

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

17 JANUARY 2008

REPORT OF CORPORATE
MANAGEMENT TEAM

COUNCIL DECISION

Housing and Community Protection – Lead Cabinet Member – Councillor Nelson

THE LICENSING ACT 2003 – REVIEW OF STATEMENT OF LICENSING POLICY

1. Summary

To inform Cabinet of the results of the consultation regarding the proposed Statement of Licensing Policy required by the Licensing Act 2003.

2. Recommendations

That Cabinet approve the draft revised Statement of Licensing Policy in principle, and refer it to Council for approval.

3. Reasons for the Recommendations/Decision(s)

The Council is required by the Licensing Act 2003 to review its Statement of Licensing Policy every three years, the last statement being agreed in December 2004 and coming into force in January 2005.

4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held –

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same

purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;

- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

AGENDA NO

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COUNCIL DECISION

THE LICENSING ACT 2003 – REVIEW OF STATEMENT OF LICENSING POLICY

SUMMARY

To inform Cabinet of the results of the consultation regarding the draft revised Statement of Licensing Policy required by the Licensing Act 2003.

RECOMMENDATIONS

That Cabinet approve the draft revised Statement of Licensing Policy in principle, and refer it to Council for approval.

DETAIL

1. The Licensing Act 2003 requires the Council to review its Statement of Licensing Policy at least every three years. Council approved the current Statement of Licensing Policy in December 2004. The opportunity has been taken to review the policy and remove those sections that dealt with the transitional provisions under the Act that no longer apply and to update contact details etc. The policy has received no adverse comments since the transfer of licensing functions to the authority and it was not felt necessary to make any major changes. None of the responsible authorities have requested any changes. The draft-reviewed policy as sent out for consultation is attached at Appendix One.
2. Consultation was undertaken with the following:
 - a) Cleveland Police Force;
 - b) Cleveland Fire Brigade;
 - c) Existing Premise Licence holders;
 - d) Existing Club Premise Certificate holders;
 - e) Existing Personal License holders;
 - f) Representatives of businesses and residents in the Stockton Borough Council area;
 - g) The Local Safeguarding Children's Board;
 - h) Trade bodies and Associations; and
 - i) A number of Solicitors Practices who undertake licensing work in this area.
3. Two substantive responses were received from the trade, from the British Beer & Pub Association and the Association of Convenience Stores, and these are attached as Appendices Two and Three. The response from the British Beer and Pub Association makes both specific points on the draft statement of licensing policy and more generic points. The

Association of Convenience Stores is a generic letter sent to all authorities and does not make any points that are not already covered by the draft revised licensing statement of policy.

4. Changes have been made to paragraph 40 and Appendix 1, paragraph 1 to make it clear that the risk assessment is recommended practice rather than a requirement. Paragraph 137 makes reference to the Enforcement Concordat and the authorities Regulatory Services Enforcement Policy; these already take account of the Hampton principles and therefore do not require repeating in the Statement of Licensing Policy.
5. Appendix 1 paragraph 4 is not a reference to a cumulative impact policy, this authority does not have one, however, these are factors that Members of the Licensing Committee will take into consideration if they receive representations about an application.
6. The Council's Licensing Committee has also considered the second draft Statement of Licensing Policy at their meeting in November 2007 where they agreed the content of the draft reviewed Statement of Licensing Policy for reference to Cabinet and Council.
7. There has been some discussion between the LGA and the DCMS as to whether or not the adoption/approval of the Statement of Licensing Policy should be an executive or full council function. In order to avoid any doubt and avoid the risk of a judicial review it is considered prudent that both the Cabinet and full Council approve the proposed Licensing Policy Statement.

FINANCIAL IMPLICATIONS

8. The adoption of the proposed Statement of Licensing Policy does not, in itself, give rise to any financial implications.

LEGAL IMPLICATION

9. The Licensing Act 2003 (Licensing statement period) Order 2004, SI No. 2004 No. 2362, requires the authority to approve/publish their Statement of Licensing Policy and to review it at least every three years.

POLICY IMPLICATIONS

10. To secure a safe and attractive environment for current and future generations;
To promote the safety and well being of the community;
To further regenerate the Borough and improve the local economy;
To extend the opportunities for people to experience the arts and culture;
To improve the health of the local community.

RISK ANALYSIS

11. The implementation of the draft revised Statement of Licensing Policy is categorised as low risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

COMMUNITY STRATEGY IMPLICATIONS

12. Maintenance of an agreed Statement of Licensing Policy will assist in:

- Securing a safe and attractive environment for current and future generations;
- Promoting the safety and well being of the community;
- Further regenerating the Borough and improve the local economy;
- Extending the opportunities for people to experience the arts and culture;
- Improving the health of the local community.

Corporate Director of Development and Neighbourhood Services

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Background Papers

The Licensing Act 2003
Guidance issued under Section 182 of the Licensing Act 2003

Ward(s) and Ward Councillors: Not Ward Specific

Draft Revised Statement Of Licensing Policy

Please see attached document.

Appendix Two



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13th October 2007

Trading Standards and Licensing Manager
Stockton-on-Tees Borough Council
16 Church Road
Stockton-on-Tees
TS18 1XT

Dear Sir/Madam,

RE: LICENSING ACT 2003 - REVIEW OF LICENSING POLICY

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 60,000 pubs in the UK. Many of our members own and run pubs in the Stockton-on-Tees area. The Association promotes the responsible sale of alcohol and management of licensed premises. It has a range of good practice information and guidance for member companies, which includes security in design, drugs, drinks promotions, noise control and health and safety.

The BBPA believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. We welcome this opportunity to provide comments as part of this licensing policy review. This response is also supported by BII, the professional body for the licensed retail sector and the Federation of Licensed Victuallers Associations.

The BBPA welcomes the Council's positive approach to the licensing of the sale of alcohol and the provision of public entertainment and in particular its recognition of the cultural and social contribution that the trade has to make, and also its importance as a local employer. The draft policy has also recognised one of the key principles of the Licensing Act 2003, namely that each application must be treated on its own merits.

The policy is a rather 'wordy' document in parts (Para 114-116 and 124-126 for example) and, though we accept that the motive for this detailed approach is probably to assist applicants, we hope that in its attempt to do so it does not confuse.

Para 40 and Appendix 1 Para 1 - Risk Assessments

The Association is very much in favour of the use of risk assessments, but the provision of a risk assessment to support an application is not a requirement under the Licensing Act 2003. We believe that these references should be clarified to show risk assessment as *recommended practice* rather than a requirement.

Para 137 Enforcement

We welcome the risk based approach to enforcement advocated by the policy and would further recommend the recognition of the Hampton principles of inspection and enforcement in this section, which include the following:

- No inspection should take place without a reason
- Regulators should be recognised that a key element of their activity will be to allow or even encourage, economic progress and only to intervene when there is a clear case for protection

Appendix 1 Para 4. Is this a reference to Cumulative Impact Policies? Without a saturation policy and the necessary representations we are not certain on what grounds the licensing authority would "*determine any further applications for premises*".

General

We have some general concerns that Councils may receive representations for change to which we will be unable to respond until *after* the policy is approved. We will take this opportunity therefore to highlight certain issues which we would not support being included in, or arising from, the final policy document as they are beyond the provisions of the Licensing Act:

- applications to be completed in a specific manner, other than that prescribed in regulations.
- blanket or standard conditions on licences eg. CCTV, hours, use of polycarbonate/plastic glasses, capacity limits, membership and attendance at Pubwatch meetings, minimum pricing requirements etc.
- written authorisation for the sale of alcohol.
- more than one personal licence holder on the premises.
- measures that duplicate existing legislation, eg. health and safety (eg. smoking, fire etc.) or disability provisions.

We trust that you will find these comments helpful and look forward to any response you may have. We would also appreciate being listed as a consultee in any further licensing related consultations.

Yours faithfully,



Dr Martin Rawlings

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A company limited
by guarantee

October 2007

Dear Sir/ Madam

Submission to Local Authority Consultation on Alcohol Licensing Policy

Thank you for offering ACS (Association of Convenience Stores- Annex 1) an opportunity to respond to your consultation on licensing policy. ACS is the voice of the convenience retail sector, representing over 33,000 local shops. Alcohol is a major product category for our members and ACS has been closely involved in the development of the new licensing regime. Therefore ACS has developed significant understanding of the implications of licensing reform for small format off licences. Our members deal with a wide variation between different local licensing policies. We have found that the most successful policies invariably involve local authorities and retailers working together in partnership to create a fair and effective licensing policy.

Responsible Retailing

An alcohol retailer's primary responsibility is to ensure that alcohol is only sold to those who can legally purchase it. ACS, working together with other industry stakeholders, has helped develop numerous schemes to help retailers to sell responsibly and we believe that it would be good practice for local authorities to support these in their licensing policies.

- ACS is a member of the Retail Alcohol Standards Group (RASG). RASG created the Challenge 21 campaign and recommends that anyone who appears to be under 21 is challenged for ID. Since RASG represents the vast majority of the alcohol retail industry, this helps create a united message, promoted with the same point of sale material.

That the point of sale material is the same in all stores in all areas is important, since it provides consistency of message for retailers, as well as for customers. ACS has been notified of some examples of local licensing authorities who have wanted to dilute the message, for example conditions on licences asking for Challenge 25. We urge you not to adopt this stance, since it introduces variation between different areas and stores. We believe that the benefit of having a different local approach is counteracted by the negative affect of a lack of coherent messaging.

However, though we encourage local authorities to support the Challenge 21 message, we do not believe that it should be used as a condition on

alcohol licences. The way the act is structured means that failure to comply with a condition is a criminal offence. Having Challenge 21 as a condition would mean that technically a retailer would be committing an offence if they did not challenge all customers, even if they knew they were over 21.

- ACS is also a keen supporter of the No ID No Sale campaign, and a founding board member of the CitizenCard proof of age scheme. CitizenCard has given out over 1.7 million cards, and offers young people who do not have a passport or drivers licence a valid form of ID. Particularly in society where identity fraud is a growing problem, it is even more important to offer a form of ID that it is not a passport or driving licence since these are often used for ID fraud if lost.

ACS would urge all local authorities to support No ID No Sale campaign, and support the use of CitizenCard as a valid form of ID.

ACS supports the use of test purchasing to root out rogue retailers who do not obey the law and fully agrees these retailers should be punished severely. However, we feel that it is important that test purchasing does not descend into a tool to “catch-out” responsible retailers, who make a genuine mistake. When a retailer does fail a test purchase, it is important that the first recourse is constructive support, rather than overzealous punishment. Punishments are effective only when they are proportionate. We do support tough sanctions against persistent offenders.

We also strongly advise local authorities to recommend that retailers are notified of any test purchases they have passed. This helps stores to recognise if their policy to prevent underage sales is working and facilitates a partnership based relationship.

Anti-Social Behaviour

However, underage drinking is also a community problem, and this needs to be reflected in licensing policy. Retailers often have to face anti-social and intimidating behaviour when refusing a sale. It is paramount that they feel sufficiently supported in their role as enforcers.

ACS believes strongly that current application of the laws surrounding alcohol sale is often disproportionate. Buying alcohol underage is an offence; however in most areas this is not addressed at all. It is absolutely vital that any local licensing policy reflects that the blame is not wholly the retailers, and encourages retailers and local agencies to work in partnership, not at loggerheads. For example, there have been some examples of retailers report thefts from their shop, and then they have been told that this it could affect their alcohol licence. This is totally the wrong sort of relationship to create, since retailer support is vital

to the success of any local licensing policy. We recommend where possible that a local licensing authorities policy should demonstrate a commitment to support retailers and communities in the areas of availability and awareness about proof of age.

Designated Premises Supervisor

Since the publication of your last licensing policy, the Department of Culture, Media and Sport have issued renewed Guidance to the Licensing Act 2003. ACS has been closely involved with the formation of the Guidance, and believes it makes several contentious issues much clearer. The most obvious of these is the revised Guidance on the role of a Designated Premises Supervisor (DPS). With the phrase 'over the course of an evening' now removed, the Guidance makes perfectly clear that a DPS does not have to be on the premises at all times while alcohol is served. We hope that this is adequately reflected in your new licensing policy

Opening Hours

Though there is no presumption in favour of longer opening hours, ACS would like to emphasis the Government's strong advice that licensing authorities should licence any retail outlet that is currently open for hours beyond current permitted hours for the whole period in which they are usually open.

If we can be of any further assistance please do contact us on 01252 515001.

Yours sincerely

Shane Brennan
Public Affairs and Communication Manager