

**RE-PUBLICATION OF BRAINTREE DISTRICT COUNCIL'S REVISED LICENSING ACT
2003 STATEMENT OF LICENSING POLICY**

Agenda Item 5

Contact Details:- Rachel Smith
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Background Papers:-

Appendix 1 – Green King Brewing & Retailing Response
Appendix 2 – Beer & Pub Association Response
Appendix 3 – Environmental Protection BDC

Financial Implications:- None
Equalities Implications:- None
Legal Implications:- See below

Options:

- 1.To approve the adoption of the Licensing Act 2003 Statement of Licensing Policy with amendments deemed appropriate by Members.
- 2.To retain the existing Licensing Act 2003 Statement of Licensing Policy

Risks: The principal behind modifying the policy is to minimise any risk of a judicial review from an aggrieved applicant.

EXECUTIVE SUMMARY

To consider the adoption of a revised Licensing Act 2003 Statement of Licensing Policy following public consultation which took place between 3rd September 2007 and 23rd November 2007. Members are to consider all valid responses that have been received during the consultation and to approve any changes to the Policy that are necessary in response to this consultation exercise.

DECISION

Members are requested to recommend to Full Council the re-publication of the revised Licensing Act 2003 Statement of Licensing Policy.

RE-PUBLICATION OF BRAINTREE DISTRICT COUNCIL'S LICENSING ACT 2003
STATEMENT OF LICENSING POLICY

1.BACKGROUND

The Licensing Act 2003 requires Braintree District Council, as the Licensing Authority, to carry out a formal review, consultation and re-publication of its Statement of Licensing Policy every three years.

The re-published policy will then set out the principles that the Licensing Authority will generally apply to promote the licensing objectives when making decisions on applications for licences made under the Act for the subsequent three years.

2.CONULTATIONS/RESPONSE

2.1 During the period from 3rd September 2007 till 23rd November 2007 the Policy was made available for public consultation.

2.2 Letters advising of the consultation were sent to :
The Chief Officer of Police
The Fire Authority
Child Protection Unit
Trading Standards
Local LVA
Local Breweries

The consultation exercise also included discussions with other internal council departments with areas of responsibility which impact upon licensing, such as:-

- Legal Services.
- Environmental Health
- Planning Services

2.3 The Policy was made available for viewing via the Council's website. A new approach was developed, in the form of a simple on-line questionnaire, which could be used to provide feedback.

2.4 Following the consultation period, only three responses were received: (Appendix 1 2 & 3). All responses request changes to the policy, therefore members will be asked to consider the requested amendments and instruct officers on the night as to what changes need to be made.

2.5 To avoid printing costs the current policy has not been appended to this report, as it is some 56 pages long. A copy of the Policy is available on the website and a copy will be on display on the night of the meeting, if members require a hard copy of the policy prior to the meeting please contact the Licensing Officer.

2.6 Legal advice will be available at the meeting for any points, which require legal clarification.

Licensing Section,
Braintree District Council,
Causeway House,
Bocking End,
Braintree,
Essex CM7 9HB

Pub Partners Licensing,
Greene King Brewing and Retailing,
Abbey House,
Westgate Brewery,
Bury St Edmunds,
Suffolk IP33 1QT

22nd November 2007

Dear Sir/Madam,

Re: Statement of Licensing Policy – Licensing Act 2003

We are pleased to respond as part of the consultation process prior to the review of your Statement of Licensing Policy. We do this on behalf of Greene King Pub Partners which is the tenanted and leased side of our business and has a number of licensed outlets for which we hold the premises licence within your area of responsibility. We submit our comments accordingly.

In general this is a balanced policy and we are pleased to note your recognition of the need to closely monitor the impact of the Act on regulated entertainment in paragraph 1.16 and the cultural and social contribution that the licensed trade has to make in paragraph 1.36. Also the emphasis thereafter on the working in partnership. Some concerns are as follows:

1. Conditions

By emphasising the control measures in 3.5, 4.3, 5.8 and 6.7 as ones that should be taken account of, there is a danger that applicants will feel obliged to include measures in their operating schedule, which are not relevant to their particular premises. If included these measures will be transferred into conditions on their premises licence. We believe that the applicant as the operator of the premises is the best person suited to determine the means of doing so.

In any event the following control measures would not be within the control of applicants and should therefore not be considered as potential conditions:

Paragraph 3.5 The provision of CCTV in and around the premises is giving the impression of a requirement for responsibilities outside the premises itself and of course CCTV is only relevant in certain circumstances.

Paragraph 5.9 The management of traffic is beyond the control of applicants as is the requirement for liaison with public transport providers. Other than security lighting external lighting may not be within the control of the operator.

2. Risk Assessments

In Paragraph 2.4 you state that “in most situations it is good practice that a documented risk assessment would support the operating schedule.” Whilst we agree that a risk assessment would be the best way of determining the content of the operating schedule, under the terms of the Act there is no requirement to submit one with the application. This section is misleading and gives an applicant the impression that one is required.

3. Capacity

In Paragraph 2.7 you state that in most instances you will agree a maximum capacity. We accept that there will be premises, probably entertainment venues or the like where capacity limits are imposed. Capacity is also addressed under fire regulations and fire risk assessment which would duplicate existing legislation. The Licensing Authority does not have the powers of their own to impose a blanket condition in respect of capacity or expect it of applicants unless relevant representations are received. We believe that capacity should be addressed on a premises specific basis dependent on the activities taking place.

4. D.P.S

In Paragraph 3.7 it should be noted that there is no requirement for the D.P.S. to have additional training or experience other than that required to hold a personal licence.

5. Noise Nuisance

In Paragraph 5.4 we are concerned that there would effectively be a requirement for an acoustic report or that the applicant should demonstrate why one is unnecessary. This may well impact unfavourably particularly on some smaller premises which would find the commissioning of an acoustic report overly burdensome as a requirement. It is up to the applicant to determine the measures to be taken within the operating schedule for their specific premises. There is an implication that an application is being prejudged which is not within the spirit of the legislation. If the measures are unsatisfactory then following representations by the EHO a noise report or other measure could be considered at that stage.

We trust that you will find our comments constructive and will consider them as part of the review process.

Yours Faithfully,

Jeremy Veitch
Licensing Manager



Appendix 2

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1 Nine Elms Lane
London
SW8 5NQ

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facsimile: 020 7627 9123
enquiries@beerandpub.com
www.beerandpub.com

From: Dr Martin Rawlings MBE, Director Pub & Leisure
Direct Line: 020 7627 9141
E-mail: mrawlings@beerandpub.com



23rd November, 2007

Licensing Team
Braintree District Council
Causeway House
Bocking End
Braintree
Essex
CM7 9HB

csc@braintree.gov.uk

Dear Sirs,

RE: LICENSING ACT 2003 - REVIEW OF LICENSING POLICY

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 60,000 pubs in the UK. Many of our members own and run pubs in the Braintree area. The Association promotes the responsible sale of alcohol and management of licensed premises. It has a range of good practice information and guidance for member companies, which includes security in design, drugs, drinks promotions, noise control and health and safety.

The BBPA believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. We welcome this opportunity to provide comments as part of this licensing policy review. This response is also supported by BII, the professional body for the licensed retail sector. Our main observations are as follows.

The BBPA welcomes the Council's positive approach to the licensing of the sale of alcohol and the provision of public entertainment and in particular its recognition of the cultural and social contribution that the trade has to make, and also its importance as a local employer. The draft policy has also recognised one of the key principles of the Licensing Act 2003, namely that each application must be treated on its own merits.

Introduction - Para 1.2 implies that the Licensing Authority is able to comment on the operating schedule. Only responsible authorities and interested parties may make relevant representations and, if these are upheld, the Licensing Authority may then consider applying further conditions.

Appendix 2

Para 1.6 – again the impression is gained that the applicant's operating schedule must satisfy the requirements of the Licensing Authority. May we suggest the following alternative wording of the first sentence: "... applicants will need to demonstrate in their operating schedule how they intend to promote the licensing objectives relevant to the individual style and characteristics of their premises and events."

Enforcement

We welcome the risk based approach to enforcement advocated by the policy and would further recommend the recognition of the Hampton principles of inspection and enforcement in this section, which include the following:

- No inspection should take place without a reason
- Regulators should recognise that a key element of their activity will be to allow or even encourage, economic progress and only to intervene when there is a clear case for protection

Licensing Objectives

Para 2.4 - the Association is very much in favour of the use of risk assessments, but as you have stated the provision of a risk assessment to support an operating schedule is not a requirement under the Licensing Act 2003. We believe the emphasis placed here on the risk assessment could mislead applicants into believing they should supply one.

The Association recognises that the lists of control measures given for each licensing objective are meant as examples and would not be applied in all cases. However, some of the examples given do not easily translate into conditions on licences and would be unenforceable, although the BBPA would support them as good practice. Others are unnecessary - underage sales, for example, are already an offence under the Licensing Act. Conditions should be specific and should not seek to "micro-manage" premises. Conditions must also be absolutely necessary for the promotion of the licensing objectives, not least since breaching a licence condition attracts a fine of up to £20,000.

Para 2.5 – there is no legal requirement for a personal licence holder to be on the premises at all times and therefore such a condition is not only unnecessary but would also be onerous and bureaucratic.

Para 2.7 - there is no mechanism for the Licensing Authority to require applicants to include an occupancy limit in their operating schedules and they cannot be imposed except where there are valid objections on a licence on the grounds of public safety. The relevant authority (namely the fire authority in this instance) may advise on those grounds.

Prevention of Crime and Disorder

Para 3.4 – The sale of alcohol to persons under 18 and the serving to drunks are already offences under the Licensing Act and given the sanctions that exist for committing such offences we believe these measures are unnecessary.

Para 3.5 - Alcohol Harm Reduction Strategy – the Government has revised its Alcohol Strategy and published "Safe. Sensible. Social" in June this year.

We would not want to see 'Proof of Age' become a condition. The Association promotes good practice in the application of its 'Challenge 21' which is designed to assist businesses to comply with the law. It would have a contrary effect if those measures were to also become the law by the application of a condition to make it mandatory. Enforcement would be problematical since the application of 'Challenge 21' is itself a matter of judgement as to whether someone looks over 21 or not.

As a major supporter of National Pubwatch we are very keen that public houses participate in their local Pubwatches, but we are opposed to such participation being a condition of the licence. Pubwatches are voluntary organisations and membership must remain voluntary if they are to be effective. They are also co-operative bodies that must be able to determine their own membership, which would become almost impossible if leaving a Pubwatch would result in a breach of condition. We trust that the policy merely seeks to encourage Pubwatch membership rather than make it a condition of licences.

Para 3.7 - The expectation that the DPS “would normally be on the premises on a regular basis” is open to subjective interpretation and should therefore be deleted. There is no legal obligation for the DPS to be on the premises at all times, but they do, of course, remain responsible for the premises in their absence. There is also no mechanism in the Licensing Act for licensing authorities to request that the DPS should have experience or undergo additional training in addition to the personal licence qualification.

Para 3.8 – We should be grateful if the licensing policy could state the legal minimum notice required for a temporary event notice is ten working days.

Public Safety

Para 4.3

- suitable and sufficient risk assessments (*In our view, such a subjective condition could not be reasonably enforced.*)
- Instruction, training and supervision of staff (*again, this is a very general requirement which would be inappropriate as a condition on a premises licence - training needs are best left to the management of the premises to decide.*)
- The BBPA Guide “Safety in Pubs” is no longer available (*this is an example of where a breach of condition might apply as the publication is out of date*).
- Proof of regular testing – this requirement is a duplication of existing legislation.

Prevention of Public Nuisance

Para 5.4 – it is for the applicant to decide how they will promote the licensing objectives and this paragraph seeks to imply that sound tests will be necessary. We believe that this section is far too prescriptive and has no place in the licensing policy. Appropriate conditions may be applied following the receipt of relevant representations and local authorities have new powers under the Noise Act to take action following complaints about noise from late night premises.

Protection of Children from Harm

Para 6.7 – we refer to our comments above regarding under-age sales and proof of age scheme conditions.

The Public Places Charter was concerned with the provision of no smoking areas in pubs but as the smoking ban is now in place this reference is no longer relevant.

We trust that you will find these comments helpful and look forward to any response you may have. We would also appreciate being listed as a consultee in any further licensing related consultations.

Yours sincerely,

A handwritten signature in black ink that reads "Martin Rawlings". The signature is written in a cursive style with a large, prominent 'M' and 'R'.

Martin Rawlings

-----Original Message-----

From: Batchelor, Colin
Sent: 23 November 2007 13:29
To: Smith, Rachel
Cc: Crabb, Lee; Sharp, Pam
Subject: Licensing Policy Consultation

Rachel,

Please find attached a specific response to the licensing policy consultation.

In general the policy has many paragraphs, which state what the licensing authority would like as to see in applications as good practice but does not expand on what will happen if such good practice is not followed. Whilst it is recognised that the role of the licensing authority is clearly defined and is largely an administrative one, it is disappointing that the policy appears not to be very strong. It concentrates on the expectations of applications and does not reflect its role in, more than just promoting licensing objectives but ensuring that they are achieved by clear consistent decision making and by imposing penalties and restrictions where there is any doubt that such objectives can be met or are not being met.

If you require any clarification please let me know

COMMENTS ON LICENSING POLICY REVIEW

- 1.19 When the Licensing Authority is considering any application, it will avoid duplication with other regulatory regimes, so far as possible, and does not intend to use the licensing regime to achieve outcomes that can be achieved by other legislation. In particular, its licensing functions will be discharged separately from its functions as the local planning authority.

However, applications for premises licences for permanent commercial premises should normally be from businesses with planning permission, a lawful development certificate or where an application for planning permission or certificate has been made for intended use of the property concerned. (Other permissions may be applicable to licensed premises and applicants are expected to ensure that such permissions are obtained where necessary.)

There have been situations such asWitham, where a licensing application was granted and the planners subsequently refused planning permission for the use. Could it be clarified as to what 'normally' means?? And can it be policy that the application be considered invalid if there is no planning permission and there is any doubt that it will be granted.

Colin Batchelor Ext 2219
Principal Environmental Health Officer
Braintree District Council