



London Borough of Hammersmith & Fulham

LICENSING COMMITTEE 11th JULY 2012

DATE
11th July 2012

ANNUAL LICENSING UPDATE

Wards

SYNOPSIS

This report is to inform the Licensing Committee about the work of the Licensing Team over the last 15 months. It provides a summary of the Licensing Team's performance for the financial year 2011/12, the Revised Licensing Policy following a change in legislation, the Revised Gambling Policy, The Alcohol Licensing Strategy, changes to the MST process and other licensing issues and cases of interest. It has been submitted to provide an overview of the work of the Licensing Authority and to allow the Licensing Committee to recommend any improvements to the current way of working.

ALL

CONTRIBUTORS

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RECOMMENDATION(S):

It is recommended that the Licensing Committee note the report, and make recommendations about any improvements to the current way of working.

CONTACT

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NEXT STEPS

The Revised Statement of Licensing Policy 2012, if adopted at Full Council on the 4th July 2012, will take immediate effect.

The Gambling Policy 2013, if adopted at Full Council on 24th October 2012, will take effect on the 31st January 2012.

The Alcohol Licensing Strategy 2012 -2015 was presented at the Crime and Disorder Reduction Partnership Meeting on the 19th June 2012.

Any recommendations for improvement will be considered for inclusion in the Licensing Team's work plan.

1. EXECUTIVE SUMMARY

- 1.1 This report provides a summary update of the work and performance of the licensing team for the period between 1st April 2011 and 31st March 2012. Additional information has also been included in relation to current work activities and recent/pending legislation changes.
- 1.2 Staff changes following a mini reorganisation in April 2011, has resulted in a more holistic and focussed approach to enforcement. This has been complemented by work to enhance existing and consider new licensing policies as part of the Licensing Authority's role to promote the licensing objectives.
- 1.3 The report highlights links with Public Health in relation to joined up partnership working through the Licensing Action Group to promote the responsible selling of alcohol, a revised Statement of Licensing Policy following the legislative changes, and a revised Gambling Policy to strengthen the existing policy.
- 1.4 An overview is provided of the work to improve payments of annual maintenance fees, enforcement action, committee hearing results, and legislation changes.

2. INTRODUCTION

- 2.1 This report is to inform the Licensing Committee about the work of the Licensing Team over the last 15 months.
- 2.2 The licensing team covers a wide range of statutory licensing, registration and enforcement functions in the London Borough of Hammersmith & Fulham. These functions cover premises which sell and supply alcohol or provide regulated entertainment or late night refreshment; gambling premises, gaming machines and lotteries; sex establishments; film classification; marriage venues; non medical poisons; scrap metal dealers and motor salvage dealers.
- 2.3 The Commercial Services team are responsible for the licensing/registration of explosives/fireworks, massage and special treatment premises and therapists and for all animal health/welfare related licensing functions within the division, namely: Riding Establishments, Animal Boarding Establishments, Pet Shops and Dangerous Wild Animals.
- 2.4 The licensing team work in partnership with others to promote the licensing objectives, improve public health and ensure that the Licensing Authority is fulfilling its functions, as efficiently as possible.

3. REPORT

3.1 Staffing

In February 2012 the Head of Commercial Services, was appointed as the Bi borough Head of Environmental Health (Licensing & Trading Standards) and is responsible for the licensing functions in LBHF and RBKC. A licensing service review, across both local authorities, is due to commence in September 2012.

The Licensing Team consists of 3 FTE Public Protection and Safety Officers (Licensing Officers) and the Trading Standards & Licensing Manager (0.5 FTE).

The main processing of licences is carried out by officers in one of the departmental Technical Support teams, who have had specific licensing training as part of the in-house arrangements to provide technical administrative support for the licensing team. As part of bi-borough working and the pending service review, this area will be looked at to identify any improvements that can be made to improve efficiency.

3.2 Team performance, work activity and key achievements in 2011/12

Licensing Act 2003

The Authority has a statutory duty to carry out its function with a view to promoting the four licensing objectives. These are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm

The work of the Licensing Team involves policy, processing, inspection, enforcement and committee work.

At the 1st April 2012, the authority had 925 licensed premises and had granted 2057 authorisations for personal licence holders under the Licensing Act 2003. The tables below illustrates the team performance during 2011/12, and 2010/11 data has been included for comparison purposes.

The data in table 1 shows that the number of applications received has been consistent with a slight reduction in the number of new and transfer of premises licence applications. There has been an increase in the number of Temporary Events Notices by 5%.

Licence/authorisation type	No. of applications received	
	2011/12	2010/11
New premises licences applications	66	73
New personal licences applications	164	168
New premises licence variations applications	50	50
Designated premises supervisor variations applications	196	198
Transfers of premises licences applications	68	73
Temporary event notices	564	535

Table 1

Licensing Work activity	Total Number	
	2011/12	2010/11
Number of visits to businesses	328	490
Number of complaints investigated	359	336
Number of commenced investigations	127	81
Number of prosecution cases sent to Legal Services	6	4
Number of S19 Closure Notices	16	Data not recorded
Number of S161 Closure Orders	2	Data not recorded
Number of simple cautions	3	2
Number of letters of warning	102	75
Number of visits conducted by licensing officers during operation Condor	160	n/a
Number of visits conducted by Met deployed officers during operation Condor	841	n/a

Table 2

The comparison data for 2010/11 in Table 2 above illustrates the change in our approach to tackling and detecting non compliances of licensed premises by moving towards intelligence led work. There has been a reduction of 33% of visits to businesses carried out by licensing officers. However Operation Condor which was launched in February 2012 to tackle unlicensed activity around the capital to crack down on licensing issues affecting the borough deployed officers from the police to carry out condition checks and support officers in licensing visits. This resulted in visits being conducted at low and medium risk premises where inspections are not conducted routinely due to service resources, burden on businesses and priorities.

As a result of this intelligence officers carried up follow up action which involved sending letters of warnings for minor non compliances and follow up visits were factored in to the work plan for 2012/13. Where a representation is made following an application for a licence a sub-committee is arranged.

In addition where the Service receives a valid representation for a review of a licence a further committee hearing is arranged and where the applicant is not happy with the decision of the committee an appeal hearing must take place. This area of work can take up considerable resource and it is important the service monitors this area of work in light of decisions made.

Table 3 illustrates the work outputs in relation to sub committee work. It is clear from the comparison with 2010/11 that the number of reviews has increased by approximately 400%. These reviews were in the main called by the Metropolitan Police, and supported by Environmental Protection and Trading Standards. Of the 23 reviews in 2011/12 there were 8 appeals to the magistrates court.

Licensing Sub Committees Hearings	2011/12				2010/11			
	Total	Agreed/Granted	Agreed in part	Refused	Total	Agreed/Granted	Agreed in part	Refused
New Premises Licence	10	6	0	4	14	10	0	4
Variation to Licence	2	1	0	1	9	2	0	7
Personal Licence	0	0	0	0	2	0	0	2
Review	23	19	4	0	6	6		
Total	35	26	4	5	31	18	0	13

Table 3

Gambling Act 2005

The Authority has a statutory duty to carry out functions with a view to promoting the licensing objectives. These are:

- Preventing gambling from being a source of crime or disorder being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The team issues premises licences for the following; bingo, betting, adult gaming centres, family entertainment centres, casino and horse racing and dog tracks.

At the 1st April 2011, the authority had granted the following authorisations under the Gambling Act 2005. Table 4 illustrates the team performance during 2011/12 with 2010/11 included as a comparison which shows a decrease in the number of applications for gaming machines in Members Clubs.

Type of Applications	Total	
	2011/12	2010/11
Adult Gaming Centre	0	1
Betting Shop	1	2
Gaming Machine Notifications	13	11
Gaming Machine s in Licensed Premises	0	2
Gaming Machines in Members Clubs	1	5
Total	15	21

Table 4

3.3 Revised Statement of Licensing Policy 2012

The Current Statement of Licensing Policy 2010 was adopted by Full Council and was published in January 2011.

In April 2012 a number of amendments were made to the Licensing Act 203 which made certain areas of the Council's Statement of Policy factually incorrect. Please refer to Section 4 for a summary of the changes.

Following legal advice the policy has been reviewed and updated and a report has been submitted to Full Council with the recommendation to approve the Revised Statement of Licensing Policy 2012. If approved on the 4th July this Forth Edition will take immediate effect.

A copy of the report prepared for the Full Council meeting on the 4th July 2012 is attached at Appendix 1.

In summary the proposed amendments to the Statement of Licensing Policy 2011 are:

- Requirement for Licensing Authorities to review their Statement of Licensing Policy every three years has been deleted and replaced with five years.
- Replacing 'Department of Culture Media & Sport' with the 'Home Office'.

- To update the information in relation to numbers, hours and 'late notices' for Temporary Event Notices (TENs).
- Replacing the term 'Interested party' with 'other persons'.
- Replacing the term 'necessary' with 'appropriate'.
- To update advice regarding non payment of annual licence fees.
- To include additional advice for applicants regarding information to be provided in their operating schedule when submitting an application.
- To include information regarding the Shepherds Bush Cumulative Impact Policy, which was approved by Full Council in 2011.
- Removal of the word 'vicinity' in relation to representations.
- To include the Primary Care Trust and the Licensing Authority as responsible authorities.
- Make minor amendments to some wording of the policy to provide clarity.

3.4 **Draft Revised Gambling Policy 2013**

The Gambling Act 2005 requires the Licensing Authority to review and republish its Gambling Policy every three years. The current policy took effect in 31st January 2010, therefore the revised policy will need to be approved by full council and take effect from the 31st January 2013.

The 12 week consultation period is now underway and will end on the 23rd July. A questionnaire setting out the key changes to the policy is available online at the following link : www.lbhf.gov.uk/gamblingconsultation2012.

The questionnaire and Draft Gambling Policy 2013 can be seen at Appendix 2.

In addition we are looking to include the Mandatory Conditions, and a list of Pool of Conditions as an Annex to the Draft Revised Gambling Policy 2013. These will provide guidance for applicants, residents, Councillors, agencies and responsible authorities when making, commenting on, or considering applications. The list of pool of conditions will not be exhaustive but a guide to help promote the three licensing objectives where considered necessary and proportionate.

We are currently consulting on these conditions and they can be seen at Appendix 3.

3.5 **Alcohol Licensing Strategy 2012 – 2015**

Nationally it has been reported that the café culture society that was envisaged from the introduction of the Licensing Act 2003, has not materialised. Research has also shown that people put their health at risk due to excessive drinking and this has had some damaging effects on some parts of our society.

In May 2012 the Government released a national alcohol strategy which signals a radical change in approach and seeks to turn the tide against irresponsible drinking. The national alcohol strategy covers:

- Minimum pricing for alcohol;
- Targeting those that drink to excess and commit crimes and the reduction of alcohol fuelled crime;
- Making 'health' a licensing objective in relation to cumulative impact policies; and
- Sharing of accident and emergency data between hospitals, the police and local authorities.

There are costs, crime and health consequences associated with the irresponsible selling and drinking of alcohol and therefore a local Alcohol Licensing Strategy has been developed which outlines the Licensing Authority's approach to reducing crime, disorder, anti-social behaviour and the negative impact of alcohol on public health, over the next 3 years.

This licensing strategy and delivery plan clearly documents our intentions and is an additional step in our proactive approach towards the prevention and reduction of alcohol related violent crime, disorder and antisocial behaviour and the negative impact on public health.

Working with our partners, we will always strive to adopt best practice around:

- Interventions to tackle the alcohol-fuelled disorder, using enforcement powers to tackle problem premises and problem individuals; and
- Managing the night time economy using partnership approaches.

The reduction of the level of alcohol related crime, disorder and anti-social behaviour and the negative impact on public health will be tackled through the **four** strategic goals below:

- Building an Evidence Base
- Providing Advice and Education
- Regulation and enforcement:
- Improving Public Health

The strategic goals of the strategy require the support of members of the Licensing Action Group (LAG) (see 3.6 below), and the Crime and Disorder Reduction Partnership Group (CDRP) to provide this drive. In addition, the LAG will be key to planning arrangements and ensuring that this strategy is delivered.

The action plan that will be developed to implement this strategy will be monitored through key performance indicators (KPIs), which will be reviewed and agreed annually. Evaluation of the work streams, projects and actions carried out, as part of this strategy will be carried out periodically by members of the LAG and reported annually to CDRP members.

The Strategy was presented to the CDRP members on the 19th June 2012 for comments. The Strategy can be seen at Appendix 4.

3.6 Licensing Action Group (LAG)

In 2010/11 the LAG was inaugurated as a group of key partners who would agree to work together to tackle licensing issues. The group consists of officers from the licensing team, trading standards team, commercial services team, environment protection team, planning enforcement team, the police, the London Fire Brigade (LFB), Drug and Alcohol Action Team (DAAT) and the community safety division.

Since the formation of the LAG, a Memorandum of Understanding (MoU) has been signed by all partners to agree a protocol of working together more effectively. Members of the group recognise the potential negative affects that the irresponsible sales of alcohol can have on public health and to the night time economy.

3.7 Changes to the Message and Special Treatment's process

The Massage and Special Treatment licensing regime aims to safeguard public health and protect children from harm. In 2011/12 a review of the fees charged to businesses wishing to apply for a licence to offer Massage and Special Treatments was carried out.

Fee Structure and Charges

The fees charged for licensing each type of treatment is set by each Local Authority independently and varies considerably between London boroughs. In order to determine whether the proposed fee structure was reasonable, a comparison was made with the existing LBHF fee structure, and the fees charged by LB of Westminster and RB Kensington & Chelsea.

During this review the opportunity was taken to simplify the system to assist promotion of online application and payment facilities and as a significant number of applicants had requested assistance in completing the application forms and in calculating the correct fee that must be paid. In summary the key changes to the fee structure are:

- Fee structure updated to better reflect the degree of hazard associated with treatment and the level of technical expertise required for its control.
- Fee structure updated to represent council resources input necessary to determine the application.
- Prompt renewal before due date will be eligible for a reduced fee rate. If a renewal application is not received prior to the expiry of the special treatment licence a new application is required and the relevant new application fee will apply. Introduction of a reduced renewal fee should encourage prompt renewal and reduce the need for repeated renewal reminder letters to be issued.
- Removal of the requirement to pay a fee for each individual treatment room or cubicle.
- Additional legislative requirement to licence cosmetic laser treatments.

In addition, the fee structure has been simplified, as follows:

- The licensable treatments have been allocated into one of three levels of risk; Levels 1, 2 and 3.
- If there is a higher level of risk to public health from a treatment which is poorly controlled, that treatment is in a higher Level.
- Level 1 treatments are low risk non invasive procedures
- Level 3 treatments are high risk invasive treatments or treatments proven to be commonly detrimental to health if not carried out in a safe manner and may be subject to age restriction to protect children from harm
- Applicants offering more than one treatment will pay a licence fee at the rate relating to the highest risk level treatment offered.

Treatments categorised as Level 3 require a high level of therapist expertise and knowledge to safeguard public health but there is no nationally recognised training qualification. The Level 3 treatments which involve piercing the skin have significant potential to spread infectious blood borne disease. Ultra Violet Tanning has significant potential to cause detrimental health effects including skin cancer.

The fee charged also represents the council resources necessary to determine the application:

- Commercial Services Environmental Health Officers assess the documentation accompanying an application.

- Where a risk assessment indicates it is appropriate, the Commercial Services Environmental Health Officer carries out an inspection of the premises to ensure the standard conditions for licensed premises, which are necessary to safeguard public health and protect children from harm, are being complied with.
- Where a risk assessment indicates it is appropriate the Commercial Services Officer interviews the premises manager and individual therapists about their understanding and execution of infection control procedures to safeguard the health of clients and the therapists themselves and protect children from harm.
- Processing Officers assist applicants, process applications and produce paper licence documents.

Standard Conditions

Section 10 of the London Local Authorities Act 1991 grants the council power to prescribe standard conditions and restrictions applicable to all or a particular class of licensable treatment. The conditions applied to existing special treatment licence have been amended and updated to reflect changes in special treatment practices and legislation:

- Removal of conditions relating to fire safety which are rendered redundant on effective by The Regulatory Reform (Fire Safety) Order 2005
- Addition of conditions relating to cosmetic laser treatments now licensable by the council
- Additional conditions relating to emerging treatment of fish therapy
- Removing overly prescriptive conditions
- Promoting Sensible Risk Assessment
- Simplifying the layout and language used to assist applicant understanding and compliance
- Rationalisation and simplification to shorten the Standard Conditions document

Impact on council income

Overall the total income to the council is estimated to rise slightly. Of a sample 77 businesses the 2012-13 income would be approx £53700 (2% increase applied to current year income). Applying the proposed scheme the estimated income would be approx £55500.

There has been targeted enforcement action taken over the last year or so which has resulted in an increase in the number of beauty salons known to the council who now pay the required fee. There has also been many new businesses opening up in the borough. There are a few remaining businesses who do not hold valid licence and are carrying out unlicensed beauty treatment. Final warning letters have been issued and formal legal action is anticipated to be taken against some of these businesses.

A copy of the revised standard fees can be seen at appendix 5 and the revised standard conditions at appendix 6

4. LEGISLATION CHANGES

4.1 Rebalancing the Licensing Act

The Police Reform and Social Responsibility Act 2011 received Royal Assent. Part 2 of this Act has the effect of amending several sections of the Licensing Act 2003.

On 25 April 2012 a number of Commencement Orders were laid in Parliament enabling a number of these amendments to become effective.

The amendments to the Licensing Act 2003 have required the Home Office to revise the Secretary of State's guidance to Licensing Authorities issued under Section 182 of the Licensing Act 2003. In accordance with the Act the Licensing Authority must have regard to the Guidance when carrying out its licensing functions.

The main amendments to the Licensing Act 2003 and the Secretary of State Guidance are as follows;

- Licensing Authorities and Local Health Bodies become "Responsible Authorities"
- The Term "Interested Party" has been abolished and replaced by "Other Persons"
- The "vicinity" test for persons/businesses making representations for/against licence applications is abolished.
- In addition to the Police, Environmental Health Officers may now submit objections to a Temporary Event Notice (TEN). Objections from both bodies may now be made in connection with any of the four licensing objections, and not just the "prevention of crime and disorder" objective.
- Conditions can now be added to a TENs provided the conditions are already specified on the Premises Licence and appropriate for the promotion of the licensing objectives.
- The period for making objections has increased to 3 working days.
- The limit for the number of days per calendar year an individual premises may hold a TEN is increased from 15 to 21 days.
- The limit that an individual TEN can last is increased from 96 to 168 hours.
- The provision for applicants to submit 'Late TENs' has been introduced. A normal TENs must be submitted at least 10 working days prior to a event. However a Late TENs can be submitted between 5 and 9 working days before the event where there are "Exceptional" reasons for late submission.
- A non payment of the annual licensing fee by a premises licence/club premises certificate holder may result in the premises licence being suspended.
- The statutory review period for a Statement of Licensing Policy's has been extended from 3 to 5 years.
- The criteria on which licensing decisions must be made has been changed from being "necessary" to "appropriate". However steps must still be "proportionate"
- The fine for persistent sales of alcohol to children doubled from £10,000 to £20,000.

Further amendments to the Licensing Act 2003 are proposed to take effect in October 2012. The proposed amendments are in relation to a Late Night Levy (LNL) and Early Morning Restriction Orders (EMROs).

The amendments to the 2003 Act have required the Home Office to revise the Secretary of State's guidance to Licensing Authorities issued under Section 182 of the Licensing Act 2003. In accordance with the act the Licensing Authority must have regard to the Guidance when carrying out its licensing functions.

4.2 Live Music Act 2012

The Live Music Act 2012 will come into effect in October 2012 and it will:

- Remove the licensing requirement for **unamplified live music** taking place between 8am and 11pm in all venues. This will be subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate relating to premises authorised to supply alcohol for consumption on the premises

- Remove the licensing requirement for **amplified live music** taking place between 8am and 11pm before audiences of no more than 200 persons on premises authorised to supply alcohol for consumption on the premises. This will be subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate
- Remove the licensing requirement for **amplified live music** taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment)
- Remove the licensing requirement for the provision of entertainment facilities
- Widen the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of unamplified live music.

4.3 DCMS Deregulation Proposal

The Licensing Act 2003 brought together nine separate outdated licensing related regimes, and created instead a single Act that controlled alcohol supply and sale, late night refreshment, and "regulated entertainment".

The Government believes that In tidying up the old licensing regimes new problems were created for many wishing to host entertainment events. The Government therefore has proposed a reform of activities currently classed as "regulated entertainment" in Schedule One of the 2003 Act.

The consultation sought views on the removal in certain circumstances of the requirement for a licence in England and Wales to host a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music, any playing of recorded music, or a performance of dance.

In addition the consultation requested views from interested parties taking the assumption that all regulated entertainment would be deregulated, with the exception of:

- Events for 5,000 or more persons
- Boxing and Wrestling
- Adult entertainment (that falls outside the requirement for a Sexual Entertainment Venue licence).

Recorded music may be deregulated in a similar fashion to live music with limits on audience figures and times of the day/night.

However the DCMS are currently considering the responses to this consultation, and there are no indications of when then deregulation will take place.

5. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

5.1 Not required

6. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

6.1 Not required

7. CONCLUSION

Officers will continue to work in partnership with all statutory agencies to develop new procedures and enforcement policies to facilitate the effective operation of new and existing legislation and to promote the selling of alcohol responsibly.

List of Appendices

Appendix Number	Description
Appendix 1	Revised Statement of Licensing Policy 2012, Full Council Report for Full Council meeting on the 4 th July 2012.
Appendix 1a	Final Draft Revised Statement of Licensing Policy 2012
Appendix 2	Consultation Questionnaire
Appendix 2a	Draft Revised Statement of Gambling Policy 2013
Appendix 3	Mandatory and Draft Local Pool of Conditions to be included in the Revised Statement of Gambling Policy 2013
Appendix 4	Alcohol Licensing Strategy 2012 – 2015
Appendix 5	Copy of Revised Fees for MSTs
Appendix 6	Copy of Revised Standard Conditions for MSTs
Appendix 7	Schedule of Applications heard by Licensing Sub-Committee

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Licensing Act 2003	Sanju Manji, Ext: 3392	TTSD – 5 th Floor HTHX
2.	Guidance Issued under section 182 of the Licensing Act 2003	Sanju Manji, Ext: 3392	TTSD – 5 th Floor HTHX
3	Police Reform & Social Responsibility Act 2011	Sanju Manji, Ext: 3392	TTSD – 5 th Floor HTHX