



Leicester
City Council

WARDS AFFECTED
City Wide

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Cabinet

5 September 2006

Relationship between Planning Legislation and the Licensing Act 2003

Report of the Corporate Director Regeneration & Culture

1 Purpose of Report

- 1.1 To clarify the relationship between Planning and the Licensing Act 2003.
- 1.2 To identify a future approach to managing the relationship between Planning and the Licensing Act 2003.

2 Summary

- 2.1 Premises that want to provide activities that are licensable under the Licensing Act 2003, such as the retail sale of alcohol, or providing hot food after 23:00 hours, are now controlled by both the planning and licensing regimes. However, although there are some similarities between the two regimes, the differences between them mean there is a potential or perceived conflict which needs to be managed.
- 2.2 Both regimes are able to refuse applications, impose conditions on the operation of the premises and take enforcement action in relation to unauthorized activities. There are differences though. Planning legislation controls the long-term use of land and will often aim to preserve residential amenity. The Licensing Act focuses on the control of activities on a shorter term basis and aims to prevent public nuisance. These differences and similarities mean that we need to consider how best to manage the relationship between the two regimes.
- 2.3 Management of the relationship between planning and licensing should be aimed at ensuring that:
 - Applicants are not confused about the requirements of each regime;
 - The two regimes are run as efficiently as possible and where possible benefit from each other;
 - The two regimes achieve their individual statutory objectives; and
 - The two regimes operate legally, within their statutory frameworks.

2.4 A summary of the comments made by Licensing Committee and Development Control Committee about the proposals contained in this report are shown in Appendix 3.

3 Recommendations

3.1 Cabinet notes the comments of Licensing Committee and Development Control Committee set out in Appendix 3.

3.2 Cabinet agrees the approach to managing the inter-relationship between planning and licensing by dealing with them as two independent processes.

3.3 Cabinet requires the Corporate Director of Regeneration and Culture to ensure that clear information is provided, to applicants from premises subject to both regimes, about the authorisations required, potential outcomes of their applications and the situation in respect of fees, to ensure there is no confusion about the inter-relationship between planning and licensing.

4 Financial and legal Implications

4.1 See supporting information.

5 Report Author/Officer to contact

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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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SUPPORTING INFORMATION

1 The Relationship between Planning and Licensing

- 1.1 The Licensing Act 2003 introduced the concept of “responsible authorities” which are given powers under the Act to make representations about applications and make requests for reviews. The local planning authority is identified as a “responsible authority” and this provides a mechanism which did not previously exist for linking the two regimes.
- 1.2 Advice to licensing authorities issued by the Secretary of State for Culture, Media and Sport was that licensing and planning should be integrated, as far as possible, to prevent decisions by separate parts of the same authority cutting across each other. In an attempt to achieve this, an approach has been adopted whereby planning officers make representations about those applications for licences which would result on a premises contravening its planning consent. However, practical application of this approach since the Act came into force in February 2005 has presented problems.
- 1.3 There are key differences between licensing and planning regulation. Planning is concerned with land uses and the relationship between different uses; licensing focuses primarily on specific activities. Planning permission normally relates to the long-term use of land, it is not personal to the operator or specific to a particular business plan or way of operating. Generally, once granted, planning permission cannot be taken away. A licence does take into account how a business will be run and can be revoked following a review, subject to representations being made if problems arise. Planning can and does work in terms of areas and the cumulative impact of a number of licensable operations on residential amenity, parking and highway safety.
- 1.4 A decision to grant or refuse planning permission or impose a restriction on opening hours can be based on the likelihood of problems arising. It does not have to be evidence based in the way of a licensing decision. However, to take

enforcement action against a breach of planning control, such as opening hours, evidence of harm being caused must be provided.

- 1.5 The attempt to integrate the two different regimes has meant that, at licensing hearings to consider planning representations, members have sometimes been presented with a confused message. Frequently they have had to decide between either refusing an application for a licence with insufficient grounds for doing so, or granting a licence which would give permission for a premises to operate in breach of its planning consent. In addition, there has been considerable officer and member time invested in trying to reconcile an irreconcilable situation.
- 1.6 Practical experience at this and other local authorities, as well as legal advice, is that the only workable solution is to treat permissions granted by the two regimes as separate requirements, both essential for licensable premises. This means that the two regimes will sometimes grant permissions that contradict each other. It will therefore be necessary to ensure that the public is provided with clear, easy to understand information about the need for both permissions and to be warned that a licence does not necessarily guarantee planning permission and vice-versa.

2 Managing the Relationship Between Licensing and Planning

- 2.1 The approaches set out below present the advantages and disadvantages of either separating licensing and planning, or alternatively continuing to attempt to integrate the two regimes as at present. Although these are presented as alternatives, it should be made clear that continuing to try to integrate the two regimes is not considered a workable solution.

Separation of Licensing and Planning

- 2.2 Under this proposal there would be a strong separation between the planning and licensing regimes. Steps which could be taken to mitigate the disadvantages of this approach would include advice to applicants about the need for planning permission, and the Planning Authority still making representations in cases where active enforcement action was in progress and evidence existed to suggest public nuisance.
- 2.3 This approach would be based on:
 - A *recommendation* to applicants that they apply for planning permission first. However, applicants could not be prevented from applying for, and be granted, a licence to operate outside of their planning consent.
 - Advice being given to applicants for licences which exceeded planning consent that a licence would not in anyway remove the need for, or affect the likelihood of being granted, planning consent. This would be achieved by a review of all advice to ensure that this point is clearly highlighted.

- Representations by the Planning Authority being made in respect of licensing applications only where it had tangible evidence relevant to the licensing objectives.
- Licensing decisions being made without regard to the planning status of a particular premises.
- Planning decisions being based entirely on planning considerations and not being influenced by whether a licence for a premises had been granted by the authority.

Advantages	Disadvantages
Licence applications would be decided on licensing criteria and planning applications on planning criteria	Applicants may be confused about the requirement for two separate authorisations
There would be a reduction in the number of representations made by the Planning Authority, reducing the need for hearings	No attempt would be being made to try to integrate planning and licensing controls
	Development Control committee may come under pressure to approve planning applications for premises already granted licences. Applicants who receive a licence and not planning permission may feel harshly treated.

Co-ordination of Licensing and Planning

2.4 Under this proposal there would be an attempt to integrate planning and licensing decisions.

2.5 There would be potential difficulties with this approach and it is not seen as an workable approach, but some attempt could be made to:

- Encourage applicants for licences to resolve their planning permission first.
- Allow the planning status of a particular premises to influence the licensing decision.

Advantages	Disadvantages
The more fundamental decision, about the land use of the premises, could be decided first.	It would not be possible to compel applicants to resolve planning permission first
An attempt would be being made to integrate planning and licensing decisions	Planning and licensing decisions could not always be reconciled because of differences in objectives and because licensing decision are required to be evidence based

Members would be able to make decisions based on wider information, including the planning consent for the premises	There would be far more hearings, many of which have no prospect of achieving harmonisation of planning and licensing
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Recommended Approach

- 2.6 At the outset of the implementation of the Licensing Act it was an aim of the government, followed by the City Council, to try to integrate the planning and licensing regimes. However, practical experience of attempting to do this has shown that it is not a workable approach. The two regimes operate in two distinct and different ways and deal with different considerations. Legal advice is that the two regimes should be dealt with separately, despite the government's advice that they should not cut-across one another. It is therefore recommended that the Planning and Licensing functions are separated.

3 FINANCIAL, LEGAL AND OTHER IMPLICATIONS

Financial Implications

- 3.1 There are no direct financial implications arising from this report.

(Martin Judson – Head of Finance R&C Ext.7390)

Legal Implications

- 3.2 The planning regime and the licensing regime provide two wholly distinct and discrete statutory frameworks. By their nature and contrary to the Governments apparent intention to integrate the two regimes, their statutory frameworks make no provision for such integration and therefore do not deal with any apparent conflicts. Therefore there is no lawful scope for a decision under one regime influencing that under the other regime.
- 3.3 Therefore planning and licensing decisions must be considered and reached separately with the result that an individual will be constrained by the most restrictive of the decisions reached.
- 3.4 The same is true of other statutory or regulatory regimes which when considered in the same circumstances can give conflicting results e.g. a building extension may have the necessary Planning Consent but its construction or use may fall foul of the Building Regulations prohibiting its use altogether.
- 3.5 To this end, the proposal to separate Licensing and Planning reflects the two distinct regimes and statutory frameworks whereas a consideration of attempting to coordinate the two regimes serves to highlight the inherent problems of an integrated approach which is presently not supported by the distinct licensing and planning statutory frameworks.

(Alison Mapp – Team Leader Legal Services Ext.7059)

4 Crime and Disorder Implications

- 4.1 Consideration of crime and disorder is a requirement of both the planning and licensing systems. Separation will not have any adverse crime and disorder implications

5 Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting information
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

6 Background Papers – Local Government Act 1972

None

7 Consultations

None at this stage.

8 Report Author

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APPENDIX 1

Background to the Licensing Process

- 1 Premises at which licensable activities take place require an authorisation under the licensing act. This may be either a premises licence or for occasional small events a temporary event notice. Licensable activities are:
 - The retail sale of alcohol;
 - The supply of alcohol by a club;
 - The provision of regulated entertainment; and
 - The provision of late night refreshment.
- 2 The Licensing Act specifies a number of responsible authorities, including the local planning authority, that can make representations about applications for licences. Representations must relate to the licensing objectives such as the prevention of public nuisance. There is a similarity between this objective and an objective of the planning regime relating to the protection of residential amenity. Therefore, where proposal of an application for a licence would breach the relevant planning consent and there is concern that it would be detrimental to residential amenity, then representations are normally made by the planning authority.
- 3 Statutory guidance from the Secretary of State under the Licensing Act states that, *“Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned”*. To reflect this, the City Council’s Licensing Policy states, *“Where planning permission is being sought, a licence application will not be approved until the necessary planning permissions have been received. Any planning consideration should therefore be resolved first”*.
- 4 The statements above are clearly aimed at ensuring Licensing and Planning controls are integrated. Ideally, planning permission, which is more fundamental, should be resolved first. However, in practice, there is nothing to prevent an applicant applying for licence for activities outside the scope of a planning consent. This has become particularly common in respect of late-night take-aways. Premises may have been operating outside the scope of their planning consent but, because of the particular nature of their operation, have not caused problems to nearby residential premises. In these circumstances, and in the absence of any evidence of conflict with the licensing objectives, it is difficult for a Sub-Committee considering the application to refuse the application, even though it does not conform to the relevant planning consent.

Background to the Planning Process

- 1 A material change of use of land and buildings requires planning permission. It is common practice when granting planning permission for new food and drink uses such as cafés, bars, restaurants and takeaways to impose a condition regulating the hours in which the business can remain open. Such a condition is attached principally to protect residential amenities.
- 2 Conditions are necessarily precautionary. Circular 11/95 states that noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. It advises that the planning system should ensure that new development involving noisy activities should, if possible, be sited away from noise-sensitive land uses. Where it is not possible to achieve such a separation of land uses, local planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning obligations. Further advice is contained in Planning Policy Guidance Note 24: Planning and Noise (PPG24).
- 3 Planning policy is contained in the City of Leicester Local Plan (2006). Policy R05 permits in principle proposals for food and drink purposes, that is, within Class A3 (Restaurants and cafés), A4 (drinking establishments) and A5 (hot food takeaways) of the Use Classes Order, in shopping centres identified in the Local Plan. That is providing, amongst other considerations that the development individually or cumulatively with other A3, A4 and A5 uses would not prove significantly detrimental to the amenities of the occupiers of nearby residential properties.
- 4 Opening hours are material in this respect and, although there is no specific policy on hours, the local plan states that hours outside 0730-2300 are likely to be unacceptable if detriment is caused to residential amenities.
- 5 Supplementary Planning Guidance on this issue was approved by Cabinet in April 2003 for local, district and town centres and in December 2003 for the city centre (defined as within the central ring road). Apart from the Central Shopping Core, where no restrictions on opening hours would generally pertain, and London Road and Braunstone Gate, opening hours in the local and district centres will normally be restricted to 0730 to 2300 hours on Mondays and Saturdays with lesser hours on Sundays depending on circumstances. The guidance is based on Government policy advice in PPG24. It applies to noise generated by premises in use for fast food, restaurants, discos, night clubs and public houses not only in the buildings but also attendant problems of noise that may be made by customers in the vicinity and disturbance caused by traffic and associated car parking. It advises that the period 2300 to 0700 hours is when people are normally sleeping. After 23.00 hours the acoustic environment changes, traffic levels and thus background noise levels begin to fall appreciably. Activities, particularly noisy on-street activities, such as car doors and engine starts, which are often associated with the operation of A3 uses (now Classes A3, A4 and A5), will be far more intrusive, for example, causing sleep disturbance, than they would be at an earlier time.

- 6 Any breach of the terms of a planning permission is open to Enforcement Action by the Council. The recipient may lodge an appeal against the service of any Enforcement Notice, *but not against the alternative action of a Breach of Condition Notice*. The appointed Inspector would, after considering whether any breach had in fact taken place, consider whether planning permission ought to be granted for the use continuing without the condition or with an amended condition.
- 7 Of relevance to this report, Circular 11/95 also considers matters which are subject to control under separate legislation, yet also of concern to the planning system. As a general rule a condition which duplicates the effect of other controls will normally be unnecessary. Conditions may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different, since it might be unwise in these circumstances to rely on the alternative control being exercised in the manner or to the degree needed to secure planning objectives. For example, a planning objective may be to maintain the residential character of an area.
- 8 Conditions may also be justified where they can prevent development being carried out in a manner which would be **likely** to give rise to onerous requirements under other powers at a later *stage*.
- 9 Since the advent of the Licensing Act and subsequently the Council's Licensing Policy many businesses seeking the new licenses are also seeking to have planning conditions restricting hours of use 'relaxed'. This has inevitably brought the two systems of control in conflict.

1 Comments of Licensing Committee

1.1 Licensing Committee considered this report on 8 June 2006. They resolved the following:

- a) *The Licensing and Development Control sections produce a joint leaflet explaining the two regimes.*
- b) *The Leicester City Council's Statement of Licensing Policy be reviewed.*
- c) *The Development Control Section investigate options for enforcement of breaches of permitted hours under planning permission.*
- d) *The possibility of a joint database for Development Control and Licensing be investigated.*
- e) *A letter be sent to the Secretary of State requesting that current legislation of the Licensing Act 2003 be revised.*

1.2 All of these comments will be actioned by officers. In relation to comment "e)" it is perhaps more realistic to ask for the government's guidance to local authorities to be revised.

2 Comments of Development Control Committee

2.1 Development Control Committee considered this report on 20 June 2006. They resolved the following:

- a) *That the Planning and Development Control Committee recognise the problems that can arise from having two regimes and hope that Cabinet can minimise the problems resulting from this.*
- b) *That the Licensing and Development Control sections produce a joint leaflet explaining the two regimes*
- c) *That the Committee welcomes the proposal for advice given to Licensing applicants to resolve Planning Consent first.*

2.2 The action proposed by officers to minimise the problems of having two separate control regimes are set out in Section 2 of the supporting information. Comments b) and c) will be actioned by officers.