

Item 7 Licensing Act 2003 – Yellow Card and Red Card Approach to the Review of Premises Licences

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

That the Committee adopt the recommendations for a ‘yellow card’ and ‘red card’ approach to the Review of Premises Licences.

SUMMARY:

- This report concerns the Department of Culture, Media and Sport and Home Office recommendations for a ‘yellow card’ and ‘red card’ approach to the Review of Premises Licences issued under the Licensing Act 2003.

1 Introduction

- 1.1 In March 2008 the Department of Culture, Media and Sport (DCMS) issued the first results of its review of the Licensing Act 2003. Following on from that review the DCMS have now written to all Licensing Authorities outlining recommendations for a ‘yellow card’ and ‘red card’ approach to the Review of Premises Licences. The yellow card being the application of tough licence conditions with the threat of revocation (a red card) at a further Review should the premise fail to improve.

2 Background

- 2.1 The findings of the above evaluation report were reinforced by the National Audit Office report *The Home Office – Reducing the risk of violent crime*, which looked at the effectiveness of violent crime reduction at local level, including the approach taken in relation to alcohol related violence. It showed that some areas were more effective than others at sharing good practice across partnerships and using the powers available under the Licensing Act alongside other interventions.
- 2.2 The report recommended that the government should raise awareness amongst partnerships and the police about how the Licensing Act can be used to reduce alcohol related violence and to ensure that all areas are using the Act to its maximum potential to reduce the risk of violent crime.

- 2.3 The DCMS therefore announced a number of measures to help 'responsible authorities' (such as the police, trading standards and environmental health officers) take a proactive approach to identifying and seeking reviews of problem premises. It was suggested that licensing authorities should be encouraged to consider whether tougher conditions might be appropriate following a licence review.
- 2.4 The proposals relate to the procedure leading to a licence review. A review must be requested by one of the 'responsible authorities' or an 'interested party' under the Act. Since introduction of the Act, Test Valley has seen six licence reviews as detailed in Annex 1 to this report. Unfortunately direct comparisons with other authorities are not possible but it is known that this figure is higher than for some other Hampshire authorities, e.g. in the last three years Havant has held one review but Test Valley has held three. Given that robust enforcement is already taking place within Test Valley, the purpose of this report can perhaps be viewed as highlighting a recommended approach available to the Council in its role as licensing authority (rather than instigating major change).

3 Corporate Objectives and Priorities

- 3.1 The authority has a statutory role in administering the requirements of the Licensing Act 2003. However, robust enforcement of the Act also contributes to the SCHEME priorities of 'creating stronger and safer communities' and 'protecting and enhancing the environment'

4 Consultations/Communications

- 4.1 No formal consultation has taken place regarding this matter. Informal liaison with the main responsible authorities, i.e. the police, trading standards and our own environmental health officers, takes place on a regular basis and all are aware of the process for requesting a licence review, should that be necessary.

5 Options

- 5.1 The approach outlined by the DCMS is for authorities to use local intelligence and knowledge to identify problem premises and to seek licence reviews with the intention of applying tough conditions as a 'yellow card' with the threat of revocation at a further review (a 'red card') should they fail to improve.
- 5.2 Detailed at Annex 2 to the report are suggestions on how the proposed yellow/red card system could work. The document details new measures to be considered when a review application is made. The first review would be

deemed a yellow card with packages of conditions and actions to challenge problem premises more aggressively. The aim would be to put premises on probation, treated as a yellow card. They would be warned that the next offence or breach would result in a red card, resulting in a second review. If satisfied at that stage that no improvement had been made, the licensing authority should look to revoke the licence. The DCMS have also specified a list of 'tough conditions' that could be assembled into packages at the first review stage (yellow card) to be tailored to fit the premises being reviewed. The proposed 'possible tough conditions to be assembled into packages' are detailed at Annex A of Annex 2 to this report.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of this report. The procedure for holding a Licensing Sub Committee to hear a licence review application is already established. In reality, the resource demand falls upon the responsible authorities who would request a licence review.

7 Legal Implications

- 7.1 There are no direct legal implications as a result of this report. The licence review process including the imposition of licence conditions or licence revocation must be carried out within the framework provided for by the legislation, the national guidance and the Council's own Statement of Licensing Policy.

8 Equality Issues

- 8.1 The Licensing Act 2003 and its associated secondary legislation have been assessed by the DCMS as being compliant with United Kingdom equalities and human rights legislation.

9 Other Issues

- 9.1 Community Safety – none specific other than that mentioned in paragraph 3.1 above.
- 9.2 Environmental Health/Sustainability Issues – none specific.
- 9.3 Property Issues – none.
- 9.4 Wards/Communities Affected – potentially the entire Borough.

10 Conclusion

- 10.1 Central government cannot tell Licensing Authorities what to do. Licence review powers are devolved to Licensing Authorities and are not a central government function. However, it is appropriate for central government to recommend best practice, such as the yellow card and red card system, to Licensing Authorities. Similarly central government cannot direct enforcement agencies who have a role as responsible authorities under the Act how to enforce the law including when to request a licence review. It would remain their judgement when and how to act, taken against the background that in Test Valley the majority of licensed premises are not problematic.

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| <u>Background Papers (Local Government Act 1972 Section 100D)</u> | | | |
| Letter from Minister for Culture, Media and Sport dated 2 September 2009. | | | |
| <u>Confidentiality</u> | | | |
| It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public. | | | |
| No of Annexes: | Two | | |
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