

EAST HERTS COUNCIL

LICENSING COMMITTEE – 7 NOVEMBER 2013

REPORT BY DIRECTOR NEIGHBOURHOOD SERVICES

6. FEEDBACK ON CONSULTATION ON STATEMENT OF LICENSING POLICY

WARD(S) AFFECTED: ALL

Purpose/Summary of Report:

- To present responses to consultation to Statement of Licensing Policy.

RECOMMENDATION FOR LICENSING COMMITTEE: that	
(A)	Licensing Committee consider the consultation responses; and
(B)	The revised Statement of Licensing Policy be recommended to Full Council for approval.

1.0 Background

1.1 Section 5 of the Licensing Act 2003 required the Licensing Authority to determine and publish its Licensing Policy at least every 3 years (extended to 5 years for future reviews¹). As the current policy was determined in February 2011 for a period of 3 years the policy must be re-determined at Full Council by 31 January 2014. The Statement of Licensing Policy sets out the principles that the authority will apply when 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.

2.0 Report

2.1 In 2013 the Statement of Licensing Policy was reviewed, and on 11 July 2013 Licensing Committee approved the draft revised

¹ Section 5 of the Licensing Act 2003 was amended by the Police Reform and Social Responsibility Act 2011 with effect from 25 April 2012. This extended the maximum period between future reviews of the Licensing Policy from 3 years to 5 years.

policy subject to consideration of responses to public consultation at this meeting.

- 2.2 During the 3 month public consultation, between 15 July 2013 and 18 October 2013, one response was received and this was from PS Andrew Palfreyman of the Community Safety Unit, Hertfordshire Constabulary. The comments are below in paragraphs 2.3-2.7 with officer's observations on the validity.
- 2.3 Paragraph 17.1 states 'If 10 clear working days advance notice (not including Bank Holidays, day of receipt of the notice, or first day of the event) is given to the police and the council'.

This does not take into account the changes made under the Police Reform and Social Responsibility Act 2011 which introduced 'late' TENs so I would suggest the wording be amended as follows: *The Licensing Authority, the Police and Environmental Health require 10 clear working days advance notice for a 'standard' Temporary Event Notice and 5 for a 'late' Temporary Event Notice (not including Bank Holidays, day of receipt of the notice, or first day of the event).*

Officers would suggest that this amendment would make paragraph 17.1 clearer and reflect the changes in legislation.

- 2.4 Paragraph 17.2 states: 'Where representation is received (by means of an objection notice) and not withdrawn, the Council will hold a hearing. The police can withdraw the objection notice by amending the TEN with the agreement of the premises user, and serving a copy on the council'.

This is inaccurate and does not reflect the changes in legislation so I would suggest the following wording: *Where representation is received against a 'standard' Temporary Event Notice (by means of an objection notice) and not withdrawn, the Council will hold a hearing. The Police or Environmental Health can withdraw their objection notice if, following negotiation with the premises user, the TEN is amended to address their concerns. Any such amendment should be confirmed in writing to the Licensing Authority.*

Officers would agree that this is a clearer description of how the process works but would suggest amending the last sentence to read 'Any such amendment should be confirmed in writing to the Licensing Authority by the premises user'. This is an important

point as the premises user (who submitted the TEN) is the only person who can amend the activities or timings requested.

- 2.5 Paragraph 17.4 states: 'The law states that a minimum of ten working days notice must be given, not including the day the notice is received, or the day of the event. A notice of less than 10 full clear working days is not valid, and the Licensing Authority has no power to remedy the invalidity. Applicants are encouraged to give more than 10 days notice, as the right of appeal is not exercisable if an application is refused on ten working days notice'.

This is inaccurate and does not reflect the changes in legislation so I would suggest the following wording: *A Temporary Event Notice submitted with less than 5 full clear working days notice can never be considered valid, and the Licensing Authority has no power to remedy the invalidity. Applicants are encouraged to give more than the statutory minimum notice to allow discussions with the Police and Environmental Health if concerns about the event are raised. In addition premises users should note that the right of appeal against the refusal of a TEN (by way of counter notice) will not be exercisable before the date of the event if only the minimum notice period is observed.*

Officers agree that the wording of this paragraph does not reflect the changes in legislation and that the amended wording is more accurate and should be clearer for people reading the policy.

- 2.6 Paragraph 17.6 states: 'Up to 3 TENs may be served late or 5 if served by a Personal Alcohol Licence Holder, on 5 working days notice. Late TENs may be rejected without appeal on receipt of an objection notice from either the Police, or the Environmental Health Service, on the grounds of any of the Licensing Objectives.'

This is inaccurate and also uses the wrong term so I would suggest the following wording: *There are limits on the number of 'late' TENs that a premises user can serve in a calendar year, 10 for the holder of a personal alcohol licence and 2 for premises users without a personal alcohol licence. If an objection notice, based on one or more of the Licensing Objectives, is received regarding a 'late' TEN it may be rejected without the Council having to hold a hearing. There is no statutory right of appeal of this decision.*

The comment is correct in that the suggested wording of paragraph 17.6 does contain the wrong figures for the number of 'late' TENs allowed. Officers agree that the word 'appeal' is used in the wrong context in as it refers to a 'hearing'. Officers consider the suggested wording to be clearer and more accurate than the wording originally proposed in the consultation.

- 2.7 I would suggest that the following sentence be added to the end of paragraph 17.7: *Such conditions must be appropriate to the licensable activity requested and may be attached through agreement by the premises user or by a Licensing Sub-Committee at a hearing held following the receipt of an objection notice.*

Officers would agree that this sentence would help to further clarify the situation regarding conditions from the premises licence being attached to a TEN for that premises. Ensuring that premises users are aware that they can agree to appropriate conditions being attached to a TEN will help to avoid unnecessary Licensing Sub-Committees being held. The Police and/or Environmental Health can withdraw their objection notices based on the agreement rather than the Council having to go to the time and expense of a hearing to achieve the same outcome.

- 2.8 **Essential Reference Paper 'B'** shows the wording of paragraphs as they appeared in the consultation and how the paragraphs would appear if Members agree with the consultation response.

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

Revised Statement of Licensing Policy.

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