

Leicester
City Council

WARDS AFFECTED: ALL

**LICENSING COMMITTEE
CABINET
COUNCIL**

**3 NOVEMBER 2004
8 NOVEMBER 2004
25 NOVEMBER 2004**

LICENSING POLICY

Report of the Service Director for Community Protection and Wellbeing

1 Purpose of Report

- 1.1 The purpose of the report is to obtain approval of the Council's Licensing Policy, following public consultation. A copy of the policy is attached at Appendix A.

2 Summary

- 2.1 Cabinet approved the draft Licensing Policy for consultation in August 2003. The public and other interested parties have now been consulted about the draft policy, which sets out how the Licensing Authority will undertake its functions. Members of the Licensing Committee made an input during a Workshop on 6 October 2004, having been given the results of the consultation process. The final draft of the policy takes account of the comments made by consultees and Members.

- 2.2 The consultation process included a request from Leicestershire Constabulary for part of the city centre to be included in a special policy on cumulative impact. Such a policy would create a presumption against new licences being issued in that area. The Police gave a presentation to the Licensing Committee Workshop to explain the reasoning and evidence behind their request, stating that high figures for violent crime correlated with the high concentration of licensed premises. A copy of the presentation is attached at Appendix B.

- 2.3 The Licensing Committee Workshop felt that the area for the proposed special policy on cumulative impact could be reduced in size. The smaller area is bounded by Churchgate, Haymarket, Belgrave Gate, Abbey Street and Burleys Way.

3 Recommendations

- 3.1 Licensing Committee is being asked to give its views on the revised Licensing Policy. Their views will be presented orally to Cabinet.
- 3.2 Licensing Committee is being asked to give its views on the special policy on cumulative impact. Their views will be presented orally to Cabinet.

3.3 Cabinet is asked to endorse the attached Licensing Policy, prior to formal approval by full Council.

3.4 Cabinet is asked to endorse the special policy on cumulative impact, prior to formal approval by full Council.

4 Financial & Legal Implications

4.1 The government has stated that the costs of administering the Licensing Act will be covered by the application and annual fees for premises licenses. The proposed fee levels have yet to be published. (Linda Loke x6320)

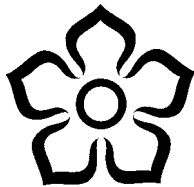
4.2 The Council’s statement of licensing policy is of fundamental importance in the implementation of the 2003 Act. It is the policy framework within which all licence applications will be determined, whether by officers, members or the Magistrates’ Court on appeal from a decision of the Council. It must be interpreted in a manner which is compatible with the human rights of applicants for licences. (Clive Tobin x7043)

5 Report Author

Rachel Hall
Licensing Team Manager
Extension 6319
hallr002@leicester.gov.uk

DECISION STATUS

Key Decision	Yes
Reason	Significant in terms of its effects on communities living or working in an area comprising one or more ward
Appeared in Forward Plan	Yes
Executive or Council Decision	Council



Leicester
City Council

WARDS AFFECTED: ALL

**LICENSING COMMITTEE
CABINET
COUNCIL**

**3 NOVEMBER 2004
8 NOVEMBER 2004
25 NOVEMBER 2004**

LICENSING POLICY

Report of the Service Director for Community Protection and Wellbeing

Report

1. Background

- 1.1 The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act integrates six existing licensing regimes into a single system, with a focus on the promotion of four statutory objectives:
- ◆ the prevention of crime and disorder;
 - ◆ public safety;
 - ◆ the prevention of public nuisance; and
 - ◆ the protection of children from harm.
- 1.2 Local authorities will be responsible for administering the scheme as Licensing Authorities. Implementation will begin on 7 February 2005, the 'First Appointed Day'. From this date, applications can be made to convert existing licences, to vary their terms and conditions and for new premises and personal licences.
- 1.3 Licensing Authorities will have two months to deal with each premises licence application and three months for each personal licence application. There will be an appeal process via the Magistrates' Courts.
- 1.4 The Licensing Sub-Committee received a progress report on 8 September 2004 about the Implementation of the Licensing Act 2003.
- 1.5 A Members' Workshop was held on 6 October 2004, where members of Licensing Committee made an input into the revision of the policy.

2. Legislation and guidance

- 2.1 The Licensing Act 2003 states that all Licensing Authorities must publish a statement of policy every three years. There must be consultation with specified stakeholders about the policy, which must set out how the authority will exercise

its functions. The policy should

- explain the Licensing Authority's approach
- be used in decision making
- provide evidence to support appeals
- ensure integration with other strategies
- encourage applicants to take steps to meet the licensing objectives

2.2 Government guidance advises what should be in policy and any departures from this advice must be justified. The Licensing Policy must include the Licensing Objectives and identify how they will be promoted. The four objectives are:

- Preventing Crime and Disorder
- Public safety
- Preventing public nuisance
- Protecting children from harm

2.3 The policy may cover "cumulative impact" and must include an explanation of how it integrates with other strategies e.g. planning, transport, crime and disorder, culture. The guidance also states that the policy should promote live music, dance and theatre, even though this may cause some limited disturbance, and recommends that local authorities should consider applying to licence public open spaces in their own name.

2.4 The policy should specify how functions are to be delegated and be subject to a race equality impact assessment. There must be no duplication of other enforcement powers e.g. fire safety.

2.5 A Licensing Authority cannot impose standard conditions – each case must be considered on its merits. The Authority may have a pool of conditions to choose from, but these can only be applied when they have been identified in the applicant's operating schedule, following representation, or following a review.

2.6 The government considers that longer licensing hours are important to spread concentrations of people leaving. The guidance warns against "zoning" (geographical restrictions on opening hours) and indicates that off-licences should be permitted to sell alcohol during normal hours of trading.

3. Consultation

3.1 Public consultation is a legal requirement of the 2003 Act.

3.2 The aims of the consultation process were to:

- ◆ Fulfil our statutory obligation
- ◆ Communicate with those affected by the 2003 Act
- ◆ Receive and collate views
- ◆ Consider the implications of these views on our Licensing Policy
- ◆ Make appropriate changes to the Policy before Council Members approve it

3.3 Consultation with existing licence holders, residents, businesses, responsible authorities and other interested parties was undertaken by consultants on behalf of Leicester City Council.

3.4 We also consulted through:

- ◆ An information leaflet issued to all existing and potential licensees in August 2004
- ◆ An item in Leicester Link in September 2004
- ◆ An online questionnaire on City Council website in August / September 2004
- ◆ Paper copies of the questionnaire available on request
- ◆ Licensing Forum for representatives of the licensed trade

3.5 Internal consultation took place with appropriate sections of the Council, including Planning, Building Control, Transport, Environmental Health, Culture and Community Safety.

4. Outcomes of Consultation

4.1 Perpetuity Research & Consultancy International were appointed in July 2004. They undertook 12 focus groups using residents selected from the People's Panel, face-to-face interviews with responsible authorities and a small sample of existing licensees, and 1250 postal surveys. A copy of the consultants' report is attached at Appendix C.

4.2 The consultation process showed that there is general agreement with the policy amongst those who took part.

4.3 The consultants concluded that there were several issues that should be considered for inclusion in the policy, as follows:

- ◆ Sale of alcohol - proof of age cards; CCTV
- ◆ Dance venues - free drinking water
- ◆ Public nuisance - More effective ways of transporting people home (especially at weekends); clear distinction between opening hours in residential areas and those in the city centre
- ◆ Children - a higher ratio of attendants to children than that in the draft policy

4.3 Comments have also been received from other sections of the Council, which have resulted in alterations to the draft policy.

4.4 Details of comments made in relation to the draft policy, together with a response and outcome, will be tabled at the meeting.

5. Special Policy on Cumulative Impact

5.1 A special policy on cumulative impact may be introduced if the Licensing Authority considers that there are particular problems of crime and disorder and / or public nuisance, which can be attributed to customers of licensed premises.

5.2 There must be public consultation in relation to such a policy. This was included in the consultation process described above.

5.3 The Police gave a presentation to the Licensing Committee Workshop to explain the reasoning and evidence behind their request, stating that high figures for violent crime correlated with the high concentration of licensed premises. A copy of the presentation is attached at Appendix B.

5.4 The Licensing Committee Workshop felt that although a special policy on cumulative impact was appropriate, the proposed area could be reduced in size.

This would lessen the impact of the proposed policy on regeneration. This smaller area is bounded by Churchgate, Haymarket, Belgrave Gate, Abbey Street and Burleys Way. Members suggested that the policy should be reviewed after 12 months.

- 5.5 A positive aspect of adopting a special policy would be to demonstrate the Council's commitment to tackling anti-social behaviour and to working in partnership with the Police. This could be beneficial to potential regeneration projects.

6. Revised Licensing Policy

- 6.1 The draft Licensing Policy has been revised to take account of the issues raised during consultation and the comments made by Members at the Licensing Workshop on 6 October. The amended policy is attached at Appendix A.

- 6.2 The consultants concluded that there were several issues that should be considered for inclusion in the policy, as set out in paragraph 4.3. These issues have been included in the revised policy as steps to promote the licensing objectives that the Authority would like to encourage. The Licensing Act does not allow such steps to be introduced as blanket conditions that are applied to every licence.

- 6.3 A matter that was raised by a number of people during consultation was the need for a robust transport system, which will ensure that visitors can get to and from licensed premises easily and safely. This will be fed in to work currently being undertaken on a city centre access strategy.

7 Role of Area Committees

- 7.1 Members have asked that consideration be given to the role of Area Committees in the licensing process. Three potential roles could be envisaged; making representations in respect of applications, requesting the review of a premise's licence and inputting into the development of the licensing policy.

- 7.2 An Area Committee would be able to make representations about an application where it was requested to by an interested party, which would include a person living in the vicinity of the premises. Draft regulations published by the government have given further details on how the application process will be dealt with. These set out time periods during which actions must be carried out by the applicant, persons making representations and the licensing authority.

- 7.3 The general timetable allows 20 working days for a representation to be made, starting from the date the application was made. This timescale would make it very challenging for the Area Committee to receive a request from a local resident, agree to act upon it and make the representation.

- 7.4 Where one or more local residents made a representation, the Area Committee could provide an opportunity to discuss, coordinate and agree to present those representations at the hearing of the Licensing Sub-Committee. The draft regulations require the Licensing Authority to give 10 working days notice of the hearing, which must be held within 20 working days of the end of the representation period. These timescales are again challenging.

- 7.5 The Act provides a review mechanism for dealing with problems at licensed premises relating to the promotion of the licensing objectives. Residents might wish to discuss such problems at Area Committees. The Area Committee could then, if requested to by residents, make a representation that a licence be reviewed and present the representation at the Licensing Sub-Committee hearing.
- 7.6 The third potential role for Area Committees would be to have an input into the development of the Licensing Policy. This will be particularly important when the policy is next reviewed, which will at the latest be in three years' time.
- 7.7 The consideration of these potential roles is at a preliminary stage. Further work will be needed to clarify the appropriateness of these roles prior to the "first appointed day".

8. Conclusion and Recommendations

- 8.1 There is general support for the draft Licensing Policy, although some revisions are necessary to take account of issues raised during the consultation process.
- 8.2 Licensing Committee is asked to give its views on the revised Licensing Policy. Any views will be presented orally to Cabinet.
- 8.3 Licensing Committee is asked to give its views on the proposed special policy on cumulative impact. Any views will be presented orally to Cabinet.
- 8.4 Cabinet is asked to approve the Licensing Policy, prior to formal approval by full Council.
- 8.5 Cabinet is asked to approve the special policy on cumulative impact, prior to formal approval by full Council.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 An Equality Impact Assessment has been carried out on the revised policy. The draft report is attached at Appendix D and the final version will be tabled at the meeting.

10 FINANCIAL AND LEGAL IMPLICATIONS

- 10.1 The government has stated that the costs of administering the Licensing Act will be covered by the application and annual fees for premises licenses. This is to include the full cost of dealing with applications, record keeping, enforcement and all other responsibilities introduced by the Act. There has been widespread scepticism from local authorities and representative organisations that this will be the case. The government has undertaken to commission a review of the fees after the first year of implementation to ensure local authorities costs are met.
- 10.2 The proposed fee levels have yet to be published, but will be in place before the "first appointed day" (7 February 2005) from when applications for conversion of existing licences can be made. Regulations prescribing how local authorities are to carry out their operations are similarly timetabled. In such a climate it is impossible to estimate either the likely expenditure or income that will arise.
- 10.3 £73,000 has been set aside from earmarked reserves to cover the one off setting up costs of the new licensing system.

- 10.4 The application fees for this financial year are likely to cover the administration costs. More likely is that in future years a budget shortfall will arise. It is hoped that more information will become available to be able to quantify the likely budget pressure in time for this year's budget setting round.
- 10.5 Author of financial comments: Linda Loke
- 10.6 The Council's statement of licensing policy is of fundamental importance in the implementation of the 2003 Act. It is the policy framework within which all licence applications will be determined, whether by officers, members or the Magistrates' Court on appeal from a decision of the Council. It must be interpreted in a manner which is compatible with the human rights of applicants for licences.
- 10.7 The policy may be challenged in a number of ways. First, at such time as the policy is adopted by the Council it is possible that any person who is aggrieved by its content may seek to challenge the policy or the manner in which it was developed. Such a challenge would be by way of judicial review and if it were successful would be likely to require amendment of the policy. This would be extremely problematic in that the Act comes into effect in February 2005, meaning that little time would be available to do so. The policy could also be challenged in respect of any individual application, in that a person who feels that the policy has been incorrectly applied may use this as a basis for an appeal.
- 10.8 For these reasons members must be satisfied that the policy adopted takes appropriate account of all relevant matters. This is particularly the case with regard to the proposed saturation policy, dealing with cumulative impact, which creates an additional burden for those persons seeking to obtain a licence for premises in the area covered. Members must be satisfied that appropriate weight is given to any evidence received in support of including a saturation area in the policy and as to the boundaries of any such area.
- 10.9 With regard to saturation policies, members should also note that planning controls are of little effect in dealing with those behaving badly when they have left licensed premises and as such offer little by way of an alternative mechanism for dealing with this issues.
- 10.10 Author of legal comments: Clive Tobin.

11 Other Implications

- 11.1 Consider implications for existing strategies, or policies. Will what you are proposing set a precedent?

OTHER IMPLICATIONS	YES/NO	PARAGRAPH REFERENCES WITHIN SUPPORTING PAPERS
Equal Opportunities	Yes	See Equality Impact Assessment at Appendix D.
Policy	Yes	Throughout
Sustainable and Environmental	No	
Crime and Disorder	Yes	Throughout. See Appendix A.

Human Rights Act	Yes	See legal comments in section 9
Older People on Low Income	No	

11.2 Risk Assessment Matrix

	Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/or appropriate)
1	Policy not agreed within timescale	L	H	Existing timetable will achieve approval within timescale. If not approved at Full Council in November an additional meeting will need to be scheduled in December.
2	Judicial review of policy	L	H	Care taken to follow Licensing Act and guidance. Legal advice taken on the policy at Appendix A and on this report to reduce the likelihood of a judicial review.
3	Appeal against decision	H	L	It is anticipated that the policy will assist a robust defence to any appeal.

L - Low
M - Medium
H - High

L - Low
M - Medium
H - High

12 Background Papers – Local Government Act 1972

- Report to Cabinet - Implementation of Licensing Act 2003 – 4 August 2003
- Report to Licensing Sub-Committee - Implementation of Licensing Act 2003 Progress Report – 8 September 2004
- Research file – Perpetuity Research & Consultancy International