

**Meeting:** LICENSING & REGULATORY COMMITTEE

**Date of Meeting:** 22<sup>nd</sup> February 2010

**Title of Report:** PETITION SUBMITTED TO COUNCIL REGARDING LICENSING MATTERS

**Report of:** P. J. Moore  
Environmental Protection Director

**Contact Officer:** K.T. Coady,  
Senior Licensing Officer  
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

### **Purpose of Report**

To respond to a Petition submitted to the full Council on 14<sup>th</sup> January 2010 from Waterloo Resident's Association.

### **Recommendation(s)**

That Members:

- (i) Give consideration to the Petition submitted by the Waterloo Resident's Association; and,
- (ii) Determine what action, if any, it wishes to take in respect of the individual requests within the Petition.

### **Corporate Objective Monitoring**

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

### **Financial Implications**

None arising from this Report.

### **List of background papers relied upon in the preparation of this report**

- The Licensing Act 2003.
- Guidance issued under S.182 of the Licensing Act 2003

## Background

1. On 14<sup>th</sup> January 2010 a petition was submitted to full Council by Mr Ian Hamilton-Fazey OBE on behalf of the Waterloo Resident's Association ("WRA").
2. The Council RESOLVED:  
  
That the petition be referred without debate to the next meeting of the Licensing and Regulatory Committee to be held on 22 February 2010.
3. The petition requests that the Licensing and Regulatory Committee:
  - i) Hold a series of well-publicised Open Meetings to obtain the views of the public concerning Licensing Policy, and
  - ii) Set up a standing 'Licensing Liaison Forum' involving all interested parties in which community groups and the public can be represented, and
  - iii) Grant no new alcohol licences and adjourn all current licence applications in the Waterloo (L22) area until such Open Meetings have been held and such a 'Licensing Liaison Forum' established.
4. A copy of the covering page of the petition is to be found within the annex to this Report.
5. The Environmental Protection Director and the Senior Licensing Officer met with Mr Hamilton-Fazey and Mr Colin Harvey (Chairman and Treasurer respectively of the WRA) on 20<sup>th</sup> November 2009 to discuss a range of licensing issues including the matters within the Petition.

## Community involvement in the Licensing Act 2003

6. Members will recall that the Licensing Act 2003 ("the Act") is primarily deregulatory, seeking to provide increased freedoms and flexibilities and reduced burdens for businesses, but also requiring a sharp focus on four statutory Licensing Objectives which need to be addressed when licensing functions are undertaken:
  - Prevention of crime and disorder;
  - Public safety;
  - Prevention of public nuisance; and
  - Protection of children from harm.
7. The main area of change which was introduced with the Act was in terms of increased community involvement with the licensing process, including the development of local licensing policy, making representations about applications and requesting the Licensing Authority to undertake a review of a premises licence, none of which formed part of the previous licensing regimes.
8. This increased involvement can be evidenced through the findings of research studies undertaken since implementation of the Act, including the *Scrutiny Councils' Report On the Licensing Laws* (July 2006) which found that "*residents are now far more aware of their rights with regard to licensed premises*".

9. A study by the University of Westminster “*Expecting ‘Great Things’? The Impact of The Licensing Act 2003 on Democratic Involvement, Dispersal and Drinking Cultures*”, which looked at the impact of the Act in 5 different local authority areas and on 24 national late-night operators, found that “*The role of residents in the licensing process was not something the Government initially had emphasised. Findings presented here, however, suggest that democratisation has been a success. Particularly in terms of working with residents, operators felt that neighbours had a greater role to play in the licensing process, be that in terms of the initial applications, to ensuring compliance with licensing conditions. The local case studies confirmed this*”.

10. 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."*

11. Members will recall that in making an application the Act places the responsibility for notification of applications on the applicant and defines the extent of notification required. Any Premises or Club who wish to be granted a licence/certificate (or who wish to vary an existing one) are required by the Act to send copies of their full application to the Authority and to the “responsible authorities”.

12. Additionally the Act requires that they:

- i) Display a prescribed Notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises by the public for a period of not less than 28 consecutive days;
- ii) Publish a Notice in a local newspaper or, if there is none, in a 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 was given to the relevant licensing authority

13. An individual Licensing Authority cannot require an applicant to undertake additional notification over and above that required by the Act.
14. The only persons who can make representations about an application are the “responsible authorities” and “interested parties”. Both of these terms are defined within the legislation and statutory guidance, but essentially “interested parties” are people who live or operate a business in the vicinity of the premises to which the application relates (or someone representing that person). Vicinity is not defined.
15. All “interested parties” and “responsible authorities” have a period of 28 days in which they can make representations to the Authority about an application. If the Authority considers that the representations are relevant it must hold a hearing to consider those representations, unless all parties agree that this is unnecessary.
16. This latter reference is a further key aspect of public involvement, in that the Act allows and the guidance encourages mediation between applicant and objector, such that the two parties come together to agree a compromise, or additional controls that will make the application acceptable and remove the need for a hearing. This is a regular feature of applications under the new regime. The *Expecting ‘Great Things’?* study, referred to earlier, quotes one late night operator in particular as stating that “*it has forced individual pubs to really engage in their community and understand what is acceptable and what is not acceptable*”.
17. At a hearing the Authority will then have choices as to how it proceeds depending upon what is necessary for the promotion of the licensing objectives. It may:
  - Decide to grant or vary the licence/certificate in the same terms as it was applied for;
  - Decide that it is necessary to refuse to issue or vary the licence/certificate;
  - Decide to grant or vary the licence/certificate, but to modify the conditions;
  - Exclude from the scope of the licence/certificate a licensable activity.
18. Any decision made by a licensing authority can be appealed, within 21 days, to the Magistrates by either the applicant, a “responsible authority”, or an “interested party”. If no relevant representations are made then the application must be granted as applied for.
19. Currently, the Licensing Unit 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.
20. The Licensing Register pages receive over 1500 “hits” per month and have been amongst the top 30 popular pages since it’s inception two years ago.

21. From April 2010 the Unit will commence a trial leafleting scheme whereby 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, will also be notified of any such application.
22. Once a Licence / Certificate has been granted residents also have a much greater scope for monitoring compliance and registering complaints about premises than ever before. Access to licensing information and to the Licensing Authority itself have been improved enormously. Under the old regime, once the licence was issued residents had no direct access to the Licensing Authority and no way of requiring that authority to re-consider a licence.
23. As stated above the Act introduced a requirement for Licensing Authorities to publish a public register of all licences issued, the availability of this register enables residents to obtain information about the activities and operating hours a premises is licensed for.
24. The Authority's Statement of Licensing Policy identifies who the responsible authorities are and an annex to the policy provides contact details for those authorities, enabling residents to enquire and register their concerns directly with those authorities and with the Licensing Authority itself.
25. In this context, the *Expecting 'Great Things'?* study referred to earlier found that: "*the Act provided more opportunities for the residents' voice to be heard*" and had resulted in "*better partnership working – especially with residents*". The study also found that "*There is some evidence that residents' groups are demonstrating an increased sophistication in monitoring licensing conditions and initiating reviews. This could be viewed both as an empowerment and as a lifting of the burden from the responsible agency's shoulders*".
26. Locally in Sefton this finding has been borne out, even prior to the commencement of the pilot leafleting scheme referred to in Paragraph 21 above, as 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.

### **Licensing Policy consultation**

27. Members will be aware that under the Act the Licensing Policy will be required to be reviewed during 2010 to enable it to take effect from 7<sup>th</sup> January 2011.
28. Before determining its Policy for any three year period, the Licensing Authority must consult the persons listed in Section 5(3) of the Act. Those being:
  - (a) the chief officer of police for the area;
  - (b) the fire authority for the area;
  - (c) persons/bodies representative of local holders of premises licences;
  - (d) persons/bodies representative of local holders of club premises certificates;
  - (e) persons/bodies representative of local holders of personal licences; and,
  - (f) persons/bodies representative of businesses and residents in its area.
29. A Report will be submitted to Members at their May Meeting which will outline the proposed methods to be used to consult the above named persons/bodies.

30. Officers were intending to propose within that Report that, in respect of (f) above, Focus Groups/Forums would be held within each Area Committee area in order to obtain business and resident views with regard to the Licensing Policy.
31. At this early stage the terms of reference, composition etc. of the Focus Groups/Forums have yet to be decided but these will be reported to Members (in the Report referred to in 29 above) and will be submitted to the Sefton Public Engagement and Consultation Standards Panel for approval.

### **Licensing liaison forums**

32. Members will recall that 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.
33. Paragraph 1.8 of that Guidance states that nothing in the Guidance “*should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation*”.
34. Further, with regard to its legal status, the Guidance outlines that:

*Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.*

*However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.*

*Departure from the Guidance could give rise to an appeal or 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.*
35. Under Paragraph 1.22 of the Guidance the Secretary of State “*strongly recommends that licensing authorities form licensing liaison groups and forums that bring together all the interested parties on a regular basis to monitor developments and propose possible solutions to any problems that may arise*”.
36. At the meeting with Mr Hamilton-Fazey and Mr Harvey, in November 2009, officers indicated that licensing was not the only, and often not the best solution, to night-time economy issues.
37. The current Licensing Policy, at Paragraph 5.4, states that whilst “*recognising that licensing law is a key aspect in the general control of anti-social behaviour and forms part of the holistic management of the evening and night-time economy, in taking its decisions the Authority will take into account the fact that it is not the primary mechanism*

*for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the Licence, Certificate or Permission concerned”.*

38. The National Alcohol Harm Reduction Strategy, the Sefton Alcohol Harm Reduction Strategy, the Crime and Disorder Act 1998, Planning Policy etc. all have a part to play in presenting solutions to problems within the night time economy and similarly partnership working between Police, Council and the PCT all contribute to easing resident's concerns with regard to crime and disorder surrounding licensed premises (the recent "Christmas Presence" campaign being a good example).
39. To date officers have considered Sefton's well established Area Committees to be the best Forum for residents to raise concerns relating to the night-time economy (including licensing issues) as this forum allows a holistic consideration of the issues in line with the intention of the Licensing Policy as set out above. More recently the Community Safety Area Partnership have provided an important multi-agency forum for further consideration and addressing of night-time economy issues. These were the very mechanisms used to consider and address the issue of potential cumulative impact within the Waterloo area previously raised by the WRA.
40. The benefits of a separate standing Licensing Forum could be explored as part of the Licensing Policy Consultation, although it should be noted that the time delay involved in that process is unlikely to satisfy the wishes of the WRA.

#### **Stay on licence applications for Waterloo**

41. The Act and its accompanying Statutory Instruments lay down the timeframes in which matters have to be dealt with by a licensing authority.
42. As indicated in Paragraph 12 for the grant (or variation) of a premises licence the matter cannot be determined before the end of the 28 day "notice period" (this to allow for the receipt of relevant representations from interested parties or responsible authorities).
43. After the conclusion of this 28 day period, and where no relevant representations are received, the licensing authority must issue the licence forthwith subject only to those conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions which must (under Sections 19, 20 or 21 of the Act) be included on the licence.
44. Where relevant representations are received then an 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.
45. Statutory Instrument No. 44 / 2005 ("The Licensing Act 2003 (Hearings) Regulations 2005") states that in respect of a grant (or variation) hearing:
  - (i) it must be commenced within 20 working days following the 28 day notice period;
  - (ii) that notice of the hearing must be given to all parties no later than 10 working days prior to that hearing.

46. Paragraph 11 of this Instrument states that:

- (1) *Subject to regulation 13, an authority may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest.*
- (2) *Where the authority has extended a time limit it must forthwith give a notice to the parties stating the period of the extension and the reasons for it.*

47. Paragraph 12 goes on that:

- (1) *Subject to regulation 13, an authority may—*
  - (a) *adjourn a hearing to a specified date, or*
  - (b) *arrange for a hearing to be held on specified additional dates, where it considers this to be necessary for its consideration of any representations or notice made by a party.*
- (2) *Where an authority has adjourned a hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.*
- (3) *Where an authority has arranged for a hearing to be held on a specified additional date it must forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.*

48. In *Thomas v Newingham Licensing Justices, Meux's Brewery Co Ltd v Newington Licensing Justices* (1926) 91 JP 37 it was held that an adjournment of an application for the renewal of a licence beyond the end of the licensing year was not a refusal of the renewal. Hewart LCJ expressed the opinion that the power of adjournment should be exercised only in a case of "*real and urgent emergency*".

49. The Guidance issued under S182 of the Act indicates, at Paragraph 9.21, that "*where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest*". No other examples of adjournment are given.

50. The Human Rights Act 1998 incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law.

51. Article 6 of the Convention ("Right to a fair trial") requires:

- i) a fair and public hearing
- ii) an independent and impartial tribunal
- iii) trial within a reasonable period
- iv) public judgment
- v) a reasoned decision

52. It is contended, therefore, that there no basis in Law whereby the Licensing Authority can refuse to grant any new premises licence, or to adjourn any current licence application, in the Waterloo area until certain pre-conditions have been met.



# WATERLOO

## RESIDENTS' ASSOCIATION

### PETITION TO SEFTON COUNCIL & ITS LICENSING SUB-COMMITEE

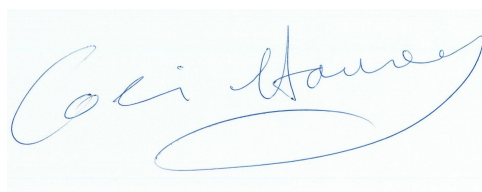
**W**e, the undersigned, bearing in mind **Sefton Council's 'Duty to Involve'** the community in the policy making process under the **Local Government & Involvement in Local Health Act 2007**, and having regard to the Council's policy on alcohol and health, call upon Sefton Council and the Council's Licensing Committee to accept the Secretary of State's '**strong recommendations**' in the **Guidelines to the Licensing Act 2003**, to

1. Hold a series of well-publicised **Open Meetings** to obtain the views of the public concerning Licensing Policy, and
2. Set up a standing '**Licensing Liaison Forum**' involving all interested parties in which community groups and the public can be represented, and
3. Grant **no new alcohol licences** and **adjourn all current licence applications** in the Waterloo (L22) area until such **Open Meetings** have been held and such a '**Licensing Liaison Forum**' established.

We have pleasure in presenting this petition



**Ian Hamilton Fazey OBE**  
Chairman, Waterloo Residents' Association



**Colin Harvey**  
Treasurer, Waterloo Residents' Association

**4 January 2010**

**NOTES:**

- **725 people had signed the petition up until 31 December 2009**
- **There will be further signing opportunities during the weekend of 9 & 10 January 2010**
- **The petition will be lodged with the Council in advance of the 14 January 2010 meeting in accordance with laid-down procedures**
- **It is sponsored by the following members of Sefton Council:-**
- **Councillor Martyn Barber**
- **Councillor Paul Cummins**
- **Councillor Anthony Hill**
- **Councillor Debi Jones**
- **Councillor Andrew Tonkiss**
- **Councillor Daren Veidman**
- **Councillor Veronica Webster**