforcement powers.</p> <p>Regular meetings between all the Derby RAs are now taking place where any particular enforcement issues can be discussed and agreed.</p> <p>Licensees are being made aware of this during visits made by the licensing partners and at meetings such as Derby Pubwatch.</p> |

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| <p>Recommendation 2. That within any limitations imposed by the legislation or by the interpretation of the legislation there should be regular monthly liaison meetings between representatives of all the Derby RAs.</p> <p>Reasons</p> <p>*To improve liaison between the RAs and enhance the effectiveness of Licensing Policy enforcement in Derby.</p> <p>*The information provided to the SMC working group strongly suggests that at present the licensing partners are largely working in isolation and whilst they may each be dealing appropriately with the issues that relate specifically to them, there seems to be no holistic approach to licensing policy enforcement. The recommendation is intended to:</p> <ol style="list-style-type: none"> 1. Promote the regular and effective exchange of information between the licensing partners 2. To improve the licensing partners overall understanding of the licensing related issues that affect Derby 3. Facilitate the adoption of a focussed and holistic approach to the enforcement of the Council's the Licensing Policy. <p>Cross-Party Working Group – Comments</p> <p>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.</p> <p>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.</p> | | <p>All the Derby RAs are now regularly meeting as the 'RAM' Group.</p> |
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| <p>Recommendation 3. To investigate the degree to which links between the Council and the Police Licensing Teams can legitimately be strengthened and enhanced and if appropriate to develop a protocol for an improved working relationship aimed at making best use of resources and providing the most effective enforcement of the Act.</p> <p>Reasons * Whilst recognising the need to retain clear boundaries between the two teams, to improve the working relationship of the Police and Council Licensing Teams, to increase efficiency and effectiveness, and to make best use of limited resources.</p> <p>Cross-Party Working Group – Comments 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</p> | | <p>The Council and Police Licensing Teams have continued to develop their working relationship.</p> <p>More information is being shared and joint enforcement exercises are being undertaken.</p> |
| <p>Recommendation 4. An effective and workable information sharing protocol should be developed to enable the legitimate exchange of information on licensed premises between Police and the Council in its role as RA. The protocol should include procedures for the exchange all the information that can legitimately be exchanged, including if possible the issue of closure notices currently recorded on the Police ‘Innkeeper’ system.</p> <p>Reasons *To improve and formalise liaison between the Police and the Council in its role as RA.</p> <p>Cross-Party Working Group – Comments 7.7 Recommendation 4 – Agreed.</p> | | <p>This has been done.</p> <p>More information is being shared between the Police and the Council in its role as a RA.</p> <p>Representatives from the Police and the Council RAs attend the RAM Group, joint exercises take place and appropriate intelligence is being shared.</p> |

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| <p>Recommendation 5. That the Environmental Health and Trading Standards Division make provision for Environmental Health and Trading Standards staff to work frequently and regularly outside during the times when it is known that problems at/with ‘on’ and ‘off’ licensed premises are likely to occur.</p> <p>It is also recommended that as part of their job the Environmental Health and Trading Standards officers be tasked to inspect all types of licensed premises to:</p> <ul style="list-style-type: none"> i. Investigate complaints and take action where appropriate ii. Conduct under age sales investigations iii. Proactively ensure compliance with Licence conditions <p>Where breaches of the legislation or License conditions are found to have occurred the Environmental Health and Trading Standards officers should report and action their findings promptly and correctly so that the appropriate action can be taken by the Licensing Committee.</p> <p>Reasons</p> <p>*To ensure that:</p> <ul style="list-style-type: none"> • Environmental Health and Trading Standards staff are available when breaches of the legislation of license conditions are most are likely to occur and can therefore witness those breaches. • To enable proactive enforcement of licensing legislation and license conditions <p>* Scrutiny Management Commission has been advised of proposals intended to enhance the provision of an out of hours service by Environmental Health and Trading Standards Officers. Whilst the Commission welcomes the improvement that the proposals should provide, members were concerned that a service which only operated during the period 0700-1900 hours would not provide a facility for the sort of enforcement which it appears is required.</p> <p>Cross-Party Working Group – Comments</p> <p>7.8 Recommendation 5 – Agreed. The CPWG also acknowledge</p> | <p>More visits are being undertaken ‘outside of normal working hours’ by officers from Environment & Regulatory Services (formally Environmental Health & Trading Standards).</p> <p>Some of these are being undertaken as part of joint exercises with other licensing partners and agencies.</p> <p>The re-structure proposals to enhance the provision of an out of hours service set out in the previous review have been delayed due to the wider financial uncertainties the Council is currently facing. Managers in Environment & Regulatory Services are currently working up proposals that retain an out of hours provision whilst achieving the required savings. These are still to be approved.</p> <p>Although the restructure of Environment & Regulatory Services has yet to be implemented, Trading Standards (TS) has substantially stepped up its enforcement activity in relation to licensed premises. Since April 2010, 176 premises have been visited. Of these, 26 alcohol test purchases have been carried out (nine of which were joint evening visits with the police). Seven premises supplied alcohol to the underage volunteers and, as a result, 4 received Fixed Penalty Notices, 2 are subject to reports for consideration of prosecution and the other has agreed to revised licence conditions. In</p> |
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| <p>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.</p> | | <p>addition, a representation has been made in support of a licence review initiated by the Police.</p> <p>69 advisory visits have also been made, 19 of which were in the evening.</p> <p>In response to the recent government consultation document on licensing, and in particular, the availability of cheap alcohol, a sample survey was conducted by TS of a range of licensed premises throughout the city. 40 items were purchased and the unit cost of alcohol calculated for each. The results indicate that alcohol is widely available in the city for as little as 15p per unit. This resulted in a press release and media interest from East Midlands Today and the DET.</p> <p>A further survey by TS into the effectiveness of the Challenge 25 scheme has just been completed. Its outcome is a matter for concern. Three volunteers, aged 20-23 were able to make alcohol purchases in 44 of 65 premises tested (a failure rate of 68%).</p> <p>Other teams from Environment & Regulatory Services have been undertaking evening visits to licensed premises. These include officers from Food Safety, Health and Safety, Pollution Control and the Licensing Team.</p> |
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| <p>Recommendation 6. That the Trading Standards Section should implement the recommendation made in the Underage Sales Review (2004) and should work co-operatively with other neighbouring local authorities in order to provide 'new' staff and test customers for underage sales exercises.</p> <p>Reasons</p> <ul style="list-style-type: none"> * The problem of Trading Standards enforcement staff being known to Licensees was reported to the Planning and Environment Commission in 2004 when they conducted their review of underage sales. The solution recommended at that time was that Derby's Trading Standards team should work co-operatively with other neighbouring local authorities in order to provide a source of 'new' enforcement staff and test customers for underage sales exercises. * It is disappointing that this recommendation has not been adopted by Trading Standards and that this problem is still seen as a limiting factor in underage sales exercises. <p>Cross-Party Working Group – Comments</p> <p>7.9 Recommendation 6 – Noted.</p> | | <p>For day-time exercises, this issue has been resolved and TS now has a 'pool' of volunteers available.</p> <p>As emphasis on night-time operations increases, the problem may recur although at present it is too soon to tell. This is due to the reluctance of parents/volunteers to be exposed to the perceived increased health and safety risks associated with night-time work. To date, however, such operations have used volunteers from the police 'pool' of volunteers and has not been a limiting factor.</p> |
| <p>Recommendation 7. That the Trading Standards Team and Derbyshire Constabulary should prepare and publish a protocol that define the actions they will take as RAs in the event that a licensed premises fails a test purchase exercise. The protocol should for example specify the circumstance under which a failed test purchase would result in a warning or in a request for a review of the license. 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.</p> <p>Reasons</p> <ul style="list-style-type: none"> * The SMC working group was told that Trading Standards did not | <p>Words added as from That to accord with GLC comment at 7.11:</p> | <p>The general principle that TS needed to be more pro-active and robust in its use of licensing review powers has been taken on board. TS has submitted 2 recent representations in support of licence review requests initiated by the Police.</p> |

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| <p>as a matter of course report failed test purchases to the Licensing Committee.</p> <p>* It is recognised that Trading Standards cannot in isolation simply report failed test purchases to the Licensing Committee. However it is suggested that there needs to be a clearly defined process which sets out the circumstances under which failed test purchases will be reported to Licensing Committee. It is considered that it would be of benefit to Licensees and the Licensing Committee to define this process.</p> <p>Cross-Party Working Group – Comments</p> <p>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.</p> <p>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.</p> | | |
| <p>Recommendation 8. That a senior officer of Derbyshire Constabulary should be asked:</p> <p>i. to confirm or deny the statements made to the SMC working group by representatives of Derbyshire Constabulary about the level of alcohol related crime in Derby and the resource implications that this is</p> | | <p>Despite extensive efforts made, the level of violent crimes on Derby Division City centre has increased by 13.8% and by 16.7% on Derby North Section that covers the City Centre area (Period: 1/4/10 – 31/08/10 compared to the same period last year.) The</p> |

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| <p>presenting for the Police, and:</p> <p>ii. to comment on the suggestion made by the representatives of Derbyshire Constabulary that there are just too many licensed premises</p> <p>iii. to clarify whether the comments made by the Derbyshire Constabulary representatives amount to a indication on the part of the Police that they are in favour of the establishment of a Saturation Zone.</p> <p>Reasons</p> <p>* At the SMC working group's evidence gathering meeting on 18 December 2008 Inspector Colin Ingley and Sergeant Neville Stocks told members that they had the impression that alcohol related crime in Derby was increasing. They also said that as the result of alcohol related issues the Police might not have sufficient resources to cover problems which arise and said that on Fridays and Saturdays it was necessary to bring in officers from other areas.</p> <p>* Inspector Ingley also suggested that there were just too many licensed premises in Derby and mentioned the Saturation Zone approach that was in the Act and had been adopted by Southampton City Council.</p> <p>* The working group considers that in view of the comments of the Police it would be helpful to know whether Derbyshire Constabulary are advocating the implementation of a Saturation Zone for Derby.</p> <p>Cross-Party Working Group – Comments</p> <p>7.12 Recommendation 8 – Noted.</p> | | <p>Derby City Night Time Economy is a major risk and naturally has huge resourcing implications each weekend for the Police.</p> <p>The East Midlands Public Health Observatory have observed that Derby City Centre has the 5th highest concentration in the United Kingdom. The influence of alcohol on the number of violent offences is well documented nationally and locally. The cumulative impact of the number of premises licensed to sell alcohol within the City Centre Night Time Economy is therefore being currently analysed by Police Analysts with a view to submitting an application to establish a Cumulative Impact Zone (a Saturation Zone). This is being co-ordinated by Inspector Fairbrother.</p> |
| <p>Recommendation 9 [As passed] i. That wherever legally practicable and the appropriate RAs should recommend that membership of Pubwatch is made a condition of the 'on' licenses they consider [sic].</p> <p>Reasons</p> <p>*To improve the exchange of information between licensees and</p> | <p>Words altered to accord with GLC comment at 7.13</p> | <p>This has been done where it has been considered appropriate.</p> |

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| <p>the RAs and thereby to reduce the incidence of anti-social behaviour.</p> <p>Cross-Party Working Group – Comments</p> <p>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.</p> | | |
| <p>Recommendation 10. To investigate ways whereby the views of the Derby Community Safety Partnership and the Derby Primary Care Trust on matters relating to the licensing of premises can be made available to and taken into account by the Licensing Committee.</p> <p>Reasons</p> <p>* The SMC working group has been advised that the legislation does not enable the Council to add the Derby Community Safety Partnership and the Primary Care Trust to the list of RAs. The working group however considers that the views of these organisations would be of relevance to the Licensing Committee and strongly recommends that their views are sought and are taken into consideration by the Committee.</p> <p>Cross-Party Working Group – Comments</p> <p>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.</p> | | <p>Not possible to implement – see Cross party Working Group comment 7.14 Recommendation 10.</p> |
| <p>Recommendation 11. Investigate what might be done to change the ‘drinking culture’ of Derby</p> <p>Reasons</p> <p>* Information provided to the working group has highlighted the social and health implications of Derby’s ‘drinking culture’. Whilst</p> | | <p>The current Home Office consultation document ‘Rebalancing the Licensing Act – A consultation on empowering individuals, families and local communities to shape and determine local licensing’ sets out proposals</p> |

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| <p>recognising the reasons for the current drinking culture and the inherent difficulties in changing it, the working group does however consider that it would be remiss of the Council to dismiss without proper consideration the possibility of changing the existing drinking culture. It is therefore recommended that the Council gives consideration to the suggestions that have been put forward by witnesses for changing the drinking culture of the City.</p> <p>Cross-Party Working Group – Comments</p> <p>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.</p> | | <p>for consideration to be given to the wider health implications of alcohol and the ‘drinking culture’. The Council’s General Licensing Committee have recently responded to the consultations on behalf of the Council.</p> <p>The Council, along with its partners, are currently working collaboratively to achieve ‘Purple Flag Status’ to secure improvements to the night time economy.</p> |
| <p>Recommendation 12. That the means whereby enforcement action taken by Fire Officers is reported to the Council is examined and improved where necessary.</p> <p>Reasons</p> <p>* To address a concern expressed by the DFRS officers that the process of exchanging information could be improved at a local level and to ensure that DFRS officers fully understand their role as representatives of a RA.</p> <p>Cross-Party Working Group – Comments</p> <p>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</p> | | <p>DFRS are represented at the RAM Group on a regular basis and have exchanged information with the Licensing Authority and the RAs where necessary.</p> |

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| 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 | | |
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| Cross-Party Working Group Recommendations , confirmed by the General Licensing Committee and Council without revision | Progress to September 2010 |
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| 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. | The Derbyshire Licensing Authorities meet regularly to discuss common issues. A protocol has been agreed between them which sets out a common framework for enforcement. |
| 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. | This has been done. Please see the comments already set out above regarding the work undertaken with the Derby RAs. Joint working also takes place with other stakeholder partners, e.g. Safe & Sound, Youth Offending Service, Education. |
| 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. | Basic information is now available. More updated information is ready to be updated to the Council's website once current changes to it have been completed. |

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| <p>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.</p> | <p>The re-structure proposals to enhance the provision of an out of hours service set out in the previous review have been delayed due to the wider financial uncertainties the Council is currently facing. Managers in Environment & Regulatory Services are currently working up proposals that retain an out of hours provision whilst achieving the required savings. These are still to be approved.</p> |
| <p>5. That a report be brought to committee at a future date to initiate discussions about how the Council's Licensing Policy can support the wider Alcohol Strategy for Derby.</p> | <p>The Council's current licensing policy has recently been reviewed.</p> <p>In addition, The current Home Office consultation document 'Rebalancing the Licensing Act – A consultation on empowering individuals, families and local communities to shape and determine local licensing' sets out proposals for consideration to be given to the wider health implications of alcohol and the 'drinking culture'. The Council's General Licensing Committee have recently responded to the consultations on behalf of the Council.</p> |
| <p>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.</p> | <p>This has been done.</p> |

The full reports from the two linked reviews are accessible below:

SMC review <http://cmis.derby.gov.uk/CMISWebPublic/Binary.ashx?Document=13167>

Cross Party Working Group: <http://cmis.derby.gov.uk/CMISWebPublic/Binary.ashx?Document=13211>