

**Seminar: Licensing Issues –
26 May 2010 at 6.30pm, East Northamptonshire Council**

Note of the main points discussed

Present:-

Councillors –

Glenn Harwood MBE – ENC (**Chairman**)

David Beaty - HBC
Pauline Bradberry JP – ENC
Lesley Callnon - BCW
Ann Carter – DDC
Scott Edwards - KBC
Richard Gell – ENC
Chris Lamb - KBC
Ray Lilley – CBC
Chris Long - DDC
Peter MacGovern - ENC
Andy Mercer – ENC
Gill Mercer – ENC
Brian Northall – ENC
Alan Pote – KBC
Rupert Reichhold – ENC
Margaret Talbot - KBC
Ron Silver – ENC
Portia Wilson – NBC

Police Licensing:

PC Andy Glover
Sgt. Mark Worthington

Fraser Brown Solicitors

Walaiti Rathore

BCW Licensing:

John Casserley
Amanda Wilcox

CBC

Damian Wilkins

DDC

Andrea Hill

ENC:

Mike Deacon – Head of Environmental Services
Tom Morrisey – Licensing Enforcement Officer
Keith Osborne – Democratic Services Manager
Julia Smith – Commercial Health Manager

KBC

Larry Henson

1.0 Apologies

1.1 Apologies were received from Cllr David Dean, BCW; Vighe Dighe, RCC; Deanna Eddon, DDC; Pat Fawcett, CBC; Ian Fletcher, Police; Cllrs Anna Sauntson and Robin Underwood, ENC; Cllr Colin Poole, DDC and Cllr Geoff Timms, BCW. .

2.0 Welcome and Introductions

2.1 Cllr Glenn Harwood welcomed everyone to the third Seminar, especially those who had travelled from outside Northamptonshire. All present introduced themselves.

Cllr Harwood referred to the Queens Speech outlining the proposals of the new Coalition Government with regard to an overhaul of the Licensing Act to enable licensing authorities to refuse licences for premises giving rise to problems.

3.0 Notes of Previous Seminar and Matters arising

3.1 The notes of the last Seminar, held on 3 November 2009, were received, and accepted as an accurate record.

3.2 The following comments were made under the Action column:-

- Minute 4.3: Spreadsheet of Delegation arrangements etc: - would be raised under agenda item 7
- Minute 4.4: The Chairman urged Councils to adopt the wording about developing a consistent approach. ENC had done so in March 2010. Cllr Lesley Callnon felt that different situations applied across the County and it was not appropriate to be too prescriptive. However, both Cllr Andy Mercer and the Chairman emphasised the desirability of having common processes and procedures – for example with regard to Police presence at hearings.
- Minute 5.3: The Chairman gave a brief overview of Alcohol Disorder Zones. As no licensing authority had yet adopted the provisions and guidance was no longer on the Home Office website, it had been considered inappropriate for a presentation to be made to this Seminar.

4.0 Licensing Update – Fraser Brown Solicitors

4.1 The Chairman welcomed Walaiti Rathore from Fraser Brown solicitors, who gave a presentation on the following licensing aspects –

- New mandatory licence conditions, including a ban on irresponsible drinks promotions and provision of free tap water
- Early morning alcohol restriction orders
- Interested Parties
- Selling Alcohol to Children

- Sexual Entertainment Venues.

The presentation is attached as an Appendix to these Notes.

4.2 The following points arose in the discussion:-

- Northampton Borough Council has just adopted a policy on Sexual Entertainment Venues
- Uncertainty about how the provision relating to free tap water would work in practice
- A ban on irresponsible drinks promotions could only operate if there was a “significant risk to licensing objectives”. The Police were trying to come to some agreement on this with licensing authorities; it had to be looked at on a case by case basis. Convictions may be very difficult to achieve but the Police may well press for a review on specific cases instead
- Early morning alcohol restriction orders would be made by the licensing authority and apply to a geographical area. The Police would look at COMPASS reports on crime to enable Councils to consider applicable areas. There would be a need to extend delegation to Licensing Committees and the remit of Licensing panels to consider representations
- Interested Parties – the redefinition to include Members of a licensing authority was greatly welcomed

4.3 At the end of the presentation, the Chairman thanked Walaiti Rathore for his presentation and Walaiti confirmed that Fraser Browns would provide advice to Licensing Authorities free of charge.

5.0 What is the Solution?

5.1 Cllr Ray Lilley drew attention to continuing problems in Corby Old Village, which accounted for 35% of alcohol related crime in the Borough. The Borough Council had been trying to solve these problems for 2 years and despite co-operation from the Police, they were no nearer a solution.

5.2 PC Andy Glover explained that two licensed premises were regarded as “destination premises”, and everyone tended to migrate there. There had been a review of the licence for one of the premises and the other had a review pending but agreement had been reached with the licensees. The behaviour in the street could not be directly attributed to the premises concerned.

5.3 Both Cllr Andy Mercer and the Chairman believed that the licensing authority should call for a further review if a licensing objective was being breached, work closely with the Police and be prepared to spend time in the Magistrates Court to “fight” an appeal. The calling of reviews was now easier since Ward Members had been included in the definition of “Interested Parties”. The organisation and style of drinking in the licensed premises should be examined and more tables and chairs encouraged to reduce “vertical drinking”.

5.4 The Chairman indicated that it was often believed that the rowdiness of revellers outside pubs was a licensing issue which licensing authorities should have the power to deal with. However, case law had shown that anti-social behaviour outside licensed premises was not normally, in law, a sound enough reason to take action against a licence holder unless evidence clearly indicated that there was a clear link between the licence holder or premises and the problem being experienced.

5.5 The concept of charging more for licences with late night drinking to pay for additional Police had also featured in the Queens Speech and it was suggested that this provision should be used.

6.0 Northampton Best Bar None Award Scheme

6.1 Sgt Mark Worthington reported on the above Scheme, which comprised a charter mark for the licensed trade. An earlier scheme in 2007 had only attracted 12 applications but the new scheme incorporated a simplified approach to be followed by licensees and it was felt that this would not act as a deterrent. So far 18 applications had been received with a further 5 in the pipeline. Judging and awards on the theme "We Deliver More" were being sponsored by Carlsberg Brewery. Further information could be found on the website www.bestbarnone-northants.co.uk.

7.0 Licensing Authority Decision Making Data

7.1 Julia Smith circulated a schedule with information collated from all licensing authorities. Cllr Lesley Callnon indicated that, on occasions, Ward Members had served on Licensing Panels at Wellingborough. It was noted that Ward Members also served in South Northants.

7.2 Keith Osborne acknowledged that ENC may need to amend its Code of Practice for Licensing Procedures. Ward Members could decide to act as Interested Parties or, if they were to sit on Panels, they would need to ensure they did not predetermine the issue. The quasi judicial nature of Panels required both sides to be heard before a conclusion could be made. **KO - Examine**

8.0 County Taxi Policy – Criminal Records

8.1 Julia Smith reported that ENC had agreed a policy on this issue in April and would be encouraging other licensing authorities to adopt it. The policy replaced Home Office guidance.

9.0 House to House Collections Other Issues Raised

9.1 Attention was drawn to bogus charity collections in the County. ENC had refused applications and had launched a campaign via the Council's free newspaper *Nene Valley News* to increase public awareness. Cllr Lesley Callnon reported on callers in Finedon, allegedly seeking financial contributions for the RSPCA.

10.0 Review of Licensing Policy

10.1 Julia Smith reported that the 3 year review was due in the Autumn.

11.0. Other Issues Raised

- 11.1
- Drinkers entering pubs already drunk. Enforcement Officers should make licensees aware.
 - Results of a “sting” conducted by Licensing Officers at BCW would be circulated
 - Consultation on Government proposals for Licensing should be circulated to attendees
- John Casserley**
Julia Smith

12.0 Future meeting

12.1 A further Seminar would be held in 6 months' time. ENC would e-mail representatives with a suggested date.

**Julia Smith/
Keith Osborne**

LICENSING UPDATE

26th May 2010

FRASERBROWN
SOLICITORS

Interested Parties

- Residents in the vicinity
- Businesses in the vicinity
- Bodies representing residents in the vicinity
- Bodies representing businesses in the vicinity
- Members of the Licensing Authority

Selling Alcohol to Children

- Offence to persistently sell alcohol to under 18's.
- On two or more different occasions.
- Within consecutive period of three months.
- Must be the same Licence Holder.
- Maximum fine of £10,000 or cease alcohol sales for 48 hours.

SEXUAL ENTERTAINMENT VENUES

Policing and Crime Act (2009)

- Amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
- Deals with control of sex establishments
- Adds "sexual entertainment venue" within the meaning of a sex establishment

The meaning of Sexual Entertainment Venue

- Premises at which relevant entertainment is provided
- Before a live audience
- For the financial gain of the organiser or entertainer

Meaning of Relevant Entertainment

- Any live performance or live display of nudity
- Reasonably assumed to be provided solely or principally for sexual stimulation of the audience
- By verbal or other means

Exemptions

- Sex cinemas and sex shops
- Premises where relevant entertainment has not been provided more than 11 times in the past 12 months provided that:-
 - the entertainment lasted for no more than 24 hours each time
 - there was a month between each period of entertainment
- Premises specified in an Order

Application of Provisions

- Includes an audience of one
- The organiser means any person responsible for the organisation or management of the relevant entertainment or the premises
- Premises includes any vessel, vehicle or stall but not a private dwelling to which the public is not admitted
- Financial gain may arise directly or indirectly from the performance or display of nudity

Restrictions

- May refuse application if the number of sex establishments is equal to or exceeds the amount considered appropriate for the locality
- Authority has the power to prescribe standard conditions
- Renewable at least every year
- Provisions only apply if adopted by resolution

NEW MANDATORY LICENSING CONDITIONS

Mandatory Conditions

From 6th April 2010:

- Ban on irresponsible drinks promotions
- Ban dispensing alcohol direct into the mouth
- Free tap water must be provided

Mandatory Conditions

From 1st October 2010:

- An age verification policy must be in place
- Small measures must be available

Responsibility for Compliance

- Premises Licence Holder
- Designated Premises Supervisor
- A person who is aged 18 or over authorised by a holder or supervisor
- A member or officer of a club present on premises with a Club Premises Certificate

Meaning of Irresponsible Promotion

- Any activity or offer
- Encourages customers to drink alcohol
- Significant risk of breaching one or more of the licensing objectives

Prohibited Promotions

- Drinking games
- Large quantities of alcohol for free or at fixed or discounted prices
- Alcohol as prizes or rewards
- Based on sporting events
- Posters and flyers encouraging anti-social behaviour or drunkenness

Conviction

- A responsible person
- Carrying on licensable activities
- Without having taken all reasonable steps to ensure that staff
- Do not carry out, arrange or participate
- Games or other activities

Conviction

- Which require or encourage or are designed to encourage individuals
- To drink a quantity of alcohol within a time limit
- Other than to drink alcohol before the bar is required to close
- Games or other activities were carried on for purpose of encouraging sale or supply of alcohol for consumption on the premises
- In a manner which carries significant risk of leading to or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children

Early Morning Alcohol Restriction Order

- Crime and Security Act (2010) not yet in force
- May suspend any authorisation of the sale of alcohol
- Between 3.00am and 6.00am
- Includes Premises Licences, Club Premises Certificates and Temporary Event Notices

Early Morning Alcohol Restriction Order

- May apply every day or on particular days
- May relate to whole or part of the Licensing Authority area
- May be for limited or unlimited period

Early Morning Alcohol Restriction Order

- Order made by the Licensing Authority
- Must be necessary to promote the licensing objectives
- Proposed Order must be advertised
- Must hold a hearing to consider relevant representations
- Representations may be made by an affected person, an interested party or a Responsible Authority

Hall & Woodhouse Limited v Poole Borough Council (2009)

- Premises Licence held by the Company
- Premises let to a tenant
- Company and others charged with licensing offences
- Premises Licence Holder not automatically liable
- Company did not carry out licensable activities at the premises
- Company not liable for offences

Bristol Council v Bristol Magistrates Court (2009)

- Hearing held following receipt of representations
- New Premises Licence granted subject to conditions
- Applicant appealed decision to impose conditions
- Magistrates Court allowed appeal against conditions
- Council applied for judicial review

Bristol Council v Bristol Magistrates Court (2009)

The conditions removed by the Magistrates Court related to:-

- Noise from equipment
- Obstructions of gangways
- Secure fastening of floor coverings
- Provision of non-slip floor surfaces
- Accumulation of rubbish

Bristol Council
v
Bristol Magistrates Court (2009)

- The operating schedule is not automatically included into a Premises Licence
- There is no statutory duty to impose conditions that reproduce the effect of the operating schedule
- The prescribed form does not require an applicant to state what conditions he is proposing should be attached to any Premises Licence
- The operating schedule is only required to include a statement of the proposed steps to promote the licensing objectives not those which the authority thinks should be taken

Bristol Council
v
Bristol Magistrates Court (2009)

- There is no obligation to impose a condition to give effect to anything contained in the operating schedule if the authority considers that compliance with other legislation is sufficient for that purpose
- There is no obligation to impose a condition to give effect to the operating schedule if that condition is not necessary to promote the licensing objectives

Prasannan v Borough of Kensington & Chelsea (2010)

- Appeal by owner of a convenience store
- Three failed test purchases between December 2005 and March 2008
- Application for review of Premises Licence
- Premises Licence revoked
- Appeal to Magistrates Court

Prasannan v Borough of Kensington & Chelsea (2010)

- Licence Holder not to be believed on any point except one
- Licence conditions seen as unimportant and unfair restriction on ability to trade
- Court decided that licensing objectives met by imposition of a new condition
- Appeal allowed
- Licence holder ordered to pay costs of £20,000.00
- Licence Holder appealed to High Court

Prasannan v Borough of Kensington & Chelsea (2010)

- Appeal not allowed
- Magistrates Court had a discretion to make a costs order in favour of the Council
- Discretion exercised on proper grounds considering matters taken into account by the Magistrates Court
- Amount was substantial but in view of work involved was not obviously unjust

Albert Court Residents Association v Westminster City Council (2010)

- Application to vary Premises Licence
- Licensing Authority notifying residents in the immediate vicinity
- Not all nearby residents were notified
- Late representation received and rejected
- Application granted
- Application for judicial review by residents

**Albert Court Residents
Association v Westminster City
Council (2010)**

- Licensing Authority has no discretion to consider and/or act upon late representations
- Licensing Authority had decided to notify residents in immediate vicinity of licensing applications
- Residents relied on the process previously
- Notification not carried out as mere courtesy
- Notification process so bad as to be irrational
- Decision quashed

**Carmarthenshire County Council
v Llanelli Magistrates Court
(2010)**

- Three failed test purchases in August 2008
- Application to review Premises Licence
- Premises Licence revoked
- Licence holder appealed to Magistrates Court

**Carmarthenshire County Council
v Llanelli Magistrates Court
(2010)**

- Licence holder operated the premises for 19 years
- Previous good record
- No other evidence of crime and disorder
- Many letters of support for licence holder
- Appeal allowed and Council ordered to pay costs of £3,850.00
- Council applied to High Court for judicial review

**Carmarthenshire County Council
v Llanelli Magistrates Court
(2010)**

- Magistrates decided revocation not necessary and proportionate
- Magistrates did not consider the licensing objectives
- Magistrates did not give proper consideration to the views of the Responsible Authorities
- The Magistrates ignored their duty to have regard to the Statutory Guidance
- Costs Order quashed

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