

Title of Report: Local Licensing Policy Post Consultation

Item 5

Report to be considered by: Licensing Committee

Purpose of Report:

To agree the text of the Local Licensing Policy following consultation.

Recommended Action:

To recommend to Council that the Local Licensing Policy (as set out in Appendix 5(a)) be formally adopted subject to any amendments or changes required by the Licensing Committee.

List of other options considered:

None as it is a statutory duty to produce a local licensing policy.

Key background documentation:

- The Licensing Act 2003
- Guidance - s182 Licensing Act 2003
- Previous report to Licensing Committee, 13 September 2004, "Licensing Act 2003" plus appendix – draft policy version 6.4

Contact Officer Details

Name: John Priest
Job Title: Environmental Health and Licensing Manager
Tel. No.: 01635 519167
E-mail Address: jpriest@westberks.gov.uk

Supporting Information

1. Background

- 1.1 Members have received several reports on this subject and in September 2004 approved version 6.4 of the draft local licence policy for consultation. That report also contained a detailed list of proposed consultees. The Licensing Committee modified that list and the draft then went out for formal consultation. Consultation closed on 31st October 2004.
- 1.2 Much of the work associated with formulating the various drafts was undertaken by a Working Party made up of Licensing Committee Members and Officers. The Working Party met several times and will have met again to discuss and formulate the draft version (version 7) now attached to this report as Appendix 5(b).
- 1.3 This Council is legally obliged to have its policy approved, publicised and operational in time for the start of the transition process between the old and new licensing regimes. This process begins officially on 7 February 2005. However the Working Party aims to complete the process at the December 2004 meeting of full Council. This will then enable a publication date much earlier than the deadline, thereby assisting potential applicants.

2. Consultation Responses

- 2.1 Based on the experiences of other Councils, Officers expected a significant number of responses to the draft policy. Relatively few were ultimately received and the majority were either neutral in overall tone or supportive. Many consultees made minor observations before asking specific questions about the new licensing regime. Appendix 5(a) sets out a summary of the comments received during the consultation process.
 - 2.2 A minority of consultees gave detailed observations about specific points in the policy and these proved helpful in formulating the latest version. Others submitted specific shopping lists for what they wanted to see included. These proved less useful because they were aimed broadly at all Councils and did not take account of what this Council was proposing.
 - 2.3 The Police and Fire Service also had difficulty in providing specific comments about the policy. Both services cover many Council areas and issued statements from headquarters setting out what they would like to see included in all policies. Some comments were already addressed by the draft and some could not be included because they amounted to either protocols or licence conditions, neither of which was appropriate. These difficulties were largely avoided with the assistance of locally based Police officers. It was these local officers who had a better understanding of what the policy could and could not say. They also had a detailed knowledge of the district and its local needs in this context. Both services were invited to the Working Party. Hopefully this will have provided both services a say in what they would like to see in the final version.
1. A significant development is the recent publication of draft regulations dealing with licensing procedures. Although in draft form, it is not anticipated these regulations will change significantly so their effects have been incorporated in this latest draft policy. Perhaps most important is the requirements of most applicants to notify the statutory agencies directly with copies of their application form and associated documentation. It had been anticipated that this function would fall to the Licensing Officers of the Council. The change is therefore generally welcomed because it helps to slightly reduce the administrative burden. The extent to which applicants will fully realise their duties is in some doubt however and it will still be necessary for Licensing Officers to check the procedure has

been followed correctly. Failure to do so could mean licences not being commented upon by, say the police, then being granted automatically under delegated powers.

2. The draft regulations now mean that the Licensing Authority does not actively seek the comments of the statutory bodies. It also follows that other bodies such as Parish Councils cannot be notified by the Licensing Authority that a particular application has been received. Instead interested bodies like Town and Parish Councils will have to rely on seeing statutory notices in the press and “blue” site notices, the equivalent of the orange site notices used for planning purposes. This development is disappointing to Licensing Officers and will no doubt also be disappointing to Town and Parish Councillors.
3. The Council itself contains several discrete statutory consultees. Officers are currently investigating systems to ensure notifications by applicants to these services are co-ordinated for optimum efficiency. So for instance, it may be possible for formal notifications to Child Care, Planning and Environmental Health to be routed via the Council’s Licensing Team. The precise extent to which this will become viable ultimately depends on the final form of the regulations.

2.4 Officers and Members have for some time been concerned with adverse publicity generated by poorly drafted policies from other Councils. Many specialist licensing lawyers have been vocal in their criticisms of Councils who ignored national guidance, sought to re-write the legislative powers or impose detailed conditions in their policies. These and other errors could ultimately lead to legal challenges of one sort or another. To help avoid this in our case, the Council sought advice from a barrister specialising in this field. This advice has been incorporated in the latest draft.

3. Recommendation

3.1 The Licensing Committee is invited to:

- Put forward any amendments or changes to the Local Licensing Policy as set out in Appendix 5(b)
- Recommend to Council that the Local Licensing Policy is formally adopted.

Appendices

Appendix 5(a) – Summary of consultations received

Appendix 5(b) – Draft Local Licensing Policy Version 7

Implications

Policy:	There is no current policy. The recommendation will ultimately establish policy for the first time. This is a statutory duty imposed on the Council by the Licensing Act 2003
Financial:	None
Personnel:	None
Legal:	None directly but a poor policy could lead to legal challenges and appeals against individual decisions made by Members at licensing hearings. The policy in its final form to be approved by Council forms the basis for all decisions made by the Council in respect of the Licensing Act 2003. Any decisions not based on the policy will be open to legal challenge.

Environmental:	None directly but the fundamental aims of the Licensing Act include environment matters.
Equalities:	The policy will play a significant role in ensuring equality of access to licensing hearings, a fair hearing to applicants and objectors, It will also help reinforce the principal that all cases will be dealt with on the merits of the case in question.
Property:	None
Risk Management:	None
Community Safety:	This policy will have a significant effect on community safety particularly in relation to the prevention of crime and disorder where alcohol consumption is a contributory factor.

Consultation Responses

Local Stakeholders:	Significant consultation with local stakeholders has been undertaken. Please see Appendix 2 of previous report dated 13 September 2004.
Officers Consulted:	Licensing Team, Legal Services Team
Trade Union:	Not applicable