

Agenda Item 7

Licensing and Enforcement Committee

9 June 2009

RP



Parish and Town Council Involvement in Licensing

Summary

An explanation of the statutory frameworks governing parish council involvement.

Recommendation

That Committee discusses the report.

a) Reasons for Recommendation

Members have asked for a report on this subject.

b) Alternative Options

To note the report.

c) Risk Considerations

Legal implications are set out separately in the report.

d) Policy and Budgetary Considerations

The details of the current Licensing Policies are set out in the report. If changes to procedures are made, these may carry a cost in officer time.

e) Date for Review of Decision

Dependent on the outcome of the committee's discussions.

1. Background

At its October quarterly meeting, the committee requested that the Head of Legal, Licensing & Democratic Services prepare a report on who may make representations under the Licensing Act 2003 and the Gambling Act 2005 and if there was any room for change of the current arrangements. Some members queried the statutory framework and were unhappy parish and town councils could not automatically make representations on licensing applications. This issue has been explored in the past in detail at several training sessions run by both in-house and external trainers.

2. Formal Consultation/Notification.

Parish/Town Councils and ward members in East Devon are not statutory consultees for licensing applications under the Licensing Act 2003 or the Gambling Act 2005, unlike the position with planning applications. The applicant is responsible for this part of the process, not the Council. The licensing statutory consultation process relies on site notices, public advertisements and notification of the application to the licensing, environmental health and planning authorities, the police; Devon Fire and Rescue, child protection and trading

standards. The licensing authority's role is to make the application available on the statutory registers (kept on the council website) and to check that these statutory formalities (and others) have been complied with, and to deal with representations, if any.

3. Making representations

Interested parties may make representations about applications relevant to the licensing objectives.

4. Interested parties under the Licensing Act 2003

4.1 The Act states: "Interested party," means any of the following—

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity,
- (c) a person involved in a business in that vicinity,
- (d) a body representing persons involved in such businesses.

4.2 Only (b) and (d) are relevant to parish councils. These provisions give parish councils the opportunity to represent the views of those who live or are involved in a business in the vicinity of the premises. It does not, in my view, give parish councils the right to make representations on their own behalf.

4.3 In making a representation, a parish council will therefore need to identify the local residents or business people it represents in the vicinity of the premises. If the representation results in a committee hearing, it will be expected to provide evidence in support of its representation; this will normally be in the form of the local resident(s) or business the Council represents. Potentially, the council may represent persons living in the vicinity of the relevant premises and persons involved in businesses in the vicinity whose views may differ. Parish councils will therefore need to consider whose interests they wish to represent, if any, in relation to a particular application.

4.4 The definition of 'interested parties' is exhaustive in legal terms and the council does not have power to add to this. Its interpretation has been the subject of legal debate; this authority's approach has been consistent since the legislation came in.

4.5 If a parish council makes a relevant representation related to the promotion of the licensing objectives and identifies those it represents who live in the vicinity, then it is treated as an interested party. The parish council representation should particularise the objection in the normal way. However, the legislation does not provide for parish councils to simply give a view on an application in terms of desirability, or whether in principle the application should be granted. It must be focussed as provided by the legislation.

4.6. Councils should also have regard to Government Guidance, issued under section 182 of the Licensing Act 2003. However, the Guidance cannot override the provisions of the Act. The Guidance states:

"interested parties" – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:

- a person living in the vicinity of the premises in question;*
- a body representing persons living in that vicinity, for example, a residents' association, or a parish or town council;*
- a person involved in a business in the vicinity of the premises in question; and*
- a body representing persons involved in such businesses, for example, a trade association.*

8.6 *It is expected that “a person involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.*

8.7 *Any of these individuals or groups may specifically request a representative to make a representation on their behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.*

8.8 *Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question.*

8.9 *However, local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a ‘prejudicial’ interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest). However, the latest version of the Code, which came into force on 3 May 2007, has relaxed the rules on prejudicial interest. In terms of licensing, this has the effect of allowing councillors with a prejudicial interest in an application to attend relevant meetings to make representations, answer questions or give evidence, provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.*

8.10 *The Code applies to any council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.*

8.11 *In addition, councillors who are not themselves interested parties or representing interested parties may wish to be kept informed of licensing related matters within the area, such as applications and reviews. The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as ‘soliciting’ representations. It should be remembered that the ‘licensing authority’ in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.’*

4.7 Therefore, parish councils may make representations on applications in cases where they represent residents or people running businesses in the vicinity of the licensing premises, as set out above, paragraphs 4.1- 4.5. Members are kept updated on licensing applications through the register on the website, which also gives the closing date for representations.

5. Gambling Act 2005

5.1 The Act states a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person:

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- (b) has business interests that might be affected by the authorised activities, or
- (c) represents persons who satisfy paragraph (a) or (b).

5.2 The latest version of the Gambling Commission's Guidance, issued under section 25 of the Gambling Act 2005 in May 2009 states:

'Interested parties can be people who are democratically elected such as councillors and MPs. Where appropriate, this will include county, parish and town councillors. Other than these persons, authorities should require written evidence that a person 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or business interests that might be affected by the authorised activities. A letter from one of these persons requesting the representation is sufficient.

8.13 *The following gives further advice on how licensing authorities can determine whether someone is an interested party.*

People living close to the premises

8.14 *The approach taken by licensing authorities in determining who is an interested party is also a function that should be dealt with in their Licensing Authority Statement of Policy. As with responsible authorities, regulation 17 requires this information to be in a separate section of the Licensing Authority Statement of Policy.*

8.15 *The factors that licensing authorities should take into account when determining what 'sufficiently close to the premises' means (in each case) might include:*

- the size of the premises*
- the nature of the premises*
- the distance of the premises from the location of the person making the representation*
- the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment)*
- the circumstances of the complainant. This is not the personal characteristics of the complainant, but the interests of the complainant which may be relevant to the distance from the premises.*

For example, it could be reasonable for an authority to conclude that 'sufficiently close to be likely to be affected' could have a different meaning for (a) a private resident, (b) a residential school for children with truanting problems, and (c) a residential hostel for vulnerable adults.

The nature and scope of business interests that could be affected

8.16 *It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being 'a person with business interests that might be affected by the premises' under consideration. For example, an operator in a particular sector (be it casino, bingo, betting, etc) should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. The licensing authority should be satisfied that the relevant business is likely to be affected. In this respect, licensing authorities should bear in mind that the 'demand test' from the 1963 and 1968 Acts is not continued in the 2005 Act.*

Factors that are likely to be relevant include:

- ❑ *the size of the premises*
- ❑ *the 'catchment' area of the premises (that is, how far people travel to visit the premises)*
- ❑ *whether the person making the representation has business interests in that catchment area that might be affected.*

People representing those in the above categories

8.17 Licensing authorities should include guidance in their Licensing Authority Statement of Policy on whom they consider comes within this category. For example, it should include democratically elected representatives such as local councillors and MPs, and could include bodies such as trade associations and trade unions, and residents' and tenants' associations. In other cases licensing authorities should satisfy themselves on a case by case basis, and possibly request written evidence, that a person does represent interested parties. For example, a school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.

8.18 Licensing authorities will need to have regard to anything an interested party says about their status to make representations.'

5.3 This Council's Gambling Act Licensing Policy deals with interested parties as follows:

'Local councillors, MPs, trade associations and trade unions, and residents' and tenants' associations should be treated as interested parties within 9.1.(c) [of the Council's Gambling Licensing Policy] (Gambling Commission Guidance for local authorities 8.17). This authority will view these bodies as interested parties if they represent those who live sufficiently close to the premises or have business interests likely to be affected by the activities being applied for. In relation to any person or body claiming to represent others, written evidence may be asked for to confirm their legal status to make representations. If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing and Enforcement Committee dealing with the licence application. If there are any doubts then please contact (Licensing service)'

6. Helping Parish Councils access applications

6.1 As stated above, all applications under the 2003 and 2005 Acts are available on the website. If members would find it helpful, we can place a link in the Knowledge each week, which would take parish councils straight to the weekly list.

7. Conclusion

7.1 In summary then, in relation to the Licensing Act 2003 Parish/Town Councils are able to represent people living in the vicinity or businesses in the vicinity. Similarly in relation to the Gambling Act 2005 Parish/Town Councils are able to represent people who live sufficiently close to the premises to be affected by the activity and business interests that might be affected by the activity. However as explained in paragraph 4.5 the legislation does not provide for parish councils to simply give a view on an application in terms of desirability, or whether in principle the application should be granted. It must be focussed as provided by the legislation.

7.2 In the case of every representation made, whether from a parish council or otherwise, its validity must be looked at on a case-by-case basis to check it falls within the statutory parameters. In addition, there are various statutory grounds on which representations may be excluded; if they are not relevant to the promotion of the licensing objectives, or are frivolous or vexatious.

Legal Implications

The statutory framework is set out in the report.

Financial Implications

Additional consultation with Parish Councils may involve increased officer time in processing applications, but with current levels of efficient procedures and hearings, no extra costs should be incurred.

Background Papers

- The Council's Licensing Act and Gambling Act policies, approved by Council on the 12 December 2007 and 6 December 2006 respectively.
- DCMS Guidance issued under Section 182 of the Licensing Act 2003
- The Gambling Commission's revised Guidance to Licensing Authorities on Gambling under the Gambling Act 2005 (1 May 2009).

Rachel Pocock Ext 2601
Head of Legal, Licensing and Democratic Services

Licensing and Enforcement Committee
9 June 2009