

## REFORM OF THE LICENSING ACT: PROPOSALS

### SUMMARY

- 1.1 To consider my views on a more fundamental review of the current licensing regime than is being proposed by the Home Office.

### RECOMMENDATION

- 2.1 To agree to send the Home Office the concerns on the current Licensing Act and proposals for reform of it set out in Appendix 2 to the report

### REASONS FOR RECOMMENDATION

- 3.1 The current provisions in the Licensing Act 2003 referred to in Appendix 2 have proved to be flawed.

### SUPPORTING INFORMATION

- 4.1 The Government has announced its intention to overhaul the Licensing Act and at its meeting on 1 September this Committee considered the consultation document issued by the Home Office, "Rebalancing the Licensing Act" and agreed a formal response to it on behalf of the Council.
- 4.2 However I, and I believe some other Committee Members, consider that the consultation was too narrow in its scope and that a more far reaching review should be carried out and it was agreed at the last meeting that we inform the Home Office that we wished to make further comments on other aspects of the current licensing regime.
- 4.3 In my view there are a number of areas that need particular attention and reform. These are;
- ❖ Premises license
  - ❖ Opening hours
  - ❖ Personal Licenses

- 4.4 I have for committee's consideration amplified in Appendix 2 to this report my concerns on these issues and my proposals for reform (?) but acknowledge that other members may well have other and different concerns.

<b>OTHER OPTIONS CONSIDERED</b>
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- 5.1 None

<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Name 01332 641931 e-mail sandra.mansell@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Concerns and proposals for reform
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<b>IMPLICATIONS</b>
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**Financial**

1.1 None

**Legal**

2.1 None

**Personnel**

3.1 None

**Equalities Impact**

4.1 None

**Health and Safety**

5.1 None

**Carbon commitment**

6.1 None

**Value for money**

7.1 None

**Corporate objectives and priorities for change**

8.1

## **PREMISES LICENSES**

### **Concerns**

The ability of the Local Authority to consider such applications is too tightly constrained by reference to the four licensing objectives which often makes it difficult to legally justify refusal, or sustain such a decision on appeal. This is particularly so when faced with well resourced applicants, such as large pub groups, who can and do devote significant time and money and use specialist lawyers for applications and appeals. The result, in Derby at least, has been the proliferation of licensed premises and a night time economy that is running out of control.

### **Proposed Reform**

**Removal of ‘presumption’ as to grant of license if no relevant objection is submitted.**

**Substitute an adversarial inquiry before Licensing Committee (accepting this would bring about an increase in hearings) in all circumstances, with a burden of proof being on applicant to substantiate the application and offer evidence as to meeting the 4 criteria, taking cognoscente of existing licensed premises provision in the locality.**

**(This would require a definition of ‘locality’ which, I would suggest for the purposes of debate, should be within 1 square mile from the premises under consideration.)**

**In other words – ‘presumption’ is removed from Licensing Committee consideration, even where no objection from a ‘relevant person’ is received - but, the burden of proof is added whereby the applicant evidences in detail, how an application of grant/variation will meet and enhance licensing objectives - and provision, in areas of high density licensed activity.**

**‘Relevant persons’ to remain in place.**

## **OPENING HOURS**

### **Concerns**

The introduction of a “café-culture” by allowing 24 hour licenses and flexible closing times has not materialised. In the city centre applicants tend to make “Carte Blanche” applications for long hours so as to compete with nearby licensed premises and while currently this late hours drinking causes problems it is very difficult, under the current regime, to justify refusal for a new late license on the grounds of saturation and/or cumulative impact.

We should not countenance a ‘migratory’ situation whereby one outlet is restricted in opening hours and another not, thereby attracting a movement of custom when one

premises shuts down to another with a later extension of hours. A 'blanket' closing hour is therefore the only fair and equitable solution.

I dismiss the previous thought process in the passage of the bill by justifying original flexibility as to staggered closing times stating they 'spread the load on the street' - this has failed and merely offers the opportunity of later closing times which, when granted in one instance, licensing authorities struggle to resist when further applications/reviews are submitted.

## **Proposed Reform:**

**Change to current legislation extending the ability of a Local Authority Licensing Committee to introduce 'blanket' late night closure based on an acceptance that the '24 hour culture' has proven to be unjustified in many localities given the incidences of breach in the four licensing objectives.**

## **PERSONAL LICENSES**

### **Concerns**

There are a number of concerns on this issue which I regard as one of the most ill conceived sections – introduced by the 2003 Act. Firstly there is not proper test of the fitness of the applicant to be granted a license. They merely have to be over 18, have a clean CRB check and have received suitable training (which may often be no more than a one day course). Therefore someone with very little experience and only a basic knowledge of the licensing law can obtain a license.

Secondly unless the license holder is convicted of a "relevant" offence they will retain their licence for 10 years without review.

Thirdly the personal license is not tied to a particular licensed premise so that the personal license holder is free to move around the country to different licensed premises without the need for any further notification to the new Licensing Authorities or approval from the Police whose area he/she is operating, even though the original Licensing Authority may have concerns with his/her performance.

Sections within the 2003 Act introduced the role of "Designated Premises Supervisor" which allowed the personal license holder to not always be on the premises and even supervise more than one licensed premises. This, I believe, dilutes accountability and is a cause of confusion as to where responsibility lies for the running of the premises.

Current legislation allows 'hands off' flexibility as to the location of- or number of outlets covered by a Personal Licence holder this gives inconsistency and lack of supervision in the sale and supply of alcohol.

Similarly, too often a review of the premises license is disregarded – when following up a detected breach by relevant parties due in part to the complexity of building a substantial case in order to prove breach of licensing objectives.

Premise owners often take an early initiative by removing the Personal licence holder or DPS thereby satiating the relevant persons consideration of action by recognising this may

well be a 'simple and cost effective solution' without resort to law. Realistically the product of this solution is to protect the premises and cast aside the Licence holder.

This separation of the two functions was successfully lobbied by the industry at the time the Bill passed through parliament. It is common practice for owners to set sales targets for PLH/DPS's whereby they may well indeed find it necessary to breach Licensing Law in order to achieve the required level of performance. If detected, the company are able to plead ignorance, quickly dispense with the PLH/DPS's services and such is the proliferation of unemployed license holders they quickly install new personnel thereby protecting both the premise license and profit margins.

Such regular changeover of PLH/DPS's is a major factor in the lack of professional expertise and stringent application of law, and is, I would suggest, the major cause of drink related incidents we experience in the City of Derby , and indeed elsewhere within England and Wales.

PLH/DPS's are often untested, unprofessional by way of inexperience and work for a low salary/wage, often in shifts (where 24 hr drinking is in place) and would not normally match a profile one would readily associate with the running of an establishment offering a variable selection of licensed activities and importantly, its locality. Such a category of license holder does however appeal to the premises owner, because they are available, dispensable and cheap.

## **Proposed Reforms**

**Review of the written test used to authenticate the applicants knowledge of Licensing Law. It is simplistic and basic, needing to be far more stringent.**

**Review of accredited trainers administering this system. Many are internal to the industry and integrity of their legal obligation can be questioned.**

**Introduction of the promised (at the time the bill passed through Parliament) Nationwide data system whereby Personal licence holders have a history of employment throughout the period of licence as to where previously employed – length of service- breaches of licence, warnings etc. Updated and accessible locally when a transfer application is received.**

**Alternatively a reversion to a 3year Personal Licence leading to a tri-annual review before a Local Licensing Authority where the PLH resides or work coupled with a knowledge retest.**

**Amendment to the Act reverting to one PLH/DPS to one premise. With further re-enforcement of the legal obligation to train AND supervise employees in the legal requirements of serving alcohol and other licensable activity during permitted hours.**

**Cllr. Mick Barker  
29.09.10**