



PART A: MATTERS DEALT WITH UNDER DELEGATED POWERS

REPORT TO: LICENSING COMMITTEE

DATE: 24 JANUARY 2013

**REPORT OF THE: HEAD OF ENVIRONMENT
PHIL LONG**

**TITLE OF REPORT: THE LICENSING ACT 2003 – COUNCILLOR
CONSULTATION**

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 The purpose of this report is to decide what level of consultation with Members is required in relation to matters covered by the Licensing Act 2003.

2.0 RECOMMENDATION

2.1 It is recommended that the licensing authority continues with its present policy with regards notifications to “responsible authorities” and advertising any applications, variations and reviews in accordance with the statutory provisions only.

3.0 REASON FOR RECOMMENDATION

3.1 There is no requirement for local authorities to comply with requests from councillors (or indeed any member of the public) to provide updates as to applications and reviews, as this practice is no longer referred to in the Guidance. Use of discretionary powers would require a change to the Licensing Policy and may leave the Council open to legal challenge.

4.0 SIGNIFICANT RISKS

4.1 As stated above departure from the Guidance could give rise to legal challenge. The reason for such a departure will then be a key consideration for the courts when considering the merits of any decision taken by the Council.

5.0 POLICY CONTEXT AND CONSULTATION

5.1 The Council is obliged to follow its own Licensing Policy and have regard to the Secretary of States Guidance issued under section 182 of the Licensing Act 2003. Consultation is undertaken in accordance with the statutory provisions and statutory

guidance.

REPORT

6.0 REPORT DETAILS

- 6.1 Following a recent review of a licensed premise, a Member was not satisfied that they had received direct consultation on the review. The matter was discussed at the meeting of the Licensing Committee on 22 November 2012, and it was requested that a report be submitted to a future meeting of the Committee.
- 6.2 The Secretary of State issued Amended Guidance under section 182 of the Licensing Act 2003 in April 2012 and again in October 2012. Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must “have regard to “guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. Licensing authorities may depart from the guidance if they have reasons to do so as long as they are able to provide full reasons. Departure from the guidance could give rise to legal challenge, and the reason for departure will be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 6.3 The only specific advice in the most recent Guidance regarding the role of local councillors is contained in Paragraph 8.14
Local councillors as noted above, can make representations. Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007. The Code applies to any elected 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 or certificate of the premises in question which would then require them to withdraw from the meeting when that matter is considered (for example, where a councillor has made representations in their capacity as an elected member of the licensing authority). In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence or certificate in any other way
It is for the above reasons the Council seeks to protect councillors from accusations of bias by not having Members on the Licensing Sub-Committee in whose ward a review or application for a premise licence is taking place. With regard to the notifying of Members prior to any review/application hearing the Guidance provides no advice. The role of the Licensing Committee however is to be kept advised of licensing matters and keep the policy under review.
- 6.4 Under the Licensing Act 2003, councillors are not defined as “responsible authorities”, therefore there is no legal requirement for councillors to be notified of any application/review which the authority receives. Following amendments introduced by the Police Reform and Social Responsibility Act 2011, the term “interested parties” was removed and such parties, including councillors are now termed “other persons”. This still allows councillors to make representations in their own right and also represent members of the public if specifically asked by them to appear on their behalf at any hearing.
- 6.5 A review of other local authorities in North Yorkshire has identified that the authorities that do notify Members of representations are the York, Harrogate and Hambleton/Richmondshire. Those that do not include Ryedale, Selby, Craven and

Scarborough. As stated earlier new Guidance was issued twice in 2012, therefore this situation may change at the next review of their Licensing Policy.

- 6.6 Case law states that in *Corporation of the Hall of Arts and Sciences v The Albert Courts Residents' Association (20011)* the Court of Appeal judge said that neither the 2003 Act nor the the Licensing Act (Hearings) Regulations 2005 impose any duty on a licensing authority to advertise such an application or to notify anyone affected by it that it has been made.
- 6.7 In relation to grants, variations and reviews of premises licences, so far this year there have been 7 applications and 7 variations and one review. There has been one objection to an application resulting in a hearing and one hearing following a review application by the police.
- 6.8 Previous Guidance in 2010/2011 advised that Councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews. This advice is reflected in the Councils current Licensing Policy. This Guidance stated that *"the Act does not prevent licensing authorities from providing the 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"*. The above paragraph has been removed from the statutory Guidance under both the April and October 2012 amendments. Its removal is indicative of the lack of intention for advertisement beyond what is required by statute in relation to applications and reviews.
- 6.9 Due to a number of changes in the legislation, It is proposed to undertake a review of the Licensing Policy in early 2013.

7.0 IMPLICATIONS

- 7.1 The following implications have been identified:
- a) Financial – If Members were specifically notified of all applications/representations, the Council must have reasons for doing so. Departure from the guidance could give rise to an appeal or judicial review, and the reason will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. The Council would be liable for costs if any such appeal or judicial review were successful.
- b) Legal – see reasons above

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Background Papers:

Ryedale District Council's Licensing Policy. January 2011

Amended Guidance issued under section 182 of the Licensing Act 2003. Home Office. October 2012