

**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 13 JANUARY 2015

**Subject:** Licensing Act 2003 - Local Neighbourhood Notification Scheme  
- Proposed Amendments

**Report by:** LICENSING MANAGER (in consultation with Legal Services)

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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## **1. Purpose of report**

- 1.1 To note key statutory changes to the Licensing Act 2003, changes to the statutory guidance issued by the Secretary of State and to take into consideration legal advice so far as this all relates to the "vicinity" test for the consideration of relevant and germane representations made to the licensing authority when considering licensing applications and accordingly:
- To seek amendment and revision to the Licensing Committee's adopted local neighbourhood notification scheme in relation to applications for both the grant (and major variations) in respect of both premises licences and club premises certificates
  - To seek committee approval to rescind Licensing Committee minute 5/2006 so far as this relates to the expected requirement of notifying all properties within a 50 metre radius of the application site for licensing applications
  - To note and endorse changes to the way the city council, as the local planning authority, advertises planning applications by way of neighbourhood notifications and to implement a similar more streamlined process for licensing applications
  - To note the immediate financial savings to the licensing undertaking as a result of implementing the proposed recommendations to the current administrative arrangements in respect of the licensing neighbourhood notification scheme

## **2. Recommendations**

**(1) That Licensing Committee minute 5/2006 be rescinded and substituted with:**

**(1a) That, as a matter of local policy, the Head of Health, Safety & Licensing be authorised to continue with an amended neighbourhood notification scheme for the grant (and major variation) of premises licences and club premises certificates pursuant to section 2, Local Government Act 2000 in order to promote the social well-being of the area and to bring licensing applications to the attention of persons likely to be affected;**

**(1b) That the Head of Health, Safety & Licensing be given delegated authority to administer the neighbour notification scheme for licensing applications consistent with those mentioned in (1a) above by way of:**

- **Notification of licensing applications to all members via the weekly Members' Information Service (MIS) and notification of licensing applications to ward councillors<sup>1</sup>**
- **Notification of licensing applications via public access on the council website**
- **Notification of licensing applications via site notices at the discretion of the Head of Health, Safety & Licensing and after having regard to the circumstances of any individual application received**

## **3. Background**

### **3.1 Statutory Considerations**

**3.2** The city council, as the local licensing authority, must carry out its functions under the Licensing Act 2003 ("The act") with a view to promoting the licensing objectives:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

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<sup>1</sup> Existing licensing procedure but subject to formal ratification by the committee

Each objective is of equal importance.

The authority must also have regard to the adopted local statement of licensing policy together with any statutory guidance (including revised guidance) issued by the Secretary of State pursuant to section 182 of the act.

The council is required to keep a register of all licensing applications and make this available for inspection without charge. In practice this register is maintained on the council web site with unfettered public access.

- 3.3 The act previously recognised and defined "Interested Parties" as those persons (or a body representing persons) living or involved in a business in the VICINTY of a premises.

**The vicinity test was repealed in April 2012 and, as a consequence, responsible authorities (and other persons) may make representations irrespective of their geographical location to the application under consideration. Provided the relevant representation relates to the licensing objectives and, in the case of representations by other persons, is not frivolous or vexatious it may be considered.<sup>2</sup>**

- 3.4 The act and regulations require an applicant for the grant (or major variation) of either a premises licence or club premises certificate to serve a copy of the application on the responsible authorities and to advertise key elements of the application by way of:

- A prescribed notice displayed for a period of 28 consecutive days from the premises - this is checked by your reporting staff for compliance
- Publishing a notice of the application in a local newspaper

The purpose of advertising is to bring the application to the attention of persons who live or are involved in a business in the local authority area and are likely to be affected by it.

There are no other prescribed statutory advertising requirements for either an applicant or the licensing authority to comply with in respect of applications which are the subject of this report.

- 3.5 Of some significance is that the revised statutory guidance no longer contains any reference to "neighbourhood notification" requirements.

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<sup>2</sup> Police Reform and Social Responsibility Act 2011

The last recorded reference to this practice was in 2010 and stated:

**"8.94 It is open to licensing authorities to notify residents living in the vicinity of premises by circular of premises making an application, but this is not a statutory requirement".<sup>3</sup>**

- 3.6 Case law has evolved since the committee introduced the local neighbourhood notification scheme in 2006. A similar scheme in Westminster attracted some judicial criticism that - **".....neither the act nor the regulations impose any duty on a licensing authority to advertise such an application or to take any steps to notify anyone affected by it that it has been made".**

The court went on to say - **".....I have real doubts as to whether the residents did have any legitimate expectation as to their being notified of any application....."**<sup>4</sup>

- 3.7 Although the "vicinity" test has been repealed in respect of interested parties and their representations; the vicinity and local area is still a relevant matter for the committee to consider when determining what actions are appropriate to take in support of the licensing objectives and in respect of contested applications - see paragraphs 2-18 to 2.24 inclusive of the statutory guidance.

- 3.8 The review process can be used by persons concerned about activities at premises or clubs that might undermine the licensing objectives.

### 3.9 **Previous Local Policy Considerations**

During consideration of the draft statement of licensing policy for the period 2005 - 2008, members sought advice on the introduction of a neighbourhood notification scheme in respect of licensing applications similar to that used by the Planning Department.

Members received counsel's opinion that a neighbourhood notification scheme (although not provided for in the 2003 act) COULD, on balance, be introduced as a matter of local policy and under section 2 of the Local Government Act 2000.

Specific guidance was given to ensure that the licensing authority remained "neutral" in order not to attract subsequent legal challenge. Likewise the question of determining the "vicinity" was discussed and the 50 metre radius agreed.

It was also agreed that the council (not the licensing authority) would meet the costs of administering such a scheme although in reality this has not transpired with the subsequent costs (from officer time, printing and postage etc) being met by the licensing budget.

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<sup>3</sup> Home Office amended statutory guidance October 2010

<sup>4</sup> Albert Court Residents' Association -v- Westminster City Council, Court of Appeal 13 April 2011

The local scheme came into effect in January 2006 (minute 05/2006 refers).

### 3.10 **Cost Implications**

All new premises and club certificate applications together with major variations are subject to the neighbourhood notification process under the current scheme.

This involves licensing staff using the "in house gazetteer" to determine the 50 metre radius and arranging for the subsequent print run and posting of letters generated. This in itself is a protracted exercise.

At the time of compiling this report, 77 applications have been submitted during 2014. It is possible to calculate a mean average time taken to complete the neighbourhood notification letter exercise for each application in the following way:

Officer time generating letters - 1.5 hours @ £32 per hour = £48  
Printing and collating letters - 15 minutes @ £32 per hour = £8  
Postage of say 50 letters - @ 53 pence each = £26.50

Total per average application        £82.50  
**Total x 77 for 2014 applications    £6352.50**

There will be fluctuations. Some premises generate little neighbourhood notification letters and others generate a significant amount of officer time and cost - for example the Victorious Festival held last year on Southsea Common generated over 1300 neighbourhood letters at a cost of about £1000 in officer time and postage with not one representation from local residents being subsequently received.

To maintain a more streamlined neighbourhood notification scheme (in line with planning applications) will save monies both in postage costs and officer time which can be resourced to deal with other licensing matters as determined by your reporting officer.

None of the current on-going costs associated with the scheme can be levied against applicants for licences or permissions under the 2003 act.

## **4. Reasons for recommendations**

To recognise the changes to both the Licensing Act 2003 and statutory guidance in relation to the withdrawal of the "vicinity" test for valid representations to be made and considered.

To respond to your legal advisor's advice having regard to the "Albert Hall" case.

To mirror the current planning neighbourhood notification model at a local level.

To recognise the continued development and improvements to the council's on line "public access" licensing database which allows customers to receive direct and immediate "real time" information to both track and monitor licensing applications. The self service features allows for persons to create mapped and identified local buffer zones in order to receive automatic notifications of licensing applications electronically and on a regular basis.

To reduce costs to the licensing undertaking.

**5. Equality impact assessment (EIA)**

Not applicable to this report.

**6. Legal Implications**

The legal implications are embodied in this report.

**7. Finance Comments**

None applicable to this report.

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Signed by:

**Appendices:** None applicable to this report

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Nil	Nil

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by: