

THE EXECUTIVE

12 OCTOBER 2004

JOINT REPORT OF THE DIRECTOR OF HOUSING AND HEALTH AND THE DIRECTOR OF CORPORATE STRATEGY

LICENSING ACT 2003 – DRAFT LICENSING POLICY AND LICENSING BOARD ARRANGEMENTS

FOR DECISION

Under the Licensing Act 2003 the Council must establish a Licensing Policy and set up a Licensing Board.

Summary

This report considers how to establish a Licensing Board. It proposes that the Regulatory and General Matters Board has the capacity to take on the new licensing role and could do so with small alterations to its structure and functions. It would be able to provide focused decisions on licensing applications that have received objections.

Recommendations

The Executive is asked to consider the proposals for the establishment of a Licensing Board and:

1. Approve the draft Licensing Policy for consultation purposes.
2. Recommend to the Assembly that Article 7C of the Constitution be amended as follows;
 - (a) That the Regulatory and General Matters Board be renamed the Licensing Board,
 - (b) Having regard to the political balance requirements of Section 15 of the Local Government and Housing Act 1989, to fix the membership of the Licensing Board to ten Members,
 - (c) That the Chair and Deputy Chair of the Licensing Board be fixed positions
 - (d) That the quorum of the Board be set at five Members, including the Chair and/or the Deputy Chair;
 - (e) That the Board becomes the Council's decision making body for all contested Licensing Act applications in addition to its current role, and an appeal body for applications determined by officers
 - (f) That the terms of reference of the Licensing Board be amended accordingly.
3. Further recommend to the Assembly that (a) the Independent Members' Remuneration Panel be advised of the new Chair and Deputy Chair positions and be asked to consider the appropriateness of associated Special Responsibility Allowances, and (b) all necessary changes be made to the Council's Constitution.

Reasons

To prepare to take on the new responsibilities provided by the Licensing Act 2003 the Council needs to establish a Licensing Board and agree a Licensing Policy.

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1. Background

- 1.1 The Licensing Act 2003 received Royal Assent in July 2003. It combines three previously separate systems of licensing - liquor licensing, public entertainment licensing and night café licensing - in a single new system. In doing so it transfers responsibility for liquor licensing from the Magistrates Court to the Council and makes significant changes to licensing controls and administration. Individuals as well as premises will need to be licensed where alcohol is sold.
- 1.2 The Act allows for the issuing of a Premise Licence and a Personal Licence.

Premise Licence

A Premise Licence is issued with conditions attached which specify the type of entertainment that can go on, the hours of opening and other crime, safety and nuisance related conditions.

The licence is issued for the lifetime of the business at the premises concerned. There is no annual renewal. If business changes hands, or the type of activity at the premises changes significantly, the licence has to be reconsidered and reissued.

Personal Licence

In order to run a licensed premise an individual must hold a Personal Licence and become a "designated supervisor". Also at least one Personal Licence holder must be on site whenever the business is open.

Licences are issued for ten years and are valid nationwide to those who have received appropriate training and been through an interview and a Criminal Records Bureau check.

- 1.3 The Act also requires the Council to publish a statement of Licensing Policy. The Policy must, among other things, explain how the Council will meet four main objectives behind the Licensing Act which are:
- Prevention of crime and disorder
 - Public Safety
 - Prevention of public nuisance
 - Protection of children from harm
- 1.4 The Council must also set up a Licensing Board to oversee the new regime and determine contested applications.

2. Licensing Policy

- 2.1 Central Government has published guidelines and specified a series of legal requirements which must be included within the Licensing Policy. A first draft Licensing Policy has been prepared representing the basic requirements under the Act. The Policy now needs to be circulated for wide consultation in order to localise it and reaffirm what is important to Barking and Dagenham. The first draft Policy has been circulated to Executive Members separately. The Management Team have also been consulted.
- 2.2 The Licensing Policy will have an impact on and need to be shaped by other Council policies. Relevant policies are:
- Community Safety Strategy
 - Crime and Disorder Strategy
 - Cultural and Tourism Strategies
 - Drug and Alcohol Strategies
 - Enforcement Policy
 - Environmental Strategy
 - Fair Treatment for All - Equalities and Diversity Position Statement.
 - Leisure Strategy
 - Local Authorities Enforcement Concordat
 - Neighbourhood Renewal Strategy
 - Regeneration Strategy
 - Transport Plan
 - Unitary Development Plan
 - Waste Strategy
- 2.3 In order to meet the timescale for implementing the new regime the Council must have its Licensing Policy finalised by 7th January 2005. The Policy can be revised from time to time and must be reviewed every three years.
- 2.4 The Act requires the Council to consult specific stakeholders about the Policy and the draft lists these. Once the Executive has approved the draft Policy the consultation exercise will begin. Officers expect to bring the amended draft to the Executive during December 2004 and the Assembly for final approval and formal adoption by the Council in January 2005.

3. Establishing a Licensing Board through the Regulatory and General Matters Board

- 3.1 The Council must set up a Licensing Board with between ten and 15 elected Members. A meeting of 15 Members is a very large number, so we feel that setting the membership at ten is the most appropriate. Members need to be aware that under the Act the Board can only be made up of elected Members of the Authority, leaving no provision to procure or co-opt people from the existing regime of Magistrates, the Police or elsewhere to carry out this function.

- 3.2 The Board has been established as a “committee” under the Local Government Act 1972 and Local Government and Housing Act 1989, and as such political balance requirements apply to the membership. This means that not all seats on “committees” should be allocated to the same political group. The number of seats depends upon the size of each political group as a proportion of the membership of the Council as a whole. In this instance based on a suggested membership of ten it will be necessary to offer one seat on the Board to the minority parties.
- 3.3 The current role of the Regulatory and General Matters Board (‘RGMB’) is to exercise all of the Authority’s licensing and regulatory duties, functions and powers. These functions would still remain with the addition of the new duties and powers under the Licensing Act 2003. All other considerations aside, this would make the RGMB the logical choice to fulfil the Licensing Board role.
- 3.4 The Board currently consists of a pool of Members from which five are selected, by rota, to serve when required. In order to comply with the new Act, we need to alter its title to Licensing Board and set the membership.
- 3.5 Under the Act there is an option for the Council to establish additional panels to handle some of the work of the Licensing Board. However to ensure consistency the Chair and/or Deputy Chair would need to be present at all meetings. With this and the anticipated workload in mind, it is suggested that we adopt a Board only approach but review the situation in the light of experience at an appropriate time after implementation.
- 3.6 Training will need to be provided for all Members who sit on the Licensing Board and this will be organised once the structure and membership of the Board is settled.

Expected Licensing Board Workload

- 3.7 There are around 220 premises in the Borough licensed by Barking Magistrates Court to sell liquor. Under the current system each licence is issued for three years so around 75 come up for renewal annually. The Court’s Licensing Committee sits each year in February to renew existing licences. They sit on ten other occasions during the year to consider new applications (around five per year) and applications for licence transfers (around 100 per year). The Committee sits to hear all applications whether or not they are contested. Very few applications are opposed at present either by the Police, residents or other people or organisations.
- 3.8 It is suggested that most of the Council’s licensing decisions can be made by officers under delegated authority. Under the new system some licensing decisions will have to be made by the Licensing Board, as the Act specifically prevents some things being delegated (see appendix 1). These include all applications for premises or personal licences in which objections are received together with a number of other decisions which cannot be delegated.
- 3.9 Currently the Magistrates Court deals with very few contested applications. However, one of the fundamental principles behind the shift of liquor licensing

to Local Authorities is that the community will become far more involved in the decision making process. We anticipate that 10% of licence applications will receive objections leaving around 22 to be covered by the Board. In subsequent years, only if the premise changes hands or they fundamentally change the layout or characteristics of the bar do they need to reapply.

- 3.10 All applicants or objectors will have the right of appeal over a decision regarding an application that has been made. If a delegated officer has made the decision it can be reviewed at the Licensing Board. If it is made at the Licensing Board it would then be heard at the Magistrates Courts.

4. Timetable to Introduce the Licensing Act 2003

- 4.1 7th July 2004 the Licensing Act 2003 guidelines were produced enabling us to finalise the Council's Draft Policy Statement.
- 4.2 August 2004 - the Department for Culture, Media and Sport were due to release the Application regulations, Application Forms and proposed fees, however we have now been informed that the forms will be released in early October and the fees are now the subject of parliamentary review.
- 4.3 7th January 2005 all Policy statements must be finalised and formally adopted.
- 4.4 7th February 2005 is the first appointed day by which all procedures must be in place to deal with all new licensing applications. Between the two appointed dates the current system will run in parallel with the new system. Existing liquor licences will stay in force and under the jurisdiction of the Magistrates until they are transferred over to the Council, or a new application has been made. The guidance for this process is still to be finalised by Government.
- 4.5 November 2005 has been given as when the old regime expires and the Local Authorities take full control.

5. Financial Implications

- 5.1 At this stage, it is not known what the net cost of the Licensing Act 2003 will be. A growth bid of £120K was previously agreed by the Executive for 2004/05 to meet the additional costs of running the new licensing arrangements and the potential loss of income from the standardisation of the fees. A further report will be submitted to the Executive when the Government has finalised the fees and the full extent of the proposals are known.
- 5.2 If the decision is taken to appoint a permanent Chair and Deputy Chair, the Independent Members Remuneration Panel will be required to consider the appropriateness of applying Special Responsibility Allowances to both positions.

6. **Consultation**

The following have been consulted in the preparation of this report:

Councillor McKenzie – Lead Member
Councillor Fairbrass – Lead Member

David Woods - Director of Housing & Health
Darren Henaghan - Head of Health & Consumer Services
Colin Rigby - Head of Finance Housing & Health
Nina Clark – Head of Democratic Support
Paul Feild- Principal Solicitor
Democratic Services
TMT

Background papers used in the preparation of this report:-

- (i) The Licensing Act 2003
- (ii) The Local Government Act 2000.
- (iii) Guidance issued under Section 177 of the Licensing Act 2003 by the Department of Culture, Media and Sport.
- (iv) The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- (v) The Council's Constitution.
- (vi) E-mail from the Local Authorities Co-ordinating Body on Regulatory Services dated 20th February 2004.

Appendix 1
Table of who makes licensing decisions

| Decisions made by: | Licensing Board | Council officers |
|--|----------------------|--------------------|
| Matter being decided: | | |
| An application for a personal licence | If anyone objects | If no-one objects |
| An application for a personal licence from a person with a conviction that is not spent (A spent conviction is one that does not need to be declared as a specific length of time has passed.) | In all cases | |
| An application for a premises licence or club premises certificate | If anyone objects | If no-one objects |
| An application for a provisional statement | If anyone objects | If no-one objects |
| An application to vary a premises licence or a club premises certificate | If anyone objects | If no-one objects |
| An application to change a 'designated premises' supervisor' | If the police object | In all other cases |
| An application to stop being a 'designated premises' supervisor' | | In all cases |
| An application for a premises licence to be transferred | If the police object | In all other cases |
| An applications for interim authorities | If the police object | In all other cases |
| An application to review a premises licence or a club premises certificate | In all cases | |
| Whether a complaint is irrelevant, unjustified, or made out of spite or to annoy | | In all cases |
| Whether or not to object to an application we are consulted on but not being asked to license | In all cases | |
| A police objection about a temporary event notice | In all cases | |