



LICENSING AND HEALTH AND SAFETY COMMITTEE

Notice of a meeting to be held in the Council Chamber, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on MONDAY, the 26TH NOVEMBER 2007 at 7.00 pm

The Members of the Committee are:

Cllr. Goddard (Chairman)
Cllr. Feacey (Vice-Chairman)
Cllrs. Mrs Bell, Mrs Blanford, Ellison, Mrs Heaton, Holland, Kemp,
Link, Mrs Martin, Naughton, Norris, Woodford

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 24th May 2007 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 the 16th July 2007

PART I – FOR DECISION

4. Report on the revised Licensing Policy. 1-5
(Please bring your copy of the Licensing Policy with you)

PART II – INFORMATION ITEMS

5. Update on Licensing Act 2003 7

JV/EB
16th November 2007

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 **16th JULY 2007**

PRESENT: Cllr. Goddard (Chairman);
Cllr. Feacey (Vice-Chairman);
Cllrs. Ellison, Mrs Heaton, Kemp, Mrs Laughton, Link.

APOLOGIES: Cllr Mrs Blanford, Environmental Health Manager (Commercial).

ALSO PRESENT: Licensing Manager, Senior Environmental Health Officer, Member Services & Scrutiny Support Officer.

132 MINUTES

Resolved:

That the Minutes of the meeting of the Licensing and Health and Safety Committee held on the 19th April 2007 be approved and confirmed as a correct record.

133 STATEMENT OF PRINCIPLES FOR UNLICENSED FAMILY ENTERTAINMENT CENTRES, GAMING MACHINE PERMITS AND PRIZE GAMING PERMITS – GAMBLING ACT 2005

The Licensing Manager introduced the report and explained that the policy was to assist people when making applications for Unlicensed Family Entertainment Centres (UFEC), Gaming Machine Permits (GMP) and Prize Gaming Permits (PGP). He referred to paragraph 3 of the report and the need for the Council, in adopting the Policy, to have regard to the Licensing objectives set out in the Gaming Act 2005 ie:-

- (a) Preventing gambling from being a source of crime, or disorder, being associated with crime or disorder or being used to support crime;
- (b) Ensuring that gambling is conducted in a fair and open way; and
- (c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The law stated, however, that the Licensing Authority may have regard for these objectives when determining whether or not to issue a permit for an UFEC, GMP or PGP. The Statement of Principles would declare to applicants that the Council would have regard for all these objectives. Enforcement of the objectives would fall to a number of enforcement agencies, including the Police, the Gambling Commission and the Council. The appendix to the report set out what the Council expected from applicants. The Council required all applicants to have an enhanced criminal record certificate because they could be working with children. The Licensing Manager reported the views of the Portfolio Holder, Councillor N Bell, in support of the Statement of Principles.

The Licensing Manager gave the following responses to queries/comments:-

- A plan of premises would be required with the application.
- Licenses were not required for private homes (because they were not public places).
- He would check if military premises were exempt.
- Foreign Nationals could obtain a sworn affidavit from a solicitor or a document from their consulate that they did not have a police record in their country of origin.

- If the Army could vouch for former soldiers/Ghurkhas having exemplary service records this would be considered as an alternative to an enhanced criminal record.
- The maximum number of Licensed/Gambling premises within a council area was not stated in the Licensing Act or the Gambling Act.
- Ashford was below the national average with approximately 9 bookmakers, and one in Tenterden.
- 75% of licences had been received and the remainder were being contacted.
- Applicants had until the 30th July to submit a premises licence and have continuation rights. Applications received after the 30th July and before the 30th August 2007 would have grandfather.

Recommended:

That the Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits be adopted subject to the inclusion of “military equivalent” being included.

134 **SMOKE FREE ENFORCEMENT POLICY – HEALTH ACT 2006**

The Senior Environmental Health Officer introduced the report and explained that the legislation was aimed at helping the public. The Policy at Appendix A to the report was similar to that of other local authorities many of whom had worked together for consistency. Paragraph 12 met the principles for prosecution and the Department of Health (DoH) grants were £9,421 in 2006/07 and £46,561 for 2007/08 with any monies collected from Fixed Penalty Notices (FPN) being paid back to the DoH. The number of FPNs issued in Wales, Ireland and Scotland had been miniscule (eight for the latter). There had been 85% compliance to display notices and enforcement would be through education with only two members of staff having the ability to issue FPNs. These staff would have to witness non compliance and could issue an FPN on the following day. The Premises Licence Holder was responsible for enforcing the legislation; therefore, they would be targeted if there was an infringement. The only difficulty might be that staff able to issue FPNs had no powers to insist that a person gave them their name and address as this could only be done in the presence of a Police Officer. Two complaints had been received since the 1st July and would usually involve the Council in writing to the Premises Licence Holder with the attached Appendix ‘Smoke free – Good Practice Guide’.

The following responses were given to questions/comments:-

- Signs in taxis (including those for the disabled) and work vehicles need only be 70mm large.
- The Enforcement strategy would be based on premises that were likely to be the least non-compliant eg Private Members’ Clubs, Bingo Halls, and national chains such as Woolworths plc that had maintained a no smoking policy for years and had assumed that notices did not need to be displayed.
- Most premises deemed to be in the higher risk category had been visited on a proactive basis prior to the 1st July 2007.
- Since 1st July 2007 over 130 premises had been visited, including some 60 licensed premises which had been visited during an evening of enforcement visits on the 6th July. During the evening visits only one had not been compliant.
- Neither the Health Act 2006 or the five sets of Smoke Free Regulations contravened a person’s Human Rights as defined by Articles 8, 9, and 10 of the Human Rights Act.

- The draft legislation had changed between the first and second consultation exercises, so unless an outdoor construction had a roof and a certain percentage of walls, people were permitted to smoke surrounded by other people/dining non smokers.
- The decision had been taken that Licensing staff would not wear uniforms and would introduced them selves on arriving at premises and show their ID Cards.
- The Head of Environmental Services could give authorisation for and the carrying out of covert surveillance.
- The Council's Lone Worker Policy specified the staff should work in pairs after 7.00pm, unless accompanied by a (usually) non uniformed Police Officer.
- Staff would not be expected to enter premises after 11.00pm if there were no door staff on duty.

Recommended:

That the Smoke Free Enforcement Policy be approved.

MINS:LHSX0729

Agenda Item No: 4

Report To: LICENSING AND HEALTH AND SAFETY COMMITTEE



Date: 26TH NOVEMBER 2007

Report Title: LICENSING ACT 2003: REVISION TO THE LICENSING POLICY

Report Author: Environmental Services Manager

Summary:	The purpose of this report is to present to the Licensing and Health and Safety Committee a revision to Ashford Borough Council's Licensing Policy, prepared in accordance with the Licensing Act 2003.
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Key Decision: YES

Affected Wards: ALL

Recommendations : **The Licensing and Health and Safety Committee recommends the revised licensing policy as prepared in accordance with the Licensing Act 2003, be approved.**

Policy Overview: The Council is under a statutory duty to publish a Licensing Policy every three years and to ensure that there is adequate consultation with stakeholders as part of the policy development process. The preparation of a licensing policy is an important objective as outlined within Environmental Service Plan. 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.

Financial Implications: The costs associated with the revision to the Licensing Policy are met through the centrally set licensing fees under the 2003 Act.

Risk Assessment Yes

Exemption Clauses: None

Background Papers: Consultation Matrix to be provided at the meeting

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**Report Title: LICENSING ACT 2003: THE REVISION TO
ASHFORD BOROUGH COUNCIL'S
LICENSING POLICY**

Purpose of the Report

1. The purpose of this report is to present to the Licensing and Health and Safety Committee a revised Licensing Policy that has been prepared in accordance with the Licensing Act 2003. The revised Licensing Policy was provided to members by post and is available from the Licensing Manager.

Issue to be Decided

2. The Licensing and Health and Safety Committee is asked to recommend approval of the licensing policy as prepared in accordance with the Licensing Act 2003.

Policy Development

3. The Ashford licensing policy as appended to this report has been developed in accordance with the Secretary of States Guidance under s182 of the Licensing Act 2003.
4. A draft licensing policy was approved by the Executive for consultation purposes in October 2007.
5. The policy has been amended as a result of consultation, although the only responses that have been received are from Officers who have been reviewing the policy. As the consultation period has yet to close a list of the responses will be provided at the meeting.

The licensing system

6. The Licensing Act 2003 has been in force since November 24th 2005 and governs the sale or supply of alcohol, the provision of regulated entertainment (music, dancing, films, plays, etc) and late night refreshment.
7. On the 16th December 2004 the Council passed Ashford Borough Council's Licensing Policy.
8. Section 5 of the 2003 Act requires a licensing authority to prepare and publish a Licensing Policy every three years. Our policy must be published before the authority carries out any function in respect of applications made under the 2003 Act and must be in place by the 7th January 2008.
9. The duty on licensing authorities, i.e. the Council, is to promote the licensing objectives at all times when carrying out functions under the Act. The four objectives are:
 - a. Prevention of crime and disorder
 - b. Promoting public safety
 - c. Prevention of public nuisance
 - d. Protection of children from harm

Ashford Policy Consultation

10. The Ashford revised Licensing Policy (“the policy”) as appended to this report has been developed in accordance with the Secretary of States Guidance under s182 (as revised) of the Licensing Act 2003.
11. It has also been influenced by High Court’s decision in *R (The British Beer and Pub Association and Others) v. Canterbury City Council (2005) EWHC 1318 (Admin)*.
12. The policy may set out how the Council will approach the making of such decisions, indicating what the Council considers to be important, what control measures it will be looking for, and so forth.
13. It is vital that the policy does not turn into a rule that is applied inflexibly and fetters the exercise of discretion. There must be a willingness to consider individual applications on their particular merits.
14. A policy relating to the decision-making stage under section 18(3) not only guides the decision-maker but also service to inform an applicant about what he should consider in preparing his application.
15. A statement of licensing policy is unlawful if and in so far as it prescribes or dictates the contents of an application and gives the impression that the council will assess, and exercise substantive discretionary powers in relation to, *all* applications and not just those that come through for a decision under section 18(3).
16. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or to exercise substantive discretionary powers in relation to it, unless there are relevant representations.
17. After the Court’s decision in 2005, Ashford Borough Council’s Licensing Policy was reviewed by Counsel and the recommended changes have been incorporated into the revised policy.
18. The following persons must be consulted about the review of this policy:
 - The Chief of Police;
 - The Fire and Rescue Authority;
 - Persons/bodies representative of local holders of premises licences;
 - Persons/bodies representative of local holders of club premises certificates;
 - Persons/bodies representative of local holders of personal licences; and
 - Persons/bodies representative of local holders of business and residents.
19. The views of the community were invited via press releases which appeared in the Kentish Express and on the front page of Ashford Borough Council’s website.

20. Many of the changes in the revised policy result from this court case, but the revisions to government guidance have also influenced the review. In addition to the change in emphasis and expectation promoted by the court case, the proposed changes include:
- The removal of the expectation of planning permission for applicants making applications under the 2003 Act;
 - The removal of the section on small capacity venues as this a technical matter which has had little relevance over the past three years;
 - The revision of the legislation behind occupancy limits;
 - Change in emphasis for premises open later than 23:00 in Tenterden; and
 - Information on the licensing of public open spaces.
21. It is recognised that the consultation process may identify further focus issues and these will be incorporated into the revised policy as appropriate.
22. A tracked change version of the changes was made to the policy passed in 2004 has been available in the Member's Room and one will also be available for consultation at the Executive and Licensing Committee meetings if any member wishes to see it.
23. During the public consultation, no responses were received from the public or responsible authorities regarding the policy, however the consultation period runs until Friday 23rd November and so an update will be provided at the meeting.
24. The Licensing Committee is asked to recommend a final policy to the Executive and Full Council.

Implementation Plan

25. A timetable for policy development and consultation is provided as follows:

October – November 2007	Consultation & policy development.
End of November 2007	Summary of consultation and revised policy will be brought before the Licensing Committee for consideration.
6th December 2007	Final version of the policy reported to Executive for recommendation for Council approval.
13th December 2007	Policy approved by full Council.
7th January 2008	Policy takes effect.

26. The Licensing Manager has reviewed the consultation responses and will make final suggestions at the meeting.

Financial Implications

27. The Secretary of State has established fee levels to provide full cost recovery of all licensing functions including preparation and publication of a statement of licensing policy. The consultation costs were calculated including the statutory requirements.

Risk Assessment

28. Notwithstanding this policy each application must be considered on its individual merits.
29. It is necessary and important to continue to evolve and keep Members, Officers and the public apprised of current legislation and guidance to meet its requirements.
30. Section 5(4) of the 2003 Act provides that the licensing policy must keep its policy under review during each three year period and make appropriate revisions.

Other Options Considered

31. The requirement to implement and enforce the Act, including the publication of a policy, is a statutory duty and the Secretary of States guidance to a large extent dictates the process.

Implications Assessment

32. Judicial review is a significant risk if the policy we adopt strays beyond the key licensing objectives.

Conclusion

33. The policy must be kept under regular review ensure that it responds successfully to new circumstances, changing case law and particularly the changes to Ashford in the coming years.

Portfolio Holder's Views

34. A copy of the draft report was sent to Councillor Bell.

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Licensing and Health and Safety Committee
26 November 2007

Agenda Item No.5

Update on Licensing Act 2003



A Police Licensing Officer for the Weald will be present to give the Police perspective on the implementation of the Licensing Act 2003 in Ashford Borough and Members will be able to put questions to both the Police representative and Licensing Manager.