

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

LICENSING COMMITTEE

**Minutes of a Meeting of the Licensing Committee held on
Tuesday 18th October 2011 at 6pm in the Committee Suite, King's Court,
Chapel Street, Kings Lynn**

PRESENT:

Councillors R Groom (Chairman),
Councillor M Back, R Bird, C Crofts, M Langwade, J Loveless, A Lovett,
C Manning, G Sandell, L Scott, D Tyler, Mrs E Watson and T Wright.

By Invitation: Councillor B Long, Portfolio Holder Environment and Community
Councillor M Tilbury

Apologies for absence were received from Councillor M Back, M Hopkins and Mrs Smeaton.

1. **WELCOME AND INTRODUCTIONS**

The Chairman welcomed everyone to the meeting, in particularly acknowledged the support of the Portfolio Holder, Councillor Long. He introduced Vicki Hopps, the Principal Officer for Food, Health and Safety and Licensing and Jo Garrod, Community Safety & Neighbourhood Nuisance Officer.

2. **URGENT BUSINESS**

There was none.

3. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

4. **MEMBERS PRESENT PURSUANT TO STANDING ORDER 34**

Councillor M Tilbury

5. **MINUTES**

(i) The minutes of the full Licensing Committee meeting held on 23rd February 2011 were confirmed as a correct record and signed by the Chairman.

(ii) The minutes of the Licensing Sub-Committee hearing held on the 30th June 2011 was confirmed as a correct record and signed by the Chairman.

6. **A Consultation proposal to examine the deregulation of Regulated Entertainment**

At the invitation of the Chairman, the Licensing Manager gave a powerpoint presentation which gave an outline of the proposals to examine the deregulation of Schedule One of the Licensing Act 2003 in relation to Regulated Entertainment. The Government were proposing a reform of activities currently classed as “regulated entertainment” and sought views on the removal in certain circumstances of the requirement for a licence in England and Wales to host a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music, any playing of recorded music, or a performance of dance.

The Licensing Manager stated that there were currently 459 premises that held a licence to sell alcohol in West Norfolk and 140 which did not sell alcohol. Of the 140, 105 had a licence for regulated entertainment and 35 had a licence for late night refreshment. In addition, during 2010, 289 Temporary Event Notices (TENs) were issued of which 14 were for regulated entertainment only. He explained that under the proposals, the 105 licensed premises would no longer need a licence, however there would be no financial loss to the Council as they were currently exempt from paying any licence fee. There, however would likely be a saving in terms of enforcement action and the applicant would also no longer have to pay to advertise the application if it was for regulated entertainment only. However, there was a fee associated with applications for regulated entertainment for TENs.

The Licensing Manager outlined the current controls under the Licensing Act and explained that under the proposals any existing conditions would remain on the premises licence but additional conditions could be added under the review process. He also explained that the Council had powers under various other legislation such as the Environmental Protection Act 1990, Anti-Social Behaviour Act 2003, Noise Act 1996 and the Criminal Justice & Public Order Act 1994.

Jo Garrod, Community Safety & Neighbourhood Nuisance Officer explained that there was a difference in evidence in relation to what constituted a noise nuisance under the Licensing Act 2003 and that under the Environmental Protection Act 1990 (EPA 1990). The Licensing Act 2003 considered annoyance and disamenity caused by noise nuisance as opposed to a statutory nuisance under the EPA 1990. The level of noise nuisance experienced by members of the public to be considered as a statutory nuisance had to be severe and occur for long periods and interfere with their general living standards. She raised concerns that if the Government did deregulate regulated entertainment, taking any enforcement action against problem premises which did not require a licence would be more difficult. The Council did operate an out of hours enforcement service from 8pm to 1pm on Friday and Saturday evenings alongside a 24 hour help line for those residents who experienced noise nuisance but under the proposals it would make it more difficult to control noise levels.

The Licensing Manager explained that under the proposals, the Government intended to retain the current licensing requirements for any performance of live music, theatre, dance, recorded music, indoor sport or films where the audience was 5,000 people or more. A licence would also still be required for events involving boxing and wrestling and for any performance that was classed as sexual entertainment. Jo Garrod explained that the majority of noise nuisance problems occurred at much smaller events such as in village halls involving small groups of people. These venues often were surrounded by residents, had no double glazing and gravel car parks. She confirmed that the CS&NN team did have equipment that could measure the level of noise but it was difficult to set levels as each premises differed.

In response to a further query, Jo Garrod clarified that there were specific times during the year when fireworks could be let off, other than on 5th November, however if residents reported noise nuisance (statutory), the enforcement team could serve a notice under the EPA 1990.

The Licensing Manager explained that there were currently 3 premises in the Borough which were licensed for 5,000 people or more; Sandringham, Houghton Hall and Tuesday Market Place. He highlighted that under the current legislation, the 5,000 included both the audience and performers but under the new proposals the 5,000 would relate to just to the audience. He referred to an annual event held at Houghton Hall which next year was looking to sell 7,500 tickets but would also involve 3,000 support workers.

The Licensing Manager referred to legislation under the Local Government (Miscellaneous Provisions) Act 1982 which required some sex establishments to be licensed. Sexual entertainment could however still take place without the need for a premises being licensed as a sex establishment if it occurred infrequently, i.e. on no more than eleven occasions in any period of 12 months, provided that each occasion last no longer than 24 hours with at least one month between events.

There were a number of anomalies included in the proposals such as stock car racing which did not need a licence but indoor athletics did, an evangelist could speak in a large arena without a licence but a play in the same venue did require a licence. A football match screened live in a pub did not require a licence but a match recorded on a DVD and played back in the same venue would.

The Licensing Manager explained that the consultation included a number of questions, however those that were more relevant to the Licensing Committee were questions 11 to 22. Members were invited to comment/respond on these questions in order for their views to be considered as part of the consultation exercise.

Questions 1 to 10 – referred to the impact of the proposals which were likely to result in more performances, potentially both savings and additional costs to local authorities, an increase in both noise complaints and events.

Questions 11 – 22 – the role of licensing controls

Q11. Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?

Members questioned how the figure of under 5,000 had been derived at and acknowledged each premises was different and also was dependent on the type of regulated entertainment that was offered.

Licensing Committee's Response: No

Q12. If you believe that there should be a different limit, either under or over 5,000, what do you think the limit should be? Please explain why you feel a different limit should apply and what evidence supports your view?

Councillor Long suggested that the limits should be determined at a local level. The issue of police resources was also discussed and Councillor Bird referred to two annual events, Snetfest and Lifestyles that had experienced problems with arrests having to be made by 2 Police Officers (not PCSO's) and the requirement to travel across the other side of the borough to a secure lock-up. This took the Officers away from policing the event for some 2 hours. Again, it was highlighted that the limits were also dependent on the type of regulated entertainment that was offered. The Licensing Manager highlighted that any limit determined at a local level may be subject to challenge from the larger organisations that operated across the country.

Jo Garrod reiterated that it was the smaller events that caused the most noise nuisance complaints with the larger events potentially being subject to different restrictions. Councillor Mrs Watson referred to illegal raves which mostly involved more than 5000 people and were often held on land without the land owner's permission.

Councillor Tilbury concurred with the view expressed by Councillor Long in the limits should be determined at a local level and in accordance with the type and knowledge of the area (i.e. cities, urban/rural) that the local authority operated in.

Licensing Committee's Response: Limits should be determined locally.

Q13. Do you think there should be different audience limits for different activities listed in Schedule One? If so, please could you outline why you think this is the case. Please could you also suggest the limits you feel should apply to the specific activity in question?

Licensing Committee's Response: Yes (see also Q12).

Q14. Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply?

Licensing Committee's Response: Yes, likely increase in noise nuisance incidents.

Q15. Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so please explain why and what would this mean in practice?

Councillor Long stated that there were no indoor venues within the Borough with a capacity of over 5000 which would require a licence. In response to a query raised by Councillor Langwade in relation to the capacity of venues under health & safety legislation and whether it was the same for both indoor and outdoor events, it was explained that each premises was different and the noise emanating varied from premises to premises and whether it was indoors or outdoors. People were unlikely to be as affected from noise emanating from events held outdoors during the day.

Councillor Wright referred to an event held at Houghton Hall this year that had lasted for 3 days and attracted a considerable number of complaints as the noise could be heard 5/6 miles from venue. The Licensing Manager explained that this was the event he had referred to earlier and the plans for next year's event being even bigger. Jo Garrod reminded the Committee that at any time, if local residents had concerns, they could apply for a review of the premises licence. She explained that the CS&NN team had visited the event on the Saturday evening and witnessed breaches of what had been previously agreed and had also experienced noise from over 4 miles away. However, only 6 formal complaints had been received. Next year's event would be subject to a lower level noise limit.

Q16. Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply?

Councillor Langwade referred to the consultation document, section 3.14 which stated that the Noise Act 1996 allowed local authorities to take action in respect of licensed premises where noise between 11pm and 7am exceeded permitted levels and suggested that this would be an appropriate cut-off time for regulated entertainment under the proposals. Councillor Tilbury suggested that midnight was an acceptable cut-off time, particularly at weekends when people were prepared to stay out later.

Q17. Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so explain why?

The issue of marquees was raised and whether this constituted an indoor and outdoor event. It was acknowledged that different types of entertainment generated more noise than others. Reference was made again to Section 3.14 in the consultation document which stated a cut off time of 11pm under the Noise Act 1996. Jo Garrod explained that other legislation could be utilised if problems with noise nuisance were experienced after 11pm.

Q18. Are there alternative approaches to a licensing regime that could help tackle any potential risks around the timing of events?

Licensing Committee's Response: No

Q19. Do you think that a code of practice would be a good way to mitigate potential risks from noise? If so, what do think such a code should contain and how should it operate?

Licensing Committee's Response: No

Q20 Do you agree that laws covering issues such as noise, public safety, fire safety and disorder, can deal with potential risks at deregulated entertainment events? If now, how can those risks be managed in the absence of a licensing regime?

If proposals are introduced it was likely that the public would experience more noise nuisance disturbance.

Licensing Committee's Response: No

Q21. How do you think the timing/duration of events might change as a result of these proposals?

The Licensing Manager stated that some events were one-off so any complaints in relation to the event could be of little consequence. He referred to a previous application for a one-off jousting event planned in Emneth which was subject to a number of objections which had resulted in the organisers moving the venue to Downham Market. Organisers of such events, however still had a duty of care under the Health & Safety at Work Act.

Q22. Are there any other aspects that need to be taken into account when considering the deregulation of Schedule One in respect of the four licensing objectives of the Licensing Act 2003?

Licensing Committee's Response: No

Questions 23 to 45 were specific questions in relation to performance of various activities (live music, performance of plays, performance of dance, exhibition of film, indoor sport, boxing & wrestling and recorded music).

The Licensing Manager explained that The Institute of Licensing and Local Authority Coordinators of Regulatory Services (LACORS) would be collating responses for submission to the Department for Culture, Media and Sport (DCMS) by 3rd December 2011.

Jo Garrod explained that the CS&NN were consulting with other local authorities in the area and would be responding to the consultation in their own right.

The Chairman took the opportunity to thank Jo Garrod for her contribution and she left the meeting.

7. **Summary of principle amendments contained in the Policing Reform and Social Responsibility Act 2011**

The Licensing Manager gave a presentation that outlined the principle amendments in relation to the Licensing Act 2003 contained in the Policing Reform and Social Responsibility Act 2011. He explained elections would be held to appoint Police & Crime Commissioners and the Act also included amendments to the Licensing Act 2003. Section 12(4) of the Act was going to be amended which would make the licensing authority (licensing team) itself a responsible authority and able to make representations and apply for reviews in its own right. The Primary Care Trust (PCT) or Local Health Board would also become a responsible authority, however the PCT was to be disbanded in March 2013 and would be replaced by Clinical Commissioning Groups (CCGs). These groups were made up of GP Practices and it was estimated that there would be 250 plus whereas currently there were 151 PCTs. The Licensing Manager explained that he had concerns about establishing the relevant point of contact at the CCGs and whether they would have the resources to make representations. He also raised the issue of how the CCGs could link any health problems (i.e. drunkenness) to any specific licensed premises. Health was originally being proposed as a new licensing objective but this was not contained within the Act. However the CCGs could offer a useful input to future licensing policy reviews.

The definition of “interested parties” was being deleted and replaced by ‘other persons’. This effectively means that anyone could object if they could demonstrate that they would be affected by an application.

The Licensing Manager explained that in future notices of applications were to be advertised by the licensing authority in a prescribed manner to bring them to the attention of “other persons” who live, or were involved in a business, in the relevant licensing authority’s area and who were likely to be affected by the application. This may result in an increase in the number of objections received and subsequently an increase in the number of hearings. It was also highlighted it would likely have cost implications. Licensing Authorities must grant the application with any applicable mandatory conditions and any conditions consistent with the operating schedule if no objections had been received. The Licensing Manager explained that the evidential test would also change and the word ‘necessary’ had been replaced with ‘appropriate’. Therefore when relevant representations were made, a hearing would need to be held and have regard to the representations and take steps which it considers ‘appropriate’ for the promotion of the licensing objectives. In relation to objections to TENs, in addition to the Police, the local authority by which statutory functions were exercisable in any area in which the premises were situated could also object in relation to minimising or preventing the risk of pollution of the environment or of harm to human health. This would mean that in the future, the Environmental Health Officers would be able to object to TENs.

A Licensing Sub-Committee may impose conditions on a TEN following a hearing where it was appropriate for the promotion of the licensing objectives, that the condition were also imposed on the premises licence or club premises certificate and the condition would not be inconsistent with carrying out the licensable activities under the TEN. It was suggested that this would leave local authorities more open to challenge and have an impact of the duration of a hearing. Other changes in relation to TENs were that the duration of any event would increase from a maximum of 96 hours (4 days) to 168 hours (week). The number of accumulative days a premise could be licensed also would increase from 15 to 21 days. The Police and Environmental Health would have 3 working days to object as opposed to the current 2 working days for the police. In addition to the current 50 standard TENs that a personal licence holder could give and the 5 standards TENs a non-personal licence holder could give per year, they would also be able to give a further 10 and 2 late TENs respectively. It was explained that late TENs would also be introduced which mean that notices would could be served no earlier than 9 working days before an event and no later that 5 working days before the event began. If objections were received in relation to a late TEN, it would not allow sufficient time for a hearing to be convened and therefore the event would simply not go ahead.

The Licensing Manager explained that under the Act fines for persistently selling alcohol to children would increase from £10,000 to £20,000. He also explained that currently premises licence were granted for life and attracted a one off application fee and then a subsequent annual fee. If this annual fee was not paid, currently it could only be treated as a civil debt and pursued via civil recovery, however, under the new Act, in future premises licences and club premises certificates could be suspended for non-payment of annual charges. The Licensing Manager highlighted that clarity was required on this issue in terms of liability of unpaid fees when a premises licence was transferred.

The Statement of Licensing Policy would only need to be reviewed every 5 years as opposed to the current 3 years.

Further relevant offences would also be added to those that may potentially disqualify people from holding personal licences. For example, currently there was no requirement for personal licence holders to reveal to the Magistrates Court if they had failed to provide a breath tests for drink-driving, however, in future this may potentially disqualify people from holding personal licences.

The Licensing Manager explained that subject to ministerial approval, licensing authorities would have the power to set certain fees on a full cost-recovery basis, whereas currently the fees were set by Central Government and were based on the non domestic rateable value of the premises. The costs may also include the costs of acting as other responsible authorities under the Act e.g. planning.

He also explained that licensing authorities may decide whether to introduce a late night levy in its area. This would be administered by the licensing authority but 70% of the revenue generated must be applied to the local policing body. The late night levy must apply to the whole of the licensing area but exemption may apply which relate to taking part in particular arrangements such as Pubwatch or Best Bar None schemes. It was clarified that the percentage of revenue generated could not be changed at a local level to less than 70% being applied to the Police.

The Licensing Manager explained that there was currently no specific timescale for the introduction of the new measures but they were subject to regulations with a proposed commencement date of October 2012.

Councillor Crofts strongly supported the introduction of a night late levy and referred to cost implications of CCTV, particularly in relation to the numerous premises cited in Norfolk Street, although it was highlighted that a number of these premises were only licensed for late night refreshment. Councillor Tilbury suggested that introducing such a levy would be unfair to those premises that may have late night openings hours (or 24 hour licence) but did not open in accordance with their permitted hours. He also stated that in his opinion the introduction of "24-hour drinking" had failed in its original aim in that an extension of drinking hours would stop the rush of people all leaving at the same time and a decrease in the amount of people drinking irresponsibly. He hoped that the current Government would reverse or reduce the hours permitted under the Licensing Act 2003.

Councillor Long explained that he had spent the last Saturday evening from 8.30pm until 3.30am observing operations in the CCTV suite. He stated that CCTV was an invaluable tool to the Police and that he supported the introduction of a late night levy which would generate additional revenue for more police resources.

The Chairman thanked the Licensing Manager for his informative, in depth and interesting presentations. He also thanked the Portfolio Holder, Councillor Long and Vicki Hopps, Principal Officer, Food Health and Safety for their contributions.

7. **DATE AND TIME OF NEXT MEETING**

There being no pending business, no date was set for a further meeting.

The meeting closed at 7.47pm