

APPENDIX B

RESPONSE TO REBALANCING THE LICENSING ACT CONSULTATION

Further to the consultation document recently published by the Home Office, Officers and Councillors from Bracknell Forest Borough Council have considered the issues and have submitted the co-ordinated response set out below.

Question 1

What do you think the impact would be of making relevant licensing authorities responsible authorities?

Answer

There is a need to retain the neutrality and impartiality of the Licensing Authority as a decision making body. To make a Licensing Authority a responsible authority would impact that impartiality and threaten the independence of that role. It is however also vital to have an effective partnership between the responsible authorities and the enforcing role of the Licensing Authority to effectively deal with problem areas and to avoid problems occurring. The Licensing Authority in its role as an enforcer could be improved if it was able to act as a responsible authority that could separately call in a licence for review based upon breaches of licence conditions or complaints regarding breaches of the Licensing objectives. The present requirement to take licence breaches to the Courts is an expensive and time consuming process that could be much better and quickly dealt with by a referral to the Licensing panel who could consider matters such as a restrictions in licensing activities, additional conditions being applied or even suspension or revocation for persistent offenders. The right of appeal to the Magistrates Court would protect the licence holders right to a fair trial.

Question 2

What impact do you think reducing the burden of proof on licensing authorities will have?

Answer

Members of a Licensing Panel are often directed by applicants' representatives on the need to clearly show necessity. This can limit the actions of members who are concerned that their decisions may be successfully challenged. This can detract from the more pragmatic and reasonable approach preferred by members and lead to less effective conditions being applied. A reduction in proof level would be likely to deliver more reasonable and appropriate conditions.

Question 3

Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Answer

A risk based assessment using the licensing objectives should be made by the business and the conclusion of this should be contained within the Operating Schedule. Often the Operating Schedule is just a rehash of another with as minimum information as possible to limit the number of conditions applied. A requirement to produce a risk based assessment as part of the application process would ensure that the applicant adequately considers the impact of their business upon the local community.

Question 4

What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

Answer

As a Local Authority we take all representations, notices and recommendations from the Police into consideration and give appropriate weight to them. Members have the task of evaluating all the information presented in making their decision and it is right that the Police as any other party should be required to support their representation with any relevant evidence, intelligence or experience. As an authority we would not be supportive of any provisions which gave any party to the proceedings a lesser level of evidential requirement than any other.

Question 5

How can licensing authorities encourage greater community and local resident involvement?

Answer

As a Local Authority we have introduced a policy of neighbour notification for any premises licence application except for minor variations. This is restricted to immediate neighbouring properties who will receive brief details of the application and how to make representations. We have found that this has increased the involvement of local residents within the process and led to direct discussions between the applicant and local residents. Where representations are made, we take the lead to hold direct discussions between the applicant and local residents which can lead to additional negotiated conditions being put forward by the applicant. Where agreement cannot be reached the Licensing Panel will receive evidence from all parties with clear indications on the matters where there is agreement or disagreement.

Question 6

What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

Answer

Vicinity is open to a range of interpretations and will and should be interpreted dependent upon the local circumstances for a location. To remove this requirement would open up the process to campaign groups and lobbying which would complicate and add more bureaucracy and delays to the process with no added value. As a Local Authority we always give very careful consideration to representations and whether that person could, given local conditions, be reasonably considered to be in the vicinity and therefore subject to an impact from the licensable activities taking place at the premises.

Question 7

Are there any unintended consequences of designating health bodies as a responsible authority?

Answer

Including a Health Authority as a responsible authority would add further to the process in terms of costs to the applicant, the Licensing Authority and the Health Authority. Given the present geographical sizes of Health Authorities they would be receiving a large number of

applications for new licences and variations of existing licences on an annual basis. We would welcome comment from the Health Authorities as to how they would deal with the applications and coordinate the responses within a time table that is very tight.

Question 8

What are the implications in including the prevention of health harm as a licensing objective?

Answer

It is not felt that adding health harm as an additional licensing objective would add value to the present process but would we would be interested in receiving details of how such an objective has been found to operate within Scotland.

Question 9

What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

Answer

It is the view of this Authority that a community group can be "a body representing persons who live in that vicinity". If the group has no association with persons within the vicinity then permitting such a group to make representations opens the process up to campaign and lobbying and this should be avoided. The present process works well.

Question 10

What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

Answer

It is important that a decision is seen to be taken locally. Redirection of appeals back to the Licensing Authority would assist with that perception however there are likely to be issues with respect to , must a new panel sit for the re hearing, what appeal is there from that decision, can new evidence be introduced?.

Question 11

What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

Answer

This Authority has experience of appeals being started and then dropped to permit the businesses to continue to trade during a busy time or to enable the business to be sold. Should the suggested measure be introduced it is certain that such tactics would be halted. There would be a concern however that immediate cessation could result in claims for compensation upon a successful appeal. A Panel have options which can be suspension, revocation or changing of conditions. The problem is that until an appeal is heard the business can continue to trade under the same conditions and create the same problems. It would be helpful for the Panel to have the ability to impose additional conditions to address matters they see as most serious i.e. removal of the DPS, closing at an earlier time, whilst an appeal is being pursued.

Question 12

What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

Answer

No comment.

Question 13

Do you have any concerns about repealing Alcohol Disorder zones?

Answer

No.

Question 14

What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

Answer

No comment.

Question 15

Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Answer

In principle the concept is acceptable however there would be real questions to address in deciding upon the amount of levy, how it would be applied fairly and its administration. We would require much more detail before commenting further.

Question 16

Do you think it would be advantageous to offer such reductions for the late night levy?

Answer

See Question 15.

Question 17

Do you agree that the additional costs of these services should be funded by the late night levy?

Answer

See Question 15.

Question 18

Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

Answer

Yes but these powers are already available to licensing authorities at a hearing for any application including reviews.

Question 19

What would be the consequences of amending the legislation relating to TENs so that:

- (a) All the responsible authorities can object to a TEN on all of the licensing objectives?**
- (b) The police (and other responsible authorities) have five working days to object to a TEN?**
- (c) The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**
- (d) Licensing authorities have the discretion to apply existing licence conditions to a TEN?**

Answer

- (a) This would delay the process and create more work and costs for Licensing Authorities. Experience shows that the main issue for residents from a TEN is Public Nuisance and therefore comment and input from Environmental Health would assist in the provision of events that create fewer complaints. Public Safety is another area of concern and would again be dealt with by Environmental Health.
- (b) This would give the Police and any other Responsible Authorities more time in which to give the event full consideration and respond accordingly. It would also allow time for the Police and any RAs to liaise with the event organiser if clarification or further information was required.
- (c) An increase in the notification period would enable the responsible authorities to assist in delivery of a better planned event. As a Local Authority we encourage organisers to come to the Safety Advisory Group as soon as they have an idea so they can receive assistance to deliver a safe and successful event. It is not seen necessary for licensed premises to have an extended period as this would be seen as unfairly penalising licence holders.
- (d) Existing licence conditions have been arrived at by consultation and agreement as the best way to balance the business needs against residents and other business needs. The right to transfer conditions from a premises licence to a TEN would resolve many of the issues that have occurred within this Authority such as a business having a TEN to create late at night public nuisance which the licence was set up to prevent.

Question 20

What would be the consequences of:

- (a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**
- (b) Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field?)**

Answer

- (a) The number of TENs has not been an issue in this authority and we do not foresee a negative consequence.
- (b) To circumvent the requirements organisers have segregated different licensable with a number of TENs activities to comply with the limit of 499 persons, even if the event as a whole is much larger. Clarity within the legislation to prevent this would be welcomed.

Question 21

Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Answer

It is felt that the existing provision is sufficient. Further action through a review of the licence can be taken where necessary.

Question 22

What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Answer

See Question 21.

Question 23

What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

Answer

This is a matter for local discretion and procedure and should not be imposed by legislation.

Question 24

For the purpose of this consultation we are interested in expert views on the following:

- (a) Simple and effective ways to define the 'cost' of alcohol,**
- (b) Effective ways to enforce a ban on below cost selling and their costs,**
- (c) The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

Answer

No comment.

Question 25

Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

Answer

The present fees require that Council tax payers must foot the bill for a significant proportion of the costs associated with the provision of licensing and subsequent enforcement under the Licensing Act 2003. An increase in the fees payable for licences which ensured full cost recovery would enable the Licensing Authority, alongside the responsible authorities to deliver a better resourced and responsive service for both residents and licensed premises.

Question 26

Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Answer

Yes. This Authority has many experiences of licensed premises failing to pay for their annual licence. In most cases the costs of chasing the debt and seeking recovery exceed the cost of the licence. The ability to revoke a licence for non payment of the fee, as within most licensing regimes would be welcomed.

Question 27

Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

Answer

It is too early to tell.

Question 28

Would you support the repeal of any or all of the mandatory conditions?

Answer

No though we would support re-wording the conditions to make them more appropriate and enforceable, especially in respect of the age verification policy.

Question 29

Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

Answer

It would be useful for all application forms, including those for variation of DPS and transfer of premises licence to contain a space for the date of birth of a personal applicant, so that the police can carry out appropriate checks to enable them to comment accordingly on the crime and disorder licensing objective.

The requirement to review the Licensing Policy Statement should occur no more than once every 5 years. The authority may review it at any time should it so wish.