

Licensing Act Committee

Licensing Act 2003- Consultation over the Gedling Licensing Policy Statement for 2011-2014

Purpose of this Report

To inform Members of the statutory consultation undertaken by officers on the draft Gedling Licensing Policy Statement for 2011-2014 for future adoption by the Full Council.

Information

During the period 5th July to 24th September 2010 Gedling Borough Council undertook widespread consultation of its draft Licensing Policy Statement in accordance with the requirements of the Licensing Act 2003 and national guidance.

The comments received during the consultation have been collated and reproduced below. Officers have viewed the comments in the light of the relevant legislation and current national guidance and the final version of the Licensing Policy Statement accompanies this report as **Appendix A**. A copy of the collated comments document has been placed on the Council's website.

Consultations received-

British Beer & Pub Association

- 1. The current system of triennial review is not conducive to encouraging participation in the licensing process. It is expensive and time consuming. Policies ought to be amended as and when necessary to encourage increased participation across the local community.*

Action to be taken to amend the Policy Statement.

Licensing Authorities have to follow the prescribed arrangements set out nationally to review their Licensing Policy Statement at least every three years but can review at any other time where necessary. Where the law is changed to remove the need for a review at least every three years this would be followed by this Authority.

- 2. The Association has responded to national licensing policy consultation in the light of current Home Office proposals on licensing which have far-reaching effects on how the regime currently operates. The BBPA has many concerns surrounding the proposals in terms of both how the balance of the Licensing Act would be distorted away from business and the Licensing Authority towards the Police, and the practical problems the new proposals will introduce. The BBPA has argued that Government should introduce an amendment to the Licensing Act nominating licensing officers as responsible authorities. This would speed up the licensing process without prejudicing the Licensing Authority in its decision making role. The BBPA would support*

rescinding licences where fees are not paid, providing due notice and reinstatement can be instituted if payment is subsequently made on time. The BBPA would support a surcharge on such late payments. The BBPA recognises the concerns the LGA and LACORS have with the Home Office proposals and would urge councils not to pre-empt the results of the consultation process in their policy making consultations.

Action to be taken to amend the Policy Statement.

The local consultation over the Policy Statement for Gedling Borough Council has not pre-empted any Home Office changes to the licensing regime.

3. *The BBPA has concerns that the Council may receive representations for change to which the BBPA would be unable to respond to until after the policy is approved by Council. The BBPA highlights therefore certain issues they would not support being included in, or arising from the final policy document as they are beyond the provisions of the Licensing Act. The BBPA recommends that Licensing Policies should take into account points such as-*

(a) Blanket Conditions. Blanket or standard conditions cannot be imposed under the Licensing Act, except where there are valid objections to a licence on the grounds of one of the four licensing conditions. The Licensing Authority can only attach a condition where an objection is upheld following a hearing.

Action to be taken to amend the Policy Statement.

None required. Paragraph 10.5 of the Home Office Section 182 Guidance (October 2010) effectively gives the position of the new policy with regard to blanket conditions. While national guidance (in Annex D) provides non-exhaustive pools of conditions they must not be applied universally or treated as standard conditions. The new policy has a pool of potential conditions relating to the four licensing objectives and which can be used where it is necessary and appropriate to individual circumstance to do so.

(b) Pubwatch. As a major supporter and funder of National Pubwatch, the BBPA is very keen that public houses participate in their local pubwatches, but are opposed to participation being a licence condition. Pubwatches are voluntary organisations and membership must remain voluntary if they are to be effective. They are also co-operative bodies that must be able to determine their own membership, which would become almost impossible if leaving a Pubwatch would result in a breach of condition. We trust that the policy merely seeks to encourage Pubwatch membership rather than make it a licence condition.

Action to be taken to amend the Policy Statement.

No change intended. The proposed pool of potential conditions (condition 19) requires the regular attendance and support of the local pub watch. Experience since the beginning of the new licensing regime has shown that those in the licensed trade who do not attend local pub watches are often unaware of crime patterns and legal changes that have a direct effect on their trade and could cause them embarrassment or to have their livelihood put at risk. While freedom of choice is important and participation down to personality it is difficult to see why a licensed person would not want to remain aware of those issues with a direct relevance to his work and the health and safety of staff and patrons.

(c) Glassware. It would be helpful if the policy could include a reference to the approach outlined in the National Alcohol Strategy on alternatives to glass, namely a risk based, per premises approach. The BBPA has consolidated good practice on combating violence in licensed premises into a guide to risk assessment available from www.beerandpub.com.

Action to be taken to amend the Policy Statement.

No changes required. The draft policy (para 6.21 glassware policy) refers to examples of recommended management practices to ensure public safety and conditions 49-58 in the Pool of Potential conditions reference containers including glass.

(d) Minimum Pricing. The Licensing Authority should not seek to encourage licensees to breach competition law by advocating a minimum price for alcoholic drinks. Any agreement of a minimum price would be a clear breach of competition law which would leave operators open to prosecution and financial penalty of 10% of turnover. Any condition of this nature would clearly be unlawful. There have been examples of local authorities/police attempting to use 'voluntary' agreements and the Mandatory Code on Alcohol Sales to justify a minimum price in a specific area. This is illegal as stated above.

Action to be taken to amend the Policy Statement.

None needed. The draft policy does not advocate any minimum pricing for alcoholic drinks.

(e) Mandatory Code on Alcohol Sales. The conditions relating to promotions, direct dispense into the mouth and tap water were introduced in April 2010. Conditions relating to age verification policies and smaller measures of alcohol came into force on 1st October 2010. If mandatory Conditions are

referenced in the policy, it should also make reference to the Home Office guidance available to download at www.beerandpub.com

Action to be taken to amend the Policy Statement.

None needed. The draft policy is silent over mandatory conditions which are contained in current legislation and must be complied with by all licence holders.

(f) Smoking. Where customers are outside the premises because they are smoking, there should not be an automatic assumption that this will lead to unacceptable noise nuisance. If it does, then interested parties and responsible authorities are legitimately entitled to raise the issue as they would for any other cause of noise nuisance. In the event that customers outside licensed premises give rise to noise nuisance and representations are made to the Licensing Authority, on these grounds, then the matter can be dealt with via the processes contained in the Licensing Act 2003. Therefore, any conditions on a licence should be evidence based and relate to noise nuisance and not smoking. Smoking itself is not, of course, a licensable activity.

Action to be taken to amend the Policy Statement.

None required. The draft policy does not mention smoking as it is not a licensable activity.

(g) Risk assessments. The BBPA is very much in favour of the use of risk assessments, but the provision of a risk assessment to support an application is not a requirement under the Licensing Act 2003, therefore the Licensing Authority has no powers to demand to be shown risk assessments. We believe that this reference should either be removed or amended to as to be a recommended practice rather than a requirement.

Action to be taken to amend the Policy Statement.

No changes required. The draft policy notes in paragraph 6.19 that applicants are expected to have carried out relevant assessments under other legislative requirements (for example health and safety at work) prior to submitting their applications. These assessments should be used to identify particular issues which may need to be addressed in the operating schedule in order that the objectives will not be undermined. Paragraph 6.20 gives examples of recommended management practice to minimise crime and disorder including procedures for risk assessing promotions and events. Paragraph 6.21 gives examples of recommended management practice to ensure public safety.

(h) Cumulative Impact Policies. The policy should make it clear that applications within the cumulative impact policy area will be considered on their own merits, and determined by the Licensing Committee in the event of relevant representations being received. Where there are no relevant representations, the application must still be granted.

Action to be taken to amend the Policy Statement.

No changes required. Paragraph 6.30 notes “This policy creates a rebuttable presumption that certain types of applications will be refused. The presumption may be rebutted where applicants can demonstrate through the operating schedule and, where appropriate, supporting evidence such as risk assessments, that the operation of the premises will not potentially add to the cumulative impact already being experienced.” Paragraph 6.32 (cumulative impact) further notes that “If no representations are received then an application must be granted in terms consistent with the submitted operating schedule.”

(i) Designated Premises Supervisors. If the policy contains the expectation that the DPS will spend a significant amount of time on the premises, or should be on the premises at all times, this should be deleted. There is no legal obligation for the DPS to be on the premises at all times, but they do, of course, remain responsible for the premises in their absence. There is no mechanism in the Licensing Act for the Licensing Authorities to-

- insist that the DPS be on the premises at all times*
- make a fit and proper judgement on individuals nominated as the DPS*
- insist on experience, training or qualifications in addition to the personal licence qualification*
- insist on more than one personal licence holder for the premises.*

The law simply requires a DPS to be nominated for licensed premises where the sale of alcohol is to take place. The DPS must hold a personal licence. We welcome the clarification in the revised Government guidance to the Licensing Act on this issue.

The DCMS guidance also outlines good practice for the authorisation of the sale of alcohol. Written authorisation may be appropriate for some premises, but not all, and is not a legal requirement. Ultimately, it is for the DPS to decide how to manage this issue. There is no legal requirement for daily authorisation of the sale of alcohol, which would in our view, be unenforceable and impose an unnecessary burden on operators.

Action to be taken to amend the Policy Statement.

No amendment required. The draft policy does not contain any expectation on the time spent by a DPS at a licensed premises.

Campaign for Real Ale (CAMRA)

4. *Having examined the proposed policy it is felt that it does not contain issues that at this point we would wish to comment on.*

Action to be taken to amend the Policy Statement.

None required.

Mrs M Richardson Borough Resident

5. *Cumulative Effect mentioned. Specific issues caused by licensed late night food business affecting residents. Inter-linking of the Licensing Act and other controls.*

Action to be taken to amend the Policy Statement.

The new policy is mindful of circumstances of the effect that licensed premises may have on an area (this includes paragraphs 6.6; 6.11; 6.12; 6.13-Policy 2; 6.14; 6.18; 6.23; 6.25-6.35 containing Policies 3 and 4). Policy 4 particularly enables either Responsible Authorities or Interested Parties to seek to establish that applications should be refused on grounds that it would result in or further contribute to a cumulative impact in an area not designated as a saturation zone based on factual, evidential grounds connected to one or more licensing objectives. The policy also provides for the evidence based review of licences in specific circumstances (paragraphs 6.43-45).

Recommendation.

Members are recommended to agree the final version of the Licensing Policy Statement for 2011-2014 for adoption by Full Council.