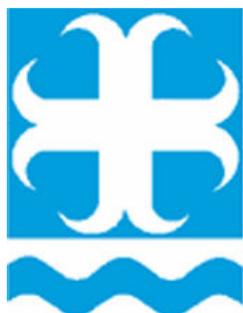


SEFTON COUNCIL

**OVERVIEW AND SCRUTINY COMMITTEE
(Regeneration and Environmental Services)**



Community Involvement - Licensing Act Working Group

FINAL REPORT

Foreword

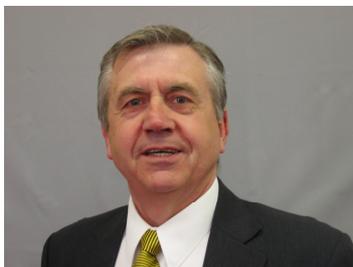
It gives me great pleasure in presenting the findings of the Community Involvement, Licensing Act 2003 Working Group.

When Members of the Working Group met and scoped the review, it seemed, on the face of it to be a fairly simple review. However, when Members of the Working Group researched and studied the Licensing Act and interviewed various witnesses it became apparent quite quickly that it was going to be a more challenging piece of work than was first anticipated.

It is clear from the recommendations that the help, goodwill and co-operation from Members, Officers and Witnesses, working together have lead to excellent recommendations.

Evidence gathered through research and interviewing witnesses demonstrated that whilst the Licensing Act is less than perfect the Working Group felt that progress had been achieved in the area of public involvement. The Licensing Act 2003 has given the public more involvement and the consequences of this review will take that public involvement one step further and to that extent the review has met its objectives.

Finally, I would like to thank Councillors Mrs S. Mainey, Papworth and Webster for all their hard work in conducting the review with special appreciation to the following Officers, Sue Cain, Kevin Coady, Ruth Harrison, Peter Moore Dave Poley and Terry Woods. I would also like to thank the following witnesses, who took time out to speak with Members of the Working Group, Mr Lebroq representative from British Beer and Pub Association, Sergeant Nick Cowell Representative Merseyside Police and The Chair and Spokespersons of Licensing and Regulatory Committee, Sefton MBC.



Cllr C. Mainey
Lead Member
December 2008

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1.0 Introduction

Further to Minute No. 45(5) of 23 October 2007, the Scrutiny and Review Committee (Regeneration and Environmental Services) (as it was then known) considered the report of the Legal Director on the work programme to be determined by the Committee in respect of working groups. It was resolved that a new working group be appointed as follows:-

1.1 Councillors C. Mainey (Lead Member), S. Mainey, Papworth, Veidman and Webster.

1.2 The terms of reference and objectives were:-

- (i) To examine the current policy in relation to Ward Councillors' involvement in petitions.
- (ii) To examine the existing protocol in relation to the granting of licences and reviews in terms of notifications and local residents and Ward Councillors.
- (iii) To examine the current policy in relation to reviews including the recording of incidents, log trail and members of the public recording complaints anonymously.
- (iv) To examine how much evidence is required when investigating complaints.

At its inaugural meeting held on 27 November 2007 Members felt that the aim of the Review would move community awareness of local public licences forward to achieve better consultation and awareness from the communities perspective. Members also felt that a further objective was greater consultation between the Licensing Department and Ward Councillors.

1.3 On the following dates meetings/site visits took place:-

Tuesday 27 November 2007 Working Group Meeting, Bootle
Tuesday 8 January 2008 Working Group Meeting, Southport
Tuesday 5 February 2008 Working Group Meeting, Bootle
Tuesday 15 April 2008 Working Group Meeting, Bootle
Friday 25 July 2008 Working Group Meeting, Bootle
Tuesday 2 September 2008 Working Group Meeting (interviewing witnesses),
Bootle
Friday 21 November 2008 Working Group Meeting (interviewing witnesses),
Bootle.

1.4 The following witnesses were interviewed:-

- Senior Licensing Officer, Sefton MBC
- Assistant Director (Regulatory Services), Planning Department, Sefton MBC
- Representative Merseyside Police
- Representative British Beer and Pub Association
- Environment Section Manager, Environmental Protection, Sefton MBC
- Solicitor - Planning, Environment and Technical Services
- Legal and Admin, Sefton MBC
- The Chair and Spokespersons of Licensing and Regulatory Committee, Sefton MBC
- Residents

2.0 Background

2.1 Following a meeting with the Assistant Director, and Section Manager (Commercial) from the Environmental Protection Department it was agreed that the aim of the review was to:

- investigate how Local Councillors get involved and are informed of local licensing issues;
- investigate the protocol in relation to notices (is there more the Council can do to inform the public whilst ensuring the Council could not be seen to be soliciting objections?);
- gain an understanding of the review process and develop a mechanism whereby the Local Councillor may play a role.

2.2 Once the scope of the review had been identified Members requested further information in relation to the following:-

- The existing protocol for granting licences;
- the existing protocol for reviews;
- the existing protocol for notifications;
- the enforcement protocol;
- the 4 Wins Leisure Limited -v- Blackpool case

3.0 The Licensing Act 2003

3.1 The Licensing Act 2003 (“the Act”) came into force in November 2005 and brought about a major change to the licensing regime in the UK. The Act introduced a unified system of regulation of “licensable activities” including the retail sale of alcohol, the supply of alcohol in “private members” clubs, the provision of regulated entertainment and the provision of late night refreshment.

3.2 The Act transferred responsibility for licensing premises from the Magistrates Court to Local Authorities.

- 3.3 The Act provides a balanced package of freedoms and safeguards by focussing on four statutory licensing objectives to be addressed when licensing functions are undertaken:-
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 3.4. The Act allows for an increased community involvement in the licensing process compared with the licensing regimes it replaced, including the development of local licensing policy, the ability to make representations about applications and the ability to request the Licensing Authority undertake a review of a Premises Licence (when appropriate).
- 3.5 Section 182 of the Act provides that the Secretary of State must issue and, from time to time, may revise Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4 of the Act provides that in carrying out its functions the Licensing Authority must “have regard to” the guidance and therefore the requirement is binding on all Licensing Authorities to that extent.
- 3.6 Paragraph 8.5 of the current Guidance deals with “interested parties” - the bodies or individuals who are entitled to make representations to Licensing Authorities on application for the grant, variation or review of Premises Licences (see paragraph 3.14).
- 3.7 Paragraph 8.8 of the Guidance deals with Ward Councillor involvement
- 3.8 Licensing Authorities may depart from the Guidance provided they can show that they have properly understood it and can provide full reasons for doing so. However, departure from the Guidance could give rise to an appeal for Judicial Review and the reasons given will then be a key consideration for the Courts when considering the lawfulness and merits of any decision taken.
- 3.9 Section 5 of the Licensing Act 2003 requires the Licensing Authority to prepare and publish a Statement of its Licensing Policy every 3 years.
- 3.10 Before determining its Policy, the Licensing Authority must consult the persons listed in Section 5(3) of the Act, including persons/bodies representing businesses and residents in its area.
- 3.11 Any change to the Policy would require public/trade consultation.
- 3.12 The Licensing Act 2003 (Premises Licences etc.) Regulations 2005 provide for the advertisement/notification of applications for Premises Licences, provisional statements, the variation of Premises Licences, applications for Club Premises Certificates or the variation Club Premises Certificates. The Regulations merely require the following:-

- that a Notice to be displayed prominently at or on the premises for a period of no less than 28 consecutive days starting on the day after the day on which the application is given to the Licensing Authority
 - that a Notice be published in a local newspaper, local newsletter, circular or similar document circulating in the vicinity of the premises on at least one occasion during the period of 10 working days starting on the day after the day on which the application is given to the Licensing Authority.
- 3.13 The Act does not provide for any additional steps to publicise applications. If the Council were to do so they run the risk of being challenged by way of Judicial Review or Appeal.
- 3.14 Section 18(3) of the Act provides that where relevant representations are made the Authority must hold a hearing to consider them, unless the Authority, the Applicant and each person who has made such representations agree that a hearing is unnecessary. The only persons who can make representations about an application are “responsible authorities” or “interested persons”, as defined under Section 13 of the Act but essentially “interested parties” are people who live or operate a business in the vicinity of the premises to which the Application relates (including someone representing that person). “In the vicinity” is not defined in the legislation.
- 3.15 “Interested parties” and “responsible authorities” have a period of 28 days in which they can make “relevant” representations about an Application. The representation will only be “relevant” if it relates to the likely effect of the grant of the Licence on the promotion of at least one of the Licensing Objectives (public safety, the prevention of public nuisance, the prevention of crime and disorder and/or the protection of children from harm). “Fivolous or vexatious” representations will not be deemed to be “relevant” and will not be considered by the Licensing Authority. The Department of Culture Media and Sports (DCMS) does provide information for interested parties about the process for making representations in their document “Guidance for Interested Parties: Making Representations”, which is available on the DCMS website and accessible through the Sefton Council Website licensing pages.
- 3.16 If the Authority considers that the representations are relevant, it must then hold a hearing to consider those representations, unless all parties agree that this is unnecessary.
- 3.17 A hearing is held before the Licensing Sub-Committee who, after hearing representations made both by the Applicant and by the person or body making the relevant representation then decide whether:-
- to grant or vary the Licence/Certificate
 - whether to refuse to issue or vary the Licence/Certificate
 - whether to grant or vary the Licence/Certificate, but to modify the conditions
 - whether to exclude from the scope of the Licence/Certificate a licensable activity

3.18 Any decision made by a Licensing Authority can be appealed, within 21 days to the Magistrates Court by the Applicant, a “Responsible Authority” or an “Interested Party”.

4.0 Sefton Council and the Licensing Act 2003

4.1 There are approximately 814 licensed premises and 70 club premises within Sefton. The average number of grants was 73 per year with 50 variations and 5 reviews taking place per year. On average 64 cases have gone to a hearing before the Licensing Sub-Committee.

5.0 Public Involvement

5.1 Currently, the Council provide the following methods of publication/notification of applications:-

- in accordance with the Act, the Council publishes a register of all Licences it issues
- a register of all applications awaiting determination is published on the Sefton Council website and all Councillors are notified of all Grant and Variation applications on a fortnightly basis.

5.2 All Councillors are informed of applications, variations and reviews on a fortnightly basis. However due to data protection Ward Councillors can not be informed on a regular basis on local issues.

5.3 The situation that Local Ward Councillors can not call a review will remain, however a local resident is allowed to request a Ward Councillor to represent them at a review.

5.4 The Licensing Register pages receive over 1500 “hits” per month and have been in the top 30 popular pages since it’s inception two years ago.

5.5 Under the existing notification arrangements public representations have been received in relation to approximately one fifth of all applications to which representations could have been made.

5.6 The Licensing and Regulatory Committee has considered, on a number of occasions, the possibility of implementing a notification procedure to residents living in the vicinity of premises. The Authority has always been concerned that if it chose to do so this might be viewed as the Authority soliciting for objections, thereby undermining the impartiality that it must maintain and placing the Authority at risk of legal challenge on the basis that it has acted outside of its powers. Sefton Licensing Authority’s current practice does not involve direct notification to residents and others who may be affected by activities at licensed premises.

- 5.7 Only one of the Merseyside Authorities (Knowsley) undertakes direct notification to residents. The Working Group did not interview anybody from Knowsley. The Working Group considered documentation provided by a representative from Knowsley MBC but Members were not able to interview anybody from Knowsley. Knowsley has the least number of premises on Merseyside, even without direct notification to residents and others in the vicinity of premises, Sefton has more Committee hearings for residents than Knowsley.
- 5.6 Mott MacDonald were commissioned by the Council to carry out a survey of public involving in licensing procedures in the Borough. The survey sought views from three different respondent groups: those who had applied for a Premises Licence or variation within the preceding 12 months; residents living nearby to premises that had submitted an application or variation in the preceding 12 months; and residents living nearby to premises that had been subject to a Licensing review in the preceding 12 months.
- 5.7 In respect of the survey of Premises Licence applicants, 23 completed surveys were returned of 64 sent out giving, a response rate of 35.9%. High levels of premises' owners were pleased with how easy it was to make an application to the Licensing Authority with more than three-quarters (78.3%) of premises respondents stating that they found the process of application to the Licensing Authority very (26.1%) or fairly (52.2%) easy.
- 5.8 A small proportion (8.7%) of respondents stated that residents had approached them directly about their application, this was due to residents wanting information on the length of time the application would take and information on what the venue would be like and how efficiently it would be managed.
- 5.9 For the reviews survey, 153 completed surveys were returned from 449 sent out giving a response rate of 34.1%. Of the respondents who lived near to an establishment where a recent licence review had been undertaken, more than two-thirds (68.6%) stated that they were unaware this review had been made. Of respondents who were aware of a licence under review in their area, half stated that they were informed by word of mouth whilst one-quarter stated that they had seen a notice in their local newspaper. More than half (52.4%) of respondents who were not aware that the local premises had their licence under review, stated that even if they were made aware of the review they would not have put representations in. Just over one-tenth (11.7%) of respondents stated that if they had been made aware of the review then they would have put in representations.

5.10 In respect of the grants and variation survey, 760 surveys were returned from 3,089 sent out giving a response rate of 24.6%. Of the respondents who lived near to an establishment which had a licence or a variation to a licence granted, more than four-fifths (83.3%) stated that they were unaware that this had happened. Of respondents who were aware of the variation or granting of a licence in their area, almost two-fifths (39.2%) stated that they were informed by word of mouth, whilst three-tenths (30.4%) stated that they had seen a notice in their local newspaper. Less than half (41.6%) the respondents stated that even if they had been made aware of the variation or grant of the licence then they would not have put representations in, with almost one-quarter (24.1%) of respondents stating that if they had been made aware of the variation or grant of the licence then they would have made representations.

6.0 Noise and Licensed Premises

6.1 As part of the review process Members deliberated concerns that had been raised by their constituents regarding noise and licensed premises . In particular, Working Group Members raised the following concerns in relation to the changing trends within licensed premises for example:-

- The increased number of beer gardens in residential areas; and
- The increased number of smoking shelters due to changes in the Health Act 2006 Legislation.

6.2 The Members felt that local residents had not been given the opportunity to make representations where premises had varied licenses to include “outside” areas.

6.3 Members discussed this issue with the Environment section Manager but agreed that further exploration of this specific issue was beyond the remit of this particular review.

7.0 Notification of Local Residents

7.1 Members of the Working Group, debated at length, a procedure of notifying local residents (within a specified radius) of applications.

7.2 The Officers interviewed had concerns about any procedure for notifying local residents and other interested parties. The Officers’ primary concern was that the Authority needed to maintain an unbiased position. The Licensing Authority holds a quasi-judicial function and must demonstrate compliance with the legal requirement/limits of the Act, Statutory Instruments (Regulations) and case law. A secondary concern was avoiding the apparent pre-determination of “vicinity” by a selective notification as in the absence of a standard definition this is a matter that should be considered individually for each premises/application.

7.3 The Guidance does suggest (at paragraph 8.78) *“it is open to Licensing Authorities to notify residents living in the vicinity of premises by circular of premises making an application”*. However, this is not a statutory requirement.

7.4 The Members of the Working Group were made aware of issues that would need to be considered if the Licensing Authority were to start directly notifying residents and others who may be affected by activities at a licensed premises, including:-

- who would the notification be sent to? The Act allows just two defined groups, “responsible authorities” and “interested parties” to make representations and “interested parties” includes a body representing persons and businesses in that vicinity. Should consideration also be given to notifying Parish Councils, Area Committees, Residents Associations and Neighbourhood Groups as well as individual residents and if so how would these be identified?
- any notification process will result in additional costs being incurred by the Licensing Authority, including the cost of additional software and training to enable identification/selection of those to be notified, the cost of processing extra representations, the cost of holding extra hearings, the cost of consultation on the change to the Licensing Policy. There will also be staffing resource implications, the likelihood being that staff would be prevented from undertaking other tasks i.e. inspections.
- neutrality - the Licensing Authority must be seen to be unbiased, be able to demonstrate that any notification is done in a neutral way and cannot be seen to be canvassing or soliciting representations, failing which, the Authority places itself at risk of Appeal or Judicial Review.

7.5 In July 2009, in the Government response to the House of Commons Culture, Media and Sport Committee Report on the Licensing Act 2003, under Recommendation 4, the Government stated that:

“Evidence shows that the public does indeed feel more involved in decision making. A University of Westminster Report published in July 2007 noted that: ‘The changes in licensing had had a generally positive effect on community relations in the areas examined, with residents and local councillors alike feeling that they had more of a say in the process of granting and challenging licensing decisions.’

The Government fully endorses the ability of responsible authorities - such as the police and fire authorities - and interested parties - residents and businesses in the vicinity of the premises - to submit positive comments in support of a licence application. The revised guidance issued in 2007 under section 182 of the 2003 Act made it clear that representations can be made in support of, as well as to object to, applications. This was further amplified in revisions to the Department’s guidance to interested parties in December 2007.

The Government feels that the Licensing Act 2003 already provides all those with an interest with the opportunity to comment on applications. There are strict advertising requirements both physically on the premises and in the local press and both responsible authorities and interested parties can make representations against an application. It is also possible for those that feel that they are not able to object to ask local representatives such as councillors to object on their behalf to an application if the objections are based on the licensing objectives. In addition, the current statutory Guidance clarifies that local authorities can make councillors aware of applications in their areas and that it is open to councillors to seek the views of their constituents living in the vicinity of premises making applications."

8.0 Conclusion

- 8.1 Members of the Working Group anticipate that direct notification, as proposed in recommendations 9.1 and 9.2 of the report, would increase resident awareness of licence applications and reviews, leading to an increased number of representations and subsequent hearings and/or witnesses at hearings. However Members considered that the pilot scheme may highlight issues of costs and risks, as summarised in 7.4 above, which maybe greater or less than the benefits that would be gained from increased awareness and involvement.
- 8.2 After considering all of the evidence and hearing from the witnesses Members of the Working Group felt strongly that local residents should be notified of licensing applications. The Members of the Working Group did not feel that the Notice requirements provided for by the legislation went far enough to advise and keep local residents informed and consideration should be given to the Licensing Authority adopting the notification procedure used by the Planning Department. Members of the Working Group considered that this would go some way to inform local residents of applications.
- 8.3 It is recommended that should Members resolve to adopt a notification scheme, that the normal planning application method of notification scheme be adopted; with such scheme of notification to be in place as a pilot scheme for a trial period of 12 months to ensure accurate monitoring of the reaction of those interested parties notified and to enable a true cost/benefit analysis to be carried out. Upon the expiry of the 12 months pilot a further report be placed before the Licensing and Regulatory Committee to consider the success/value of the pilot and to determine whether the notification scheme be continued/enhanced or withdrawn, (as appropriate) when the Licensing Authority undertake the full review of Sefton's Statement of Licensing Policy for 2011. The Working Group have requested that, out of courtesy, the report be submitted to the Overview and Scrutiny Committee (Regeneration and Environmental Services) for information.

9.0 Recommendations

- 9.1 That those occupiers and owners of properties with curtilages abutting those premises applying for a Premises Licence, Club Premises Certificate, the Variation of a Premises Licence or Club Premises Certificate or any Premises subject to a review, be notified of any such application.
- 9.2 Any such Borough-Wide notification procedure to be adopted for a 12 month period with the results of the pilot being the subject of a further report to the Licensing and Regulatory Committee to consider whether the scheme of notification be continued/enhanced/withdrawn, as appropriate prior to the full review of Sefton's Statement of Licensing Policy for 2011.
- 9.3 That the Report in relation to the outcomes of the Borough-Wide pilot on notification be submitted to the Overview and Scrutiny Committee (Regeneration and Environmental Services) for information.

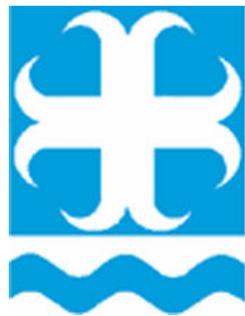
10.0 Acknowledgements

- 10.1 The Working Group is grateful to all those witnesses and other persons who assisted with its research and provided information.

11.0 Supporting Information

- 11.1 During the process of this review, the Working Group has gathered a substantial amount of information and data, which has been invaluable in helping it to form its conclusions and recommendations.
- 11.2 Any background information required is available on request from:-
Ruth Harrison, Scrutiny Support Officer
Telephone 0151 934 2042
e-mail: ruth.harrison@legal.sefton.gov.uk)

SEFTON COUNCIL



SCOPING EXERCISE

COMMUNITY INVOLVEMENT – LICENSING ACT WORKING GROUP

MEMBERSHIP

Councillors C. Mainey, S. Mainey, Pearson, Tonkiss, Veidman and Webster

Extract:

Scrutiny and Review Committee (Regeneration and Environmental Services)
Meeting of 23 October 2007.

RESOLVED: That

a Working Group be established to examine and investigate the Council's policies and procedures in relation to community involvement and the Licensing Act 2003.

TERMS OF REFERENCE AND OBJECTIVES

1. To examine the current policy in relation to ward Councillors involvement in petitions;
2. To examine the existing protocol in relation to the granting of licences and reviews in terms of notifications of local residents and ward Councillors;
3. To examine the current policy in relation to reviews including the recording of incidents, log trail and Members of the public recording complaints anonymously;
4. To examine how much evidence is required when investigating complaints

METHODS OF ENQUIRY

Investigative techniques/site visits

TIMESCALES

See Planning Chart

OFFICER SUPPORT

Lead Officer: Peter Moore

Named Officers: Terry Wood, Section Manager, Environmental Protection

Scrutiny Support Officer: Ruth Harrison

OTHERS WHO WILL BE INVOLVED

| | |
|---------------------------|--------------------------------|
| • Kevin Coady | Environmental Protection |
| • Dave Poley | Environmental Protection |
| • Sue Cain | Legal |
| • Jim Alford | Planning |
| • Tony Corfield | Head of Tourism |
| • Chair and Spokespersons | Licensing Committee |
| • Dean Ball | Knowsley MBC |
| • Nick Cowell | Police |
| • Members of Public | Peter Moore |
| • Chairs | Pub Watch Scheme |
| • Representatives | British Beer & Pub Association |

ARRANGEMENTS FOR REPORTING TO CABINET/COUNCIL

Report to Scrutiny and Review Committee - 12 August 2008

Report to Cabinet - 4 September 2008

PLANNING CHART

The Planning Chart is an example of the way reviews could/should be planned.

It is recommended that realistic time frames in which to carry out tasks should be considered including possible delays for public holidays and Council business. Effective planning suggests that more planning time be built into the chart.

| Activity | Dec | Jan | Feb | Mar | April | May | June | July | Aug |
|-------------------|-----|-----|-----|-----|-------|-----|------|------|-----|
| Scoping | | | | | | | | | |
| Consider Docs | | | | | | | | | |
| Witnesses | | | | | | | | | |
| Site Visits | | | | | | | | | |
| Initial Findings | | | | | | | | | |
| Draft Report | | | | | | | | | |
| S&R Cttee | | | | | | | | | |
| Submit to Cabinet | | | | | | | | | |

Ten Step Process Flow Chart

