

REPORT TO: LICENSING COMMITTEE - 20 JANUARY 2006

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

Licensing Act 2003 - Consideration of the implementation of a neighbourhood notification scheme in respect of applications for the grant and major variations of premises licences and club premises certificates.

1. PURPOSE OF REPORT

Following concerns being raised by Members of the Council, the purpose of this report is for the Committee to consider the possibility of implementing a neighbourhood notification scheme in respect of applications for the grant and major variations of premises licences and club premises certificates similar to the process utilised for planning applications and whether it would be appropriate to implement such a scheme.

2. STATUTORY PROVISIONS RELATING TO THE ADVERTISEMENT OF APPLICATIONS

When submitting an application for the grant or major variation of a premises licence or club premises certificate, the applicant is required to serve a copy of the application upon the Licensing Authority and those “responsible authorities” prescribed by the Licensing Act 2003 (“the Act”). Responsible authorities include the police, fire authority, public protection service and the planning authority.

In addition the Act provides for applicants to advertise their applications in the following manner by:

- Displaying a notice in a prescribed format on the premises concerned for a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority. The notice must be prominently displayed in such a manner so that it can be conveniently read from the exterior of the premises; and
- publishing 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 application was given to the Licensing Authority.

These statutory provisions for the public advertising of applications are intended to give interested parties (prescribed in the Act as persons or businesses living or working in the vicinity of the premises) an opportunity to be made aware of the application and where appropriate to make relevant representations to the Licensing Authority upon the likely impact of the application on the promotion of the licensing objectives, which in summary are:

- the prevention of crime and disorder;
- public safety;
- prevention of public nuisance; and
- protection of children from harm.

3. ADDITIONAL MEASURES CURRENTLY IN PLACE TO NOTIFY INTERESTED PARTIES OF APPLICATIONS RECEIVED

In addition to the statutory requirements imposed by the Act upon applicants, the Licensing Authority has implemented other procedures to ensure wider distribution of information concerning applications received. It is important to highlight that these measures are taken by the Licensing Authority and not the applicant as there is no legal requirement for an applicant to make arrangements to advertise an application beyond those measures prescribed by the Act and described in paragraph 2 above.

Those additional measures consist of:

- Weekly notification of all relevant licensing applications received to all Members of the Council by the Members Information Sheet;
- Weekly notification to Southsea Town Council;
- Weekly notification published on the Council's Website.

Members are also advised that licensing staff undertake inspections of all premises where an application has been submitted to ensure that the public notice is displayed in accordance with the statutory requirements.

4. BACKGROUND INFORMATION CONCERNING NEIGHBOURHOOD NOTIFICATIONS FOR PLANNING APPLICATIONS

The statutory provisions for advertising planning applications are governed by Article 8 of the Town and Country Planning (General Development Procedure) Order 1995.

Planning authorities are legally required either to advertise the application in a local paper or notify nearby properties by letter or by way of display of a site notice in the immediate area. What constitutes nearby properties is dependant upon the nature of the application.

Portsmouth City Council has decided to implement all three options and therefore the Planning Authority computer database produces letters to be sent to nearby properties and in addition they employ a part-time member of staff to display, check and retrieve site notices.

Enquiries have been made by your reporting officer as to the possibility of any spare capacity within the existing resources set aside by the Planning Authority for advertisement of licensing applications received by the Licensing Authority.

The Head of Planning Services has confirmed that no such spare resources exist and therefore any notification scheme implemented by the Licensing Authority would have to be administered and funded separately.

5. LEGAL CONSIDERATIONS AND OPINIONS

Counsel's opinion has been sought on the legality or otherwise of implementing a local neighbourhood notification scheme in addition to the national statutory requirements and the extent to which such a neighbourhood notification scheme may be implemented by this Authority.

In summary, the legal advice received indicates that the Licensing Authority may implement a scheme of neighbourhood notification but the Licensing Authority itself would have to provide and fund a scheme. It would not be able to require applicants to undertake such additional consultation. Similarly, the costs of implementing and maintaining that process would need to be met by the City Council itself. The cost cannot be recovered from the income derived from applicant's fees.

There are varying opinions on this matter but Counsel's advice has been that Portsmouth City Council can implement a neighbourhood notification scheme for licensing applications in accordance with Section 2 of the Local Government Act 2000. Nevertheless, care needs to be taken to ensure fairness and to avoid any impression of inciting either support for or opposition against any application.

A neighbourhood notification scheme could be set up which is akin to the planning notification system but the Council itself would carry out the licensing notification. Powers to do this are available under section 2 of the Local Government Act 2000. To carry out such a notification scheme lawfully would rely upon the notification scheme being likely to promote or improve the economic, social or environmental well-being. The social well being of an area is most likely to be relevant in this connection.

Counsel has indicated that the following matters should be taken into consideration:

- (a) The Council must be satisfied that the scheme is likely to promote or improve the economic, social or environmental well-being.

The requirement that the Council should act fairly and neutrally in connection with all licensing applications of course remains a central requirement for the notification scheme to be legal.

- (b) Any neighbourhood notification scheme must, therefore, be carried out in an entirely neutral manner so as to provide no grounds for legal challenge that the Council in its quasi-judicial capacity took a view either way in relation to individual applications before the matter came to be determined. It is therefore suggested that the notification should merely consist of the details required to be advertised in accordance with the Licensing Act. Any notification should also clearly express that any lawful representations (and

not just objections) can be made by any interested party.

- (c) Provided the statutory requirements are met, a failure to implement the neighbourhood notification process by the Council in the case of an individual application cannot lead to the rejection or delay of that application. To be lawful, the scheme must operate as a voluntary service provided by the Council to the local community without placing any additional obligations or burdens upon applicants.
- (d) Careful consideration will need to be given as to the area to which the neighbourhood notification for individual applications will apply as interested parties must either be persons or businesses living or working in 'the vicinity'.

Counsel advises that provided the Council directs its mind to the question of what limits should be given to the extent of the area to which the notification should apply and gives rational reasons for its choice of area, then the risk of legal challenge should be minimised albeit some risk will remain.

Further legal advice was sought which highlighted the uncertainty of how "the vicinity" may be determined. If the area is drawn too widely there is a risk of raising in the minds of the recipients that they are entitled to be heard, when the licensing manager may determine that they do not live or work "in the vicinity". Conversely, if the boundary is drawn too narrowly, a resident may complain that he/she was not notified of an application when he/she was in fact in the vicinity for licensing purposes.

The legal advice obtained suggests that rather than the licensing manager being required to draw a vicinity on a plan in each case, a defined distance should be taken and it is advisable to draw the boundary of that notification too narrowly rather than too widely, because the latter course may well lead to frustration on the part of those who thought they were being consulted, only to be advised later that they have no right to make representations.

To use a measure of 50 metres it is suggested, is most sensible and proportionate, on the basis that in most cases it is liable to pick up those most directly affected. Inevitably each case will need to be considered on its merits and some variation may be necessary.

Clear guidance has been given that any notice distributed to residents and posted in the vicinity of the premises should contain a prominent rider that the only persons who may make representations on licensing applications are those who are defined as interested parties and the definition from the Act to be included. The rider should state that the receipt of the notification does not mean that the recipient will necessarily be treated as in the vicinity. Similarly, non-receipt of the notification does not mean that a person is not in the vicinity. Consideration of whether representations can be deemed relevant will be determined on the facts of each individual case.

- (e) There can be no charge either directly or indirectly to applicants for implementing the neighbourhood notification scheme.

LACORS (Local Authorities Coordinators of Regulatory Services) have offered the following guidance to licensing authorities as regards representations in relation to licensing applications:

“LACORS reminds colleagues of the importance in not appearing to solicit representations on licence applications. LACORS has recently been passed copies of correspondence by trade associations that have been issued by the licensing authority to local residents, which could be construed as encouraging local residents to make representations on targeted applications. LACORS encourages licensing authorities to engage local residents in the licensing process wherever possible, but in the interests of your own legal costs, seek clearance from your own legal officers on correspondence to ensure that it cannot be misunderstood as prejudicing the licensing process”.

6. FINANCIAL IMPLICATIONS

In considering whether to implement such a neighbourhood notification scheme, Members are required to consider the financial implications associated with administering that process which, in accordance with the legal advice obtained, must be met by the Council and not the Licensing Authority. There is no spare capacity for providing the resources for this scheme from within from the existing licensing staffing complement.

In conjunction with financial services, estimates have been prepared which include the start up costs associated with the employment of a part-time officer to undertake the neighbourhood notification process and, in addition, the development of the existing licensing database to incorporate measures to identify the extent of neighbourhood notification together with the ongoing administration costs.

Those estimates have been used to prepare and submit a growth bid to meet the financial costs should the Committee wish to implement such a scheme.

In summary the initial first year start up costs will amount to approximately £22,500 with an on-going cost thereafter on a yearly basis to the amount of approximately £18,000.

At the time that this report was prepared, no decision was available as to whether that bid was successful.

7. OPTIONS FOR CONSIDERATION

In accordance with the information provided above, Members may wish to consider the following options when determining this matter:

Option 1

Having regard to the legal advice provided and after having considered the Council's powers under section 2 of the 2000 Act, a licensing neighbourhood notification scheme should be implemented as described within the report of the licensing manager because it is considered likely to achieve the improvement or promotion of the social, economic and or environmental well-being of the areas in the city affected by licensing applications.

- I. As a policy guide, notification should be sent to those within a radius of 50 metres of the application site;
- II. provision being made for the financial costs of the implementation of the scheme being met by the Council;
- III. the Director of Corporate Resources and Services to be given delegated authority to implement and administer such a scheme in line with the legal advice obtained.

Option 2

A neighbourhood notification scheme shall not be implemented and the current procedures for notification of licensing applications via the Members Information Sheet, Southsea Town Council and the Council's website to continue as existing.

THE COMMITTEE IS REQUESTED TO DETERMINE THE MATTER



Licensing Manager
For Head of Legal & Democratic Services