

EAST HERTS COUNCIL

LICENSING COMMITTEE - 21 JULY 2011

REPORT BY DIRECTOR NEIGHBOURHOOD SERVICES

STATEMENT OF LICENSING POLICY.

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

To advise Members of consultation on an interim review of the statement of licensing policy under the Licensing Act 2003.

To present a draft revised Statement of Licensing Policy for consideration by members, and to ask members to approve the draft revised policy for recommendation for adoption by Council, subject to members' proposed amendments, public consultation and consideration of consultation responses at next Licensing Committee.

<u>RECOMMENDATION FOR DECISION – that -</u>
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the draft revised Statement of Licensing Policy, be recommended for adoption by Council, subject to public consultation, and consideration of consultation responses.
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1.0 Background

- 1.1 Section 5 of the Licensing Act requires the Licensing Authority to determine its Licensing Policy and publish every 3 years the Statement of Licensing Policy that sets out the principles it applies in exercising its functions under the Licensing Act 2003. The Act also requires that the Statement of Licensing Policy is kept under review, and appropriate revisions are made.
- 1.2 The Act requires that consultation takes place with each Responsible Authority, representatives of personal and premises licence holders, and representatives of residents and businesses, for each 3 year determination and any revision.

- 1.3 In addition to the Statutory Consultees, Licensing Committee Members are consulted in their capacity as decision makers on licence applications
- 2.0 Report
- 2.2 The existing revised Statement of Licensing Policy was approved by Council on 23 February 2011, following which the Statement of Licensing Policy was published.
- 2.3 Since republication, there has been an issue which was not foreseen by the existing Statement.
- 2.4 Licensing Sub-Committee determined an application for a Premises Licence by Breeze Bars Limited, and a decision notice was issued. The decision notice represented a compromise between the licence sought by the applicant, and the position argued for by interested parties.
- 2.5 The interested parties discussed the possibility of an appeal with the Interim Licensing Manager, following which they expressed that while they were not happy with the outcome, they were not so unhappy with the outcome that they would appeal the decision, given that they would be able to apply for review of the licence in the event of further public nuisance, crime, or disorder.
- 2.6 The applicant company appealed the decision of the Licensing Sub-Committee to the Magistrates' Court.
- 2.7 At some point after the 21 day period after the decision notice was issued, solicitors for the applicant company approached East Herts legal team, and proposed a further compromise between the position in the decision notice, and the application.
- 2.8 At this point, as the 21 day appeal period had expired, interested parties had lost the right to cross appeal, in order to argue against any further compromise of the decision notice.
- 2.9 Legal Services, in consultation with Chairman of the Licensing Committee and Director of Neighbourhood Services, agreed a draft consent order with solicitors for the applicants.
- 2.10 Magistrates' Court approved the draft consent order, and the licence was subsequently issued to the applicants on the terms of

the consent order. Interested parties were not parties to the appeal hearing that approved the draft consent order.

2.11 Interested parties complained to the Licensing Service that there were no details in the Statement of Licensing Policy that would have alerted them to the possibility that the determination of the licence might take place in this way. They said that they should have been made aware of the need to cross appeal within the 21 days if they wished to guard against the possibility of the first compromise in the decision notice, being further diluted by way of a Magistrates' Court consent order.

2.12 Proposed changes to the Statement of Licensing Policy are set out in **Essential Reference Paper 'B'**.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**

Background papers:

Existing Statement of Licensing Policy
Draft Amended Statement of Licensing Policy

Contact Member: Councillor M Alexander – Executive Member for
Community Safety and Environment

Contact Officer: Brian Simmonds – Head of Community Safety and
Licensing –Ext 1498

Report Author: Paul Newman – Interim Licensing Manager

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives:	Promoting prosperity and well-being; providing access and opportunities <i>Enhance the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</i>
Consultation:	Consultation will take place with the bodies listed in Annexe A of the existing Statement, for further consideration by Licensing Committee.
Legal:	The implementation of the Licensing Act 2003 is a statutory function. No issues have been identified by Contact Officer or Report Author that require approval.
Financial:	No issues that require approval identified by Contact Officer or Report Author.
Human Resource:	No issues that require approval identified by Contact Officer or Report Author. It is expected that changes can be managed from within existing resources.
Risk Management:	No issues that require approval identified by Contact Officer or Report Author.

Paragraphs 21.2 to 21.5 have been inserted into the draft policy. The whole of section 21 is reproduced below.

21.0 Appeals

- 21.1** Interested parties (including residents) aggrieved by decisions of the Council are entitled to appeal to the Magistrates court with 21 days of the receiving the decision notice.
- 21.2** Where a party enters an appeal against a decision notice issued by Licensing Sub Committee, Head of Legal Services is authorised to negotiate, in consultation with Chair of Licensing Committee and Director of Neighbourhood Services, a draft consent order with the appellant.
- 21.3** Where the Magistrates' Court approves a draft consent order, the licence will be issued on the terms of the approved Consent Order.
- 21.4** Applicants and interested parties that wish to retain the right to make representations against an appeal by any other party from being settled by way of a consent order, must cross appeal the decision notice within 21 days of the date of the decision notice.
- 21.5** In order to ensure the right of cross appeal is not lost, applicants and interested parties are advised to maintain contact with the Magistrate's Court, so that they can enter a cross appeal within the 21 day period, in the event of any other party entering an appeal.