



AGENDA ITEM: 8.

**LICENSING & GAMBLING
COMMITTEE: 8 DECEMBER 2009**

Report of: Council Executive Manager Community Services

Relevant Portfolio Holder: Councillor A Fowler

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SUBJECT: LICENSING ACT 2003 – MINOR VARIATIONS AND DESIGNATED PREMISES SUPERVISORS IN “COMMUNITY” PREMISES

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of changes to the regime under the Licensing Act 2003 (the Act) with regard to:
- “Minor variations” to premises licences and club premises certificates
 - The removal of the requirement for a Designated Premises Supervisor and personal licences at “community” premises.

2.0 RECOMMENDATIONS TO COMMITTEE

- 2.1 That the delegations to the Executive Manager Community Services be amended as follows:

- “2) To determine applications under the Licensing Act 2003 as follows:
- A) Applications for Personal Licence - If no Police representation(s) have been made.
 - B) Application for Premises Licence/Club Premises Certificate – If no relevant representation(s) have been made.
 - C) Application for Provisional Statement – If no relevant representation(s) have been made.
 - D) Application to vary Premises Licence/Club Premises Certificate – If no relevant representation(s) have been made except where (K) applies.
 - E) Application to vary Designated Premises Supervisor – If no relevant representation(s) have been made.
 - F) Request to be removed as Designated Premises Supervisor – All cases.
 - G) Application for transfer of premises Licence – If no Police representation(s) have been made.

- H) Application for Interim Authority – If no Police representation(s) have been made.
- I) Decision on whether a complaint is irrelevant, frivolous, vexatious etc – All cases.
- J) Application from a Community Premises to remove the requirement for Designated Premises Supervisor – If no Police representation(s) have been made.
- K) Application for minor variation to Premises Licence / Club Premises Certificate – All cases.”

2.2 That the delegations to the Licensing Sub Committee be amended as follows:

“1) To determine applications under the Licensing Act 2003 as follows:

- A) Applications for Personal Licence - If Police representations have been made.
- B) Applications for Personal Licence, with unspent convictions – All cases.
- C) Application for Premises Licence/Club Premises Certificate – If relevant representation(s) have been made.
- D) Application for Provisional Statement – If relevant representation(s) have been made.
- E) Application to vary Premises Licence/Club Premises Certificate – If relevant representation(s) have been made.
- F) Application to vary Designated Premises Supervisor – If Police representation(s) have been made.
- H) Application for transfer of premises Licence – If Police representation(s) have been made.
- I) Application for Interim Authority – If Police representation(s) have been made.
- J) Application to review Premises Licence/Club Premises Certificate – All cases.
- K) Decision to object when the local authority is a consultee and not the relevant authority considering the application – All cases.
- L) Termination of a police objection to a Temporary Event Notice – All cases.
- K) Application from a Community Premises to remove the requirement for Designated Premises Supervisor – If Police representation(s) have been made.”

3.0 BACKGROUND

- 3.1 Members will be aware that other than to change the name or address of someone named in a premises licence or to specify a new individual as the Designated Premises Supervisor (DPS), a full variation under Section 34 of the Act is the only means for a premises licence/club premises certificate holder to change any aspect of the permission.
- 3.2 Section 19 of the Act also stipulates mandatory conditions for all premises licensed for the sale of alcohol to have a DPS and for all sales of alcohol to be made or authorised by a person who holds a personal licence.

4.0 CURRENT POSITION

- 4.1 The Government considers the legislative controls in paragraphs 3.1 and 3.2 as too restrictive for premises licence/club premises certificate holders and Licensing Authorities alike. Accordingly, new procedures have been established which aim to streamline the variation process with regard to “minor” changes and also to remove the requirement for a DPS at “community” premises.
- 4.2 Whilst applications will be considered on a case by case basis to determine whether the proposed change is “minor”, it is envisaged that four main types of minor variation application will be used:
- Minor changes to the structure or layout of premises
 - Small adjustments to licensing hours
 - Removal of out of date irrelevant or unenforceable conditions
 - Adding certain licensable activities, including live music
- 4.3 “Community” premises will include church halls and chapels as well as community and village halls. Where it is not clear whether premises are “community” premises, the matter will be approached on a case by case basis, with the main consideration being how the premises are predominantly used. Premises such as schools and other private halls available for private hire may not be considered community premises, but the extent to which such premises are providing a facility for the community rather than members of the community for private purposes must be considered. The test is directed at the nature of the premises themselves, as reflected in their predominant use.

5.0 ISSUES

Minor variations

- 5.1 Applications must be made to the Council on prescribed forms, accompanied by a fee of £89 per application. There are no exemptions to this fee (i.e. an otherwise exempt school still has to pay the £89 fee) and annual fees remain unaffected.
- 5.2 The application must be advertised on an A4 white notice at the premises which contains basic details including a brief description of the proposed variation. This notice must be displayed at the same time the application is made to the Council, but there is no requirement for the applicant to advertise the application in the local press and there are no Hearings under the minor variation process.
- 5.3 The application must be processed and determined within 15 working days of the initial day (i.e. the first working day after the day the Council receives the application). If the application is not determined within 15 working days, the application is deemed refused, and the fee must be returned to the applicant.
- 5.4 There is no requirement for applicants to notify responsible authorities of their application. Instead, responsible authorities are only involved at the request of the Council’s Licensing Officers where they consider that the variation could adversely impact upon any of the licensing objectives and require specialist

advice in reaching a decision. Interested parties may still make representations based on the licensing objectives, but representations do not trigger a Hearing. Nevertheless, Licensing Officers must take any representations into account in making a decision.

- 5.5 The first 10 working days following receipt of the application constitute a consultation period during which Interested Parties may make representations to the Council. Licensing Officers can also consider the application and consult relevant responsible authorities during this time. A determination cannot be made during the 10 working day period, therefore leaving the remaining 5 working days to determine the application.
- 5.6 When determining minor variation applications, the key test is whether the proposed variation could impact adversely on any of the four licensing objectives. Licensing Officers have no power to impose conditions; only conditions volunteered by the applicant can be added to the licence under the minor variations procedure. The determination is therefore either to grant or to refuse the application.
- 5.7 Where applications are granted, the applicant must be notified accordingly. However, if the application is refused, the applicant must be notified and provided with the reasons for refusal. Applications that have been rejected can then be the subject of a full variation application or of a revised minor variation application. A minor variation refusal does not affect any subsequent variation application in respect of the same premises.

DPS in "community" premises

- 5.8 Community premises can apply to have the mandatory conditions under Section 19 of the Act removed from their premises licence. This change will enable community premises to operate without a DPS and for sales of alcohol to be made on such premises without the authorisation of a personal licence holder. It must be noted that the premises must apply for this permission and is not automatically entitled and no other conditions can be removed from the premises licence under this process. A copy of the application must also be provided to Lancashire Constabulary.
- 5.9 The request can be made either as part of a new premises licence application or by existing premises licence holders who must pay a prescribed fee of £23. A variation of a licence to exclude the DPS requirement altogether (or reinstate it) must always follow the 28 day variation timescale.
- 5.10 Only the management committee of the premises can apply under this procedure. The application form requires applicants to set out how the premises is managed, its committee structure (including the names of committee members) and how the supervision of alcohol sales is to be ensured in different situations, as well as how responsibility for this is to be determined in individual cases and reviewed within the committee procedure in the event of any issues arising.
- 5.11 Licensing Officers must be satisfied that arrangements for the management of the premises by the committee or board are sufficient to ensure the adequate supervision of the supply of alcohol on the premises. Where arrangements are

not clear, Officers can ask for further details to confirm that the management committee/board is properly constituted and accountable before taking a decision on whether to grant the application.

- 5.12 The management board or committee will remain the premises licence holder and will be collectively responsible for ensuring compliance with licence conditions and the law.
- 5.13 In exceptional circumstances the Chief Officer of Lancashire Constabulary can object to such a request on the grounds of crime and disorder, issuing a notice seeking the refusal of the application to include the new mandatory condition. The Council must then hold a Hearing in order to reach a decision on whether to grant the application, the decision of which can be appealed by either party. Other responsible authorities do not have the right to issue a notice seeking refusal, but can seek reinstatement of the mandatory conditions through a review of the licence.

6.0 PROPOSALS

- 6.1 That the Delegations to the Executive Manager for Community Services and the Licensing Sub Committee be amended as per the recommendations contained in this report. The proposed changes to the delegations are to reflect the legislative changes highlighted in this report as well as review the existing delegations in the light of these changes.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 7.1 This legislation has the potential to impact upon many areas within the Community, particularly upon the leisure time of the public of West Lancashire. The Licensing Objectives, therefore, fit closely with many aspects of the Community Strategy. The proposal has the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D); Health and Social Care (issue A); Culture, Leisure and Sport (issue B).

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 8.1 It is anticipated that the changes outlined in this report will be met from within existing resources.

9.0 RISK ASSESSMENT

- 9.1 The Council, acting as Licensing authority, has a legal duty to carry out the functions of the Act; therefore failure to do so is a breach under the Act. If the Council fails to enact the issues highlighted in this report it would risk legal action from both Government and/or private enterprise.

10.0 CONCLUSIONS

- 10.1 The Government has made these changes to streamline the variation process with regard to minor changes and also to remove the often onerous requirement for a DPS at “community” premises. The recommendations contained in this report are necessary to ensure that the Council can properly determine the requirements of these legislative changes.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendices

None