

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Licensing Committee held on
Monday, 6 September 2010 at 9.30 a.m.

PRESENT: Councillor Cicely Murfitt – Chairman
Councillor John F Williams – Vice-Chairman

Councillors: Richard Barrett Val Barrett
Trisha Bear Nigel Cathcart
Roger Hall Sally Hatton
Liz Heazell David McCraith
Alex Riley

Officers: Myles Bebbington Licensing Officer
Gary Duthie Senior Lawyer
Ian Senior Democratic Services Officer

Apologies for absence were received from Councillor Janet Lockwood, Raymond Matthews and Charles Nightingale.

5. DECLARATIONS OF INTEREST

There were no declarations of interest.

6. MINUTES OF PREVIOUS MEETING

The Committee authorised the Chairman to sign, as a correct record, the Minutes of the meeting held on 22 June 2010.

7. LICENSING ACT 2003 - HOME OFFICE CONSULTATION DOCUMENT

The Licensing Committee considered a report on the Government's consultation document entitled rebalancing the Licensing Act.

Noting that the consultation document was a national one, the Chairman reminded Members that their role was to examine its proposals in the context of how effectively they might apply within South Cambridgeshire. Sections 1 to 4 reflected Government Policy over which local authorities had no control. The Committee's task was to consider the 29 specific questions posed in the subsequent sections, and inform the Licensing Officer's response, which had to reach the Government by 8 September 2010.

Question 1 – What do you think the impact would be of making relevant licensing authorities responsible authorities?

Members favoured the idea of South Cambridgeshire District Council being designated a responsible Authority as this would enable it to be more proactive when dealing with complaints and applications. It would be important though to impose limits by empowering other government bodies to amend or rescind the actions of a responsible Authority, where appropriate.

Question 2 – What impact do you think reducing the burden of proof on licensing authorities will have?

Members favoured a reduction in the burden of proof but noted that, while such a reduction would lead to an overall improvement, it could result in a heavier workload for licensing officers and licensing committees should there be a consequent increase in

licensing hearings, reviews and appeals.

Question 3 – Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Members agreed that applicants for licences should be required to complete a radically redesigned application form in full. Such form should include a section seeking information that would enable the Licensing Authority to assess an event's likely impact on the local environment and on the amenity of local residents. Parish Councils should be invited to make representations as consultees.

Question 4 - What would be the effect of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

Members considered that the current powers afforded to the Police were sufficient and that the only changes perhaps desirable, possibly through Government Guidance, might be that representations by the Police be considered carefully by the Licensing Authority rather than being arbitrarily accepted by it. The Senior Lawyer informed Members that Case law existed indicating that it was unlawful to seek to defer power to the Police (or any other authority) over other responsible authorities and case law exists stating that this is unlawful.

Question 5 – How can licensing authorities encourage greater community and local resident involvement?

Members considered that it was essential to involve parish and town councils (or equivalent) as a means of engaging local communities. If there was no recognisable elected body, such engagement could be with a parish meeting. Members encouraged central Government to make more effective use of Information Technology as part of the consultation process.

Question 6 – What would be the effect of removing the requirement for interested parties to show vicinity when making a relevant representation?

Members considered that removing the requirement to demonstrate vicinity would allow those persons affected in a more remote way to contribute comments. However, such removal might also result in the receipt of remarks from individuals or groups with "single issue agendas" that were not entirely relevant to the application at issue.

Question 7 - Are there any unintended consequences of designating health bodies as a responsible authority?

Members considered that the involvement of health bodies could incur significant costs at a time of significant financial and structural change within the National Health Service. They said that, if Health Bodies were to be designated as responsible authorities, it should only be at a local level so as to exclude general health matters of a more national interest when commenting on specific applications of purely local concern.

Question 8 - What are the implications in including the prevention of health harm as a licensing objective?

Members considered that the inclusion of the prevention of health harm might be broader than directly related alcohol issues. The definition of 'health harm' could be expanded to include, for example, the amenity of residents that might be affected by late night or early morning noise disturbance from licensed premises.

Question 9 - What would be the effect of making community groups interested parties under the licensing act and which groups should be included?

Members considered that the current practice of inviting community groups to make

representations on behalf of local people was adequate. Ideally, parish councils, or equivalent representative bodies, should become consultees.

Question 10 - What would be the effect of making the default position for the magistrates court to remit the appeal back to the licensing authority?

Members said that the question was not clear as to whether such a change would mean that a Licensing Authority would be required to hear the entire application again (with all the original evidence) or simply review the evidence on which the decision had been based. In general the right of Magistrates to hear an appeal in full (including all the evidence) and make their own determination was considered most appropriate but there may be scope for a council appeals panel to be introduced to scrutinise hearing decisions to ascertain whether the decision was reached fairly and is reasonable and proportionate.

Question 11 - What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

In principal, Members supported such an amendment to the legislation, subject to licensing authorities being protected against costs being awarded against them in cases where decisions were overturned on appeal, particularly where the process had been followed correctly. Members noted that such a decision could have a serious impact on business, particularly in respect of reviews and, in such circumstances, the licence holder should be able to present a business case outlining the potential impact of a licence revocation.

Question 12 - What is the likely impact of extending the flexibility of early morning restriction orders to reflect the needs of the local area?

Subject to transparency and robust decision making processes such a change could be an asset to the Local Authority in promoting the Licensing Objectives

Question 13 - Do you have any concerns about repealing Alcohol Disorder Zone?

Question 14 - What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

Question 15 - Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Question 16 - Do you think it would be advantageous to offer such reductions for the late night levy?

Question 17 - Do you agree that the additional costs of these services should be funded by the late night levy?

Members stated that South Cambridgeshire District Council had no experience of the issues referred to in Questions 13 to 17 and therefore made no comment other than to state that authorities in rural areas needed sometimes to be treated differently from those in urban ones

Question 18 - Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol – related crime?

Members agreed that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol – related crime. However, they sought clarification about the precise meaning of “alcohol related crime” in this context.

Question 19 - What would be the consequences of amending the legislation relating to Temporary Event Notices so that:

(a) All the responsible authorities can object to a TEN on all of the licensing objectives?

Members noted that, in many cases, Temporary Event Notices were used as a mechanism to usurp the conditions imposed for good reasons on a premises licence, and that an overhaul of the TEN system was needed. The following should be included as Responsible Authorities in order to address the major considerations of noise, nuisance and safety:

- Police
- Fire
- Environmental Services
- Licensing Authority

While not gaining the full support of the Committee, there was some concern that local residents should also be invited to support or object to a Temporary Event Notice.

(b) The police (and other responsible authorities) have five working days to object to a TEN?

Members welcomed the recent change to two working days and would support a further move to five working days.

(c) The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

Members expressed a number of different views on this aspect. On the one hand, it was argued that if the responsible authorities were given five working days to make representations then, in practical terms, a corresponding increase should be introduced for the Licensing Authority to process any matters that arose. On the other hand, the purpose of TENs was to offer spontaneity, which would be eroded by any increase in timescale.

(d) Licensing authorities have the discretion to apply existing licence conditions to a TEN?

Members agreed with this proposal in principle even though it would be likely to increase workload both for officers and for the Licensing Committee. Many premises use TENs to avoid the potential of reasonably imposed restrictive conditions. This “technical” loop hole can seem illogical to members of the public and lead to a loss of confidence in the licensing process.

Question 20 - What would be the consequences of :-

(a) Reducing the number of Temporary Event Notices that can be applied for by a personal licence holder to 12 per year?

Members could see no benefit in changing the current status afforded Personal Licence Holders.

(b) Restricting the number of Temporary Event Notices that could be applied for in the same vicinity.

Members reacted positively to this proposal. The existing rule was being exploited to negate the need for obtaining a full licence. Members considered that changing the definition of “vicinity” would be beneficial but urged caution in drafting this aspect of the legislation.

Question 21 - Do you think 168 hours (7 days) is a suitable minimum for the period

of voluntary closure that can be flexibly applied by the police for persistent underage selling?

Members reacted positively to this proposal. The Licensing Act should adopt the rules of Tobacco (three sales in two years) as a guideline.

Question 22 - What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Members said that the provisions for underage selling of alcohol should be made consistent with those for sales of tobacco (three sales in two years) and result in restriction orders for a period of up to 12 months.

Question 23 - What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

Members considered that such a move would make licensees aware of the importance of complying with legislation but significantly increase workloads for licensing authorities.

Question 24 - For the purpose of this consultation what are your expert views on defining the cost of alcohol and enforcing a ban on below-cost sales?

Councillor Alex Riley outlined how the cost price of alcohol was calculated. In many respects the costs of a bottle of beer, wine or similar were quantifiable up to the point of storage, this cost included the unit cost, VAT, Excise Duty and so on. While such a method would be the most accurate in determining a minimum price policy, it would be difficult to use it as evidence in enforcement situations in view of its subjectivity. The use of a cost per unit of alcohol was a very general approach but was far more simple and easy to understand and enforce. However, any cost-per-unit figure should be subject to regular review and should have limited exemptions, such as for the sale of end of line items (especially by smaller retailers) or stock approaching its sell-by date.

Question 25 - Would you be in favour of increasing licence fees based on full recovery, and what impact would this have?

Members agreed that the Government should increase licensing fees to reflect the increases in licensing authorities' workload and costs likely to arise as a result of the changes following this consultation process.

Question 26 - Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Members said they were in favour, subject to appropriate reminders being issued.

Question 27 – Have the first set of Mandatory Conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?

Members said it was too early to be certain but, at this stage, there appeared to be little if any impact in the Cambridgeshire area. Members suggested that the April 2010 Mandatory Conditions were ambiguous and unenforceable.

Question 28 - Would you support the repeal of any or all of the Mandatory Conditions?

Members agreed that the only two Conditions worthy of retention were Condition C (ensuring that free tap water was available in all licensed premises in the on-trade) and Condition D (ensuring the existence of an age-verification policy).

Question 29 - Would you support measures to deregulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

Members agreed that there were elements of the Act that should be fine-tuned in the interests of clarity, but that a wholesale deregulation would have a detrimental effect on

local communities as the Act provided the main mechanism for allowing responsible (currently regulated) activities to take place. While the Act in its current form did not promote a pro-active approach, it did allow for consideration of a number of concerns and problems to be addressed.

The Meeting ended at 12.55 p.m.
