



LICENSING AND HEALTH AND SAFETY COMMITTEE

Notice of a meeting to be held in Council Chamber, Civic Centre,
Tannery Lane, Ashford on WEDNESDAY, the 29TH NOVEMBER
2006 at 7 pm *

ASHFORD
BOROUGH COUNCIL

CIVIC CENTRE,
TANNERY LANE
ASHFORD
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The Members of the Committee are:

Cllr. Goddard (Chairman)
Cllr. Weller (Vice-Chairman)
Cllrs. Allcock, Claridge, Enock, Feacey, Harrington, Heyes, Koowaree,
Mrs Larkin, Link, Mrs Martin, Wallace

* Please note that a refresher Licensing training session will follow this meeting.

A G E N D A

Page Nos.

1. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii)
2. **Declarations of Interest** – Declarations of Interest under the Code of Conduct adopted by the Council on the 1st May 2002 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on 17th March 2005 (copy attached) 1 - 4

PART I - DECISION

4. Report on Licensing Act 2003 – Implementation Update 5 - 10
5. Update on Gambling Act 2005 (to follow)
6. Update on Licensing Act 2003 (to follow)

21st November 2006

Queries concerning this agenda? Please contact Julia Vink 330305
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LICENSING AND HEALTH AND SAFETY COMMITTEE

MINUTES of a **MEETING** of the **LICENSING AND HEALTH AND SAFETY COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **17th MARCH 2005**

PRESENT: Cllr. Goddard (Chairman);
Cllr. Weller (Vice-Chairman);
Cllrs. Allcock, Enock, Heyes, Koowaree, Mrs Larkin, Mrs Martin, Wells.

APOLOGIES: Cllrs. Claridge, Feacey, Link, Maltby.

ALSO PRESENT: Mr B Turner – Kent Police

Divisional Environmental Health Officer – Commercial, Licensing Manager, Solicitor acting on behalf of Council, Principal Legal Assistant, Licensing Assistant, Member Services Officer.

Prior to the commencement of the meeting the Chairman introduced the new Licensing Manager.

497 LICENSING HEARINGS – PROCEDURE NOTE

The Principal Legal Assistant tabled a revised report and Procedure Note, which had been amended slightly following consultation with Counsel. The changes were, in the most part, in relation to those who were entitled to speak at hearings. The report sought the Committee's approval of the Procedure Note for Licensing Hearings held under the Licensing Act 2003. Regulation 7 of the Licensing Act 2003 (Hearings) Regulations 2005 made it a requirement that information relating to the procedure to be followed at a hearing be sent out with the Notice of a Hearing and that the Procedure Note, as approved by Members, would then be used accordingly. Members were advised that the Procedure Note could be reviewed at any time if it was considered necessary.

There was some debate surrounding the issue of Ward Members attending the hearings and speaking on behalf of their ward residents. It was explained that the Act was very prescriptive as to "interested parties" and the regulations as to who could speak at hearings. Members were reassured that the Head of Legal and Democratic Services would be contacting them on this issue and would give further guidance on this matter.

Resolved:

That the Procedure Note for Licensing Hearings held under the Licensing Act 2003, as appended to these minutes, be approved and adopted.

(HC)
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PROCEDURE NOTE FOR LICENSING HEARINGS

1. Prior to the meeting of the Committee¹, the Committee will have read and familiarised themselves with the Officer's report and documents referred to in it.
2. The hearing will take place in public, subject to a discretion to exclude the public and/or parties where the public interest in doing so outweighs the public interest in the hearing taking place in public². The Committee may also exclude anyone behaving disruptively.³
3. The parties⁴ are entitled to be assisted or represented by any person, whether or not legally qualified. A party is entitled to withdraw any of their representations orally at the hearing or at least 24 hours before the day or the first day of the hearing.⁵
4. The Committee may extend any time limit in the Regulations for a specified period where it considers this to be necessary in the public interest, but must state the period of the extension and the reason for it.⁶ For example, the Committee may extend the time for making a request to call a witness (see paragraph 16 below).
5. Where a party has notified the authority that he does not intend to attend, the Committee will proceed with the hearing in his absence. Where he has not so notified the authority but does not attend, the Committee may adjourn the hearing to a specified date where it considers it necessary in the public interest to do so. Otherwise, it will proceed with the hearing.⁷
6. Before proceeding in the absence of a party who has not indicated that they do not wish to attend, the Licensing Officer should attempt to ascertain the reason for that party's non-attendance.
7. The Committee may adjourn the hearing to a specified, or extra, date where it considers this to be necessary for the determination of the case.⁸ There are limitations on the ability of the Committee to adjourn the case beyond the time limits for determination during the transitional period and on reviews following closure orders by the police.⁹
8. At the outset of the meeting, a Chair will be elected and any personal and/or prejudicial interests declared.¹⁰
9. Except where the Regulations make specific requirements, the procedure will be in the discretion of the Committee.¹¹
10. At the beginning of the hearing, the Committee will explain to the parties the procedure it proposes to follow.¹²
11. The Chairman will indicate that all the papers before the Committee have been read and that the Committee is familiar with the issues. He will ask the parties to avoid repetition.

¹ In this Note the expression "the Committee" includes a sub Committee.

² Reg 14 Licensing Act 2003 (Hearings) Regulations 2005

³ Reg 25.

⁴ Reg 2(1) "a person to whom notice of the hearing is to be given under Reg 6(1)" – includes objectors and responsible authorities, such as the Police.

⁵ Reg 10

⁶ Reg 11.

⁷ Reg 20.

⁸ Reg 12.

⁹ Reg 13.

¹⁰ Model Code of Conduct

¹¹ Reg 21.

¹² Reg 22

12. The Chairman will indicate the order of presentation.
13. If there are a number of objectors present, the Chairman may request that a spokesperson be appointed. He will make it clear that any party¹³ who wishes to speak will be able to do so, and that the appointment of a spokesperson does not mean that the objections of any interested party will be given less weight.
14. The Chairman may also indicate how the Committee intends to deal with conditions proposed by the parties or by the Committee itself. He may ask the parties to attempt to agree a schedule of conditions for use if the Committee is minded to grant the application. This will not mean that the Committee has formed any view of the merits. It will only come to its decision at the end.
15. A party is entitled to be represented or assisted by another person, whether or not that person is legally qualified.¹⁴
16. If a party wishes a person (other than himself or his representative) to appear at the hearing he must have made a request to do so prior to the hearing within the times prescribed in Reg. 8. The request must name the person and give a brief description of the point(s) on which that person may be able to assist. In such a case, the Committee will determine the application for permission at the outset of the hearing.¹⁵ In determining that request, the authority will consider the representations of all parties upon the matter and may consider the relevance of the proposed evidence, the assistance it will in fact offer to the Committee and the prejudice to the parties, if the evidence is admitted or excluded.¹⁶
17. Each of the parties has a right to:
 - a. address the Committee;
 - b. give clarification of any point, where such clarification has been sought by the Council in its notice of hearing;
 - c. question any other party, but only where this is expressly permitted by the Committee (see para 21 below).¹⁷
18. The Committee must allow an equal maximum time for the parties to exercise their rights as set out in para 17 above.¹⁸
19. The Committee will set the time of the hearing at the outset, having regard to its view of the length reasonably required for the hearing. It may hear the parties briefly before setting the maximum time. It may extend the time where circumstances require.¹⁹
20. The hearing is to take the form of a discussion led by the Committee.²⁰ The Chairman will ensure that within the discussions, all parties are given an opportunity to state their case as set out in their written application/ representations and to meet the case of opposing parties.

¹³ see footnote 4

¹⁴ Reg 15.

¹⁵ Reg 22

¹⁶ Reg 22

¹⁷ Reg 16.

¹⁸ Reg 24.

¹⁹ Reg 11

²⁰ Reg 23.

21. Cross-examination will not be permitted unless the Committee considers that it is required for it to give proper consideration to the case.²¹ Any application to cross-examine will be heard and dealt with at the hearing.
22. The Committee may consider cross-examination to be required, for example, where there is a genuine issue of fact, which can only be resolved fairly through cross-examination.
23. The Committee may question any party or other person(s) appearing.²²
24. The Committee may take into account documentary or other information provided by a party before the hearing. Information produced at the hearing may only be taken into account with the consent of all other parties.²³ The parties are therefore strongly recommended to exchange documentary evidence and brief summaries of any proposed witness evidence at least 5 days before the hearing, otherwise they may be restricted in the information they can put before the committee. Any material exchanged should also be given to the licensing authority at the same time.
25. The Committee must disregard any information given which is not relevant to the application, representations or notice of the party giving the information. The Committee must also disregard any information which is not relevant to the promotion of the licensing objectives.²⁴
26. In certain circumstances, the Committee is required by law to make its determination at the conclusion of the hearing. This includes certain applications made during the transitional period, counter-notices following police objections to temporary events notices, and reviews of premises licences following closure orders. Otherwise the Committee is required to determine the application within five working days of the day or the last day on which the hearing was held²⁵.
27. The Committee will give reasons for its decision and will confirm the decision in writing to the parties.

²¹ Reg 23.

²² Reg 17.

²³ Reg 18.

²⁴ Reg 19.

²⁵ Reg 26.

Agenda Item No: 4
Report To: LICENSING HEALTH AND SAFETY
COMMITTEE
Date: 29TH NOVEMBER 2006
Report Title: LICENSING ACT 2003 - IMPLEMENTATION
UPDATE
Report Author: Licensing Manager



Summary:	The purpose of this report is to inform the Licensing Health and Safety Committee of progress regarding the implementation of the Licensing Act 2003 and to invite Members comments.
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Key Decision: NO

Affected Wards: All

Recommendations: That the Committee consider and note the report on the implementation of the Licensing Act 2003 and comment thereon.

Policy Overview: The licensing policy links to and supports other strategies of the Council such as the Local Plan, Cultural Strategy, Transport Policy and Community Strategy, especially in terms of Crime and Disorder. The licensing policy also contributes to the objectives of a wider group of related organisations, including the Police Authority, the Fire Authority, Ashford PCT and KCC.

Financial Implications: None

Risk Assessment NO

Other Material Implications:

Exemption Clauses: None

Background Papers: Licensing Act 2003
Guidance issued under s 182 of the Licensing Act 2003

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Report Title: LICENSING ACT 2003-IMPLEMENTATION UPDATE

Purpose of the Report

1. The purpose of this report is to inform the Licensing Health and Safety Committee of progress regarding the implementation of the Licensing Act 2003 and to invite Members comments.

Issue to be Decided

2. Members are requested to consider and note the report and comment where appropriate.

Background

3. As Members will be aware, the Licensing Act 2003 came fully into operation on 24 November 2005, when the previous liquor licensing, entertainment licensing and late night refreshment licensing system was consigned to the history books and replaced with a new integrated system.
4. However, it was not only the detail of the law that changed. The Act is intended to move away from detailed regulation by licensing authorities to self-regulation by operators as they seek to comply with the four licensing objectives that underpin the new licensing regime. The Act replaced the fixed terminal hours for the sale of alcohol with a new system of flexible hours chosen by the operator but subject to representation by responsible authorities and interested parties such as local residents.
5. This new way of working has presented considerable challenges to licensing authorities; responsible bodies such as the police and of course operators and their advisors. All have had to master the new procedures and philosophy in a short period of time.
6. The Act and associated regulations would not gain a “crystal mark” for clarity! There are very many grey areas which will almost certainly only be resolved by the High Court.
7. It should also be remembered that whilst the Act came fully into operation in November 2005, the licensing authority was preparing to process licence applications from 7 February 2005 (the “first appointed day”). The Act has now been fully operational for a year, and it is timely to report to Members on its implementation, highlighting the main aspects for consideration.
8. The following comments contain the key points and the Licensing Manager will be available to answer questions at the meeting.
9. The licensing authority has issued between May 2005 and November 2006:-
 - **370** Premises Licences (required for sale of alcohol, regulated entertainment and late night refreshment after 11:00pm)
 - **33** Club Premises Certificates (supply of alcohol and regulated entertainment to members and guests)
 - **653** Personal Licences (authorising the sale of alcohol)

- **373** Temporary Event Notices (for licensable activities on an ad hoc basis where no premises licence is in place)
 - **88** Applications for the variation of Designated Premises Supervisors (Head licensee)
 - **38** Applications for transfers of the licence holder (Premises and club premises certificates)
 - **10** Applications for the variation of premises licences (To add hours or activities or due to a change in the plan of the premises)
10. Between 7 February and 24 November 2005, the Council processed all of the previous licences that needed converting to premises licences together with new premises licences and personal licence applications. This involved a considerable amount of work for both the Licensing Team and Members sitting on the Licensing Sub-Committee Hearing panels.
 11. All licences were issued by February 2006. This represented a considerable achievement in view of the volume of licences that had to be individually prepared and the small amount of resources available. It is estimated that this process took over 500 working hours to complete.
 12. The volume of applications has started to decrease, although it is noticeable that some licence holders are now submitting variation applications to their existing premises licences, either to increase hours or extend the licensable activities. A proportion of these applications have generated representations and therefore the need for licensing hearing panels to be held.
 13. In view of the complexity of the Licensing Act 2003, the licensing team have prepared a number of individual information leaflets available to all enquirers on various aspect of the legislation. These are designed with a view to answering queries and questions in an understandable format. Similar informative material is also available on the Council website and in the coming months these leaflets will be updated.
 14. In addition the Council's Licensing Authority has conducted a number of information sessions in Ashford and Tenterden to assist members of the public and local businesses in the application process.
 15. **Licensing Hearing Panels:**

Since August 2005, the Council has held 25 licensing hearing panels to determine premises licence applications where “relevant representations” were made by the responsible authorities or interested parties. It is interesting to note that to date; only one appeal has been lodged by an applicant who was aggrieved by the Panel's decision. Another did go before the Magistrates brought by an interested party that was aggrieved by the Panel's decision, but the bench did not find against the sub-committee's decision and the matter was resolved amicably by the applicant and neighbour.
 16. **Statement of Licensing Policy:**

As Members are aware, in December 2004, the Council approved a statement of licensing policy following extensive consultation. The policy statement took effect on 7 February 2005 and remains in force for a period of three years. The Licensing Act 2003 indicates that authorities should keep their policies under review and makes

provisions for revisions to policies part way through the three year period. If it is decided to review the policy, the Act requires that the same full statutory consultation with all parties takes place as applied in relation to the approval of the original policy statement. Where changes are made, the licensing authority must publish a statement of the revisions.

The policy has formed the background to all Licensing Act 2003 application decisions taken by both Members and officers. A key factor is that each application is considered on its merits. This has proved successful as the numbers of appeals lodged has been extremely low and to date the content of the policy has not been challenged in the Courts. The Government made minor amendments to the Guidance it issues to Local Authorities in June 2006, but a more significant review is expected in the New Year. In the light of this pending review, the Licensing Manager would not recommend a review of the statement of licensing policy until the revised Guidance is published.

17. Reviews of Premises Licences

As a further protection to ensure that the four licensing objectives are being complied with, the Act makes provisions for existing premises licences to be reviewed. The review can be requested by a responsible authority or interested party such as a resident living in the vicinity of the premises. This review procedure provides a valuable enforcement tool and is a very real weapon against unsatisfactory premises.

Through the successfully negotiation of problems that have arisen with regards to premises licensed under the Licensing Act 2003, no reviews have been requested by interested parties or responsible authorities in the Borough of Ashford as of November 2006, a situation that is believed to be unique across Kent.

Officers are currently developing further training for Members on reviews for delivery in 2007.

18. Enforcement

A key area of the Licensing Act 2003 is enforcement which has fallen on the Council to take the lead. Attached at Appendix A is a schedule showing Licensing Act enforcement since November 2005.

a) Licensing Enforcement Officers

Members will note that the licensing enforcement team undertake regular enforcement activity on both the premises and with licence holders. We have implemented procedures on a reactive and proactive basis and have achieved a high level of compliance. Through education, formal advice and then a system of warnings leading to prosecution, we have achieved a balance of ensuring that licensing conditions are complied with, the public are protected and licence holders are able to operate their business or trade.

Licensing Enforcement Activity Visits to Licensed Premises (from 23 November 2005 to 14 November 2006)

Licensing Manager (Alone)	57
Licensing Manager plus another local authority officer	21
Joint Visits with Police	72
Joint Visits with other agencies	7
Food Hygiene Licensing Inspections	34
Totals	191

b) Multi-Agency

It is imperative that a number of the 'Responsible Authorities' meet regularly to discuss a corporate approach. This has already proved successful in targeting resources.

Enforcement Officers meet regularly with the Police Licensing Enforcement Officer with ad hoc attendance from the Trading Standards, the Environmental Health Teams and the Fire Authority. These meetings enable a detailed discussion on the exchange of information and resulting in joint visits at premises/licensees.

c) Lack of Knowledge

Enforcement has increased by ten fold compared with previous years due to the requirements of the Licensing Act. During our daily activities and active enforcement we have found that the gaps in licence holder's knowledge is one of the contributing reasons for breaches of the Act and illegal activity. It is interesting to note that those applicants who applied for a straight licence conversion did not legally have to attend any up to date courses on the new legislation and have subsequently many have failed to educate themselves on the new procedures or offences.

19. Temporary Event Notices (TEN's)

The Licensing Act 2003 makes provision for Temporary Event Notices (TEN's) to be applied for in relation to licensable activities on an ad hoc basis, where no premises licence is in force or for activities exceeding those permitted on an existing premises licence.

It is fair to say that across the country, this is one of the most controversial aspects of the new Licensing Act, mainly due to the applicant only has to give notice of such an event only to the Licensing Authority and the Police a minimum of 10 working days before the event. The only objection that can be raised is by the Police on crime and disorder grounds. If a Police objection is raised and not resolved, a licensing hearing panel has to be arranged within that timescale.

There are also limits on the number of events at any individual site and on who can apply which can lead to monitoring problems. Representations have been made to the Government regarding the above difficulties and also the necessity for a central database. We await information as to whether the TEN's legislation and associated procedures will be reviewed.

20. Licensing of "Open Spaces and Public Areas"

Premises licences have been obtained for North Park and Victoria Park by Ashford Borough Council and for Ashford Town Centre by the Ashford Town Centre Partnership. The advantage of obtaining full premises licences is that it avoids a succession of Temporary Events Notices and applications can be more fully discussed prior to and during determination. Unfortunately despite numerous attempts a similar approach has yet to be adopted by Tenterden Town Council.

21. Licensing Forum

The Act requires that licensing authorities establish local licensing forums consisting of councillors, officers, statutory agencies, trade representatives and the public etc. Officers are currently investigating how best this can be effectively achieved and a further report will be made to the committee in due course.

22. General

Given the considerable changes and challenges that the Licensing Act presented to local authorities, it is fair to say that the implementation has proceeded very well, particularly in terms of administration and importantly positive enforcement results.

23. Legal Implications

The legal implications are dealt with within the body of the report. It should be noted that an inappropriately worded statement of licensing policy could result in a legal challenge by way of judicial review.

24. Financial Implications

There are no direct financial implications for Ashford Borough Council directly concerning the items in this report at present. However, if at any time in the future the licensing policy was subject to legal challenge, there could be costs associated with this process. There may also be financial implications concerning licence application fees (set by statute) not covering the cost of providing the service.

The authority has recently issued reminder notices to all the premises whose fees are due for renewal and approximately 275 cheques are being processed.

25. Conclusion

Members are requested to consider and note the report and comment where appropriate.

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29th November 2006

GAMBLING ACT 2005

1. Information Update

The period of consultation for Ashford Borough Council's draft Statement of Gambling Policy ended on 18th September and the responses and a revised policy were submitted to the Policy Advisory Group in November.

After minor amendments the Statement of Policy is now ready for the attention of the Executive in December, who will hopefully recommend it for Council approval on 14th December.

While the Department of Culture Media and Sport has announced a delay to the timeframe when applications will be submitted to local authorities, there is NO delay to the timeframe for publication of Statements of Principles. The statements must be published at least 4 weeks before 31st January 2007 i.e. on or by 3rd January 2007.

Licensing Authorities can begin to receive applications from April 2007, with the full responsibilities transferred in September.

2. Suggested Training

It is proposed to offer Councillors training on the Gambling Act in March 2007. The elections in May, may result in changes to the membership of the committee, but it is proposed that as applications could be brought in front of members as early as April, that training should be conducted before the elections. Further training would be offered after the elections, which may coincide with hearings, if the process follows the Licensing Act transition.