

This is the response to the Call for Evidence from Leeds City Council, licensing authority for the Leeds district. It was prepared in conjunction with Members of the Licensing Committee and officers and ratified by Licensing Committee as the response of Leeds City Council to this Call for Evidence.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote?

Yes, the existing four licensing objectives are the right ones.

There have been occasions where the area in which the premises is situated is experiencing issues which are related to the licensing objectives, but there is no premises-specific evidence available that would allow the Licensing Subcommittee to refuse or condition the licence, despite that being the best course of action. The Council has looked to the Section 182 guidance at paragraphs 8.33 to 8.41 which provides guidance to applicants on the need to consider risk to locality when completing their operating schedule, but we do not believe that this is widely used and there is a wide perception that only evidence that directly relates to the premises can be considered regardless of the locality.

We believe there should be further clarity given to the evidence that can be considered and if it needs to relate directly to the bricks and mortar premises, or if the wider locality and community can be taken into consideration.

Should the protection of health and wellbeing be an additional objective?

Yes, especially in relation to localities. There are areas in Leeds in which residents can expect a lowered life expectancy of up to ten years. We know that the causative factors relating to a lower life expectancy are alcohol, obesity and smoking. Although we are working with our Public Health colleagues and other agencies in these areas to promote health and wellbeing, we are also granting new off licences and late night takeaways in these areas as there is no direct link between the proposed activities and the four existing licensing objectives.

If we were able to take health and wellbeing into consideration, as well as receiving further clarity on whether we can consider locality issues, we would be able to consider these applications with a view to refusal or applying conditions that would assist in the promotion of health and wellbeing in these areas.

There is some concern that as the scope of 'health and wellbeing' is so broad that some councils may receive representations to all applications on the basis that even a modest amount of alcohol consumption could lead to a reduction in health outcomes and wellbeing, however this could be adequately addressed in the S182 guidance.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities?

We believe that voluntary schemes such as Purple Flag, as well as the commercial needs of the business community address the facilitation of the enjoyment of licensable activities without this becoming a specific requirement of the licensing policy.

Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

No, the licensing policy is not the best way of addressing this issue.

Should there be any other additional objectives?

We receive numerous public representations about needs, desire and parking, but we consider these to be adequately addressed by the wider planning controls.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Yes. In our view many premises added live music to their licences when they converted from the Magistrates Courts to the Licensing Act regime. It has not been our belief that the licensing regime imposed unnecessarily strict requirements on premises in relation to live music.

Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

We investigated a late night levy in detail. Despite the potential for raising revenue that could be used to improve the night time environment, the Council felt that the impact on smaller businesses and businesses that were situated in quiet areas would have been too severe to make the proposition feasible. The easiest way to make a late night levy more useful would be to allow the Council to designate the area to which it applies.

The other reason for the hesitancy to impose a late night levy was the arrangement for the disposal of the funds. The lack of oversight led to concerns about where the levy would be spent by Police. We received verbal confirmation that the levy raised in Leeds would be used in Leeds to provide additional policing, but no commitment was provided in a written agreement.

Although we have not specifically looked into an EMRO the procedure for implementing it is complicated and onerous.

Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Yes, the Licensing Act allows the licensing authority to sit between licensees and members of the public/agencies and consider all sides when making decisions.

For members of the public, the quasi-judicial nature of licensing subcommittee hearings can be daunting and we are aware of occasions where people have not made a representation due to the fear of reprisals. However now that the ability to make representations is unrelated to vicinity people can ask their local councillor, residents association or other people to represent them at hearings, and their representations are given just as much weight when presented in writing as they are when they are presented in person.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done?

We have an excellent working relationship with all the responsible authorities with regular engagement through the Licensing Enforcement Group. For some responsible authorities, such as the Leeds Children's Safeguarding Board the licensing process does not lend itself to intervention at the application stage but there are facilities there to review licences if the premises have been linked to child-related issues.

Sometimes during licensing subcommittee hearings, there is a perception that the responsible authority could have provided more information or liaised with other authorities to provide a more rounded view. However where this has been noted, it has been addressed with the responsible authority concerned and these comments have been taken on board.

The ability to reach agreements can lead to just one responsible authority attending a hearing as others have withdrawn their representations. This is often commented on by the applicant's solicitors and perceived as the absent responsible authority's approval of the application. For example, if Environmental Health is not present the solicitor will often make a comment about their absence indicating there are no public nuisance issues. In most cases Environmental Health have been involved at a very early stage of the process and secured adequate measures to address their concerns.

Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

There is a need for a liaison service to provide support to local communities in relation to licensing applications. For many their representation is the first and last they will make and it can be a steep learning curve. As they are often at a hearing against trained and experienced solicitors, it can be perceived to be an unfair process on members of the public.

We don't believe the licensing authority is the best authority to provide this service as it is difficult, especially in smaller authorities, to be impartial while assisting both applicants, members of the public and acting as a responsible authority.

In relation to temporary event notices, there are two uses for temporary event notices:

- Non-commercial organisations such as school PTAs use them to sell alcohol at occasional events.
- Commercial premises use them to extend the terms of their licence or to remove restrictions as the notices can replace the premises licence and its restrictive measures.

The first type of temporary event notice creates very few problems and in our view is what the TEN system was designed for. The second type of temporary event notice creates concern amongst ward members who are often dealing with complaints around noise nuisance from licensed and unlicensed premises, but are frustrated by the inability to make a representation themselves. Adding elected members to the list of people that can make a representation would be a way of ensuring that communities have their say in temporary events.

If the premises is licensed, an amendment to the Licensing Act enables the licensing authority to transfer conditions from the premises licence to the TEN, however this comes at a cost as it requires a hearing – costing in excess of £1000. A TEN costs the organisation £21. Increasing the cost of a TEN would unfairly penalise the voluntary and non-commercial organisations that use the TEN system appropriately. It would be useful to have two systems to reflect the additional work that goes into administering TENs for commercial purposes.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes, Leeds City Council takes shaping and supporting communities very seriously and has formed community committees which have this specific responsibility. Both Planning and Licensing applications are discussed through this process and any amendment to licensing policy is presented to community committees as part of the consultation process.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

The tension between Planning and Licensing has been long established. Although in Leeds we have an excellent working relationship between the licensing and planning authorities, there is some merit in tying the two regimes more closely together. Licensing sub-committees would like the ability to adjourn licensing decisions until the planning decision is made to ensure the two permissions are closely aligned.

We would like to go further and in the sex establishment licensing regime, we require the licence applicant to already have their planning permission in place before proceeding with their licence application so that there is consistency between the planning consent and the licence. This is not encouraged under the S182 guidance which specifies that the two regimes should be dealt with separately due to their different objectives, and the avoidance of allowing residents a ‘second bite of the cherry’.

For example the Duck and Drake is a city centre pub, well known for live music. It is very popular and is one of the few premises with a beer garden in the city centre. This is absolutely vital in the summer as the building is small and hot. The pub has a late licence and has enjoyed popularity for many years. A developer has built flats right next to the pub. The pub received noise complaints from residents living next door who complained about the use of the beer garden into the early hours of the morning. Not only has the pub had to close its beer garden by 9pm, but now has to close all windows and doors to avoid a noise nuisance which makes it unbearably hot in the summer.

Requiring ‘agent of change’ proposals would have placed the onus on the developer to take the proximity of the pub into consideration, and sound proofing and air conditioning could have been a requirement. Alternatively the developer could have been made to sound proof and air condition the pub.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

(Sent to PS David Shaw, West Yorkshire Police for comment)

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Our view is that the sale of alcohol airside is a matter for the airport’s security services. It is self-policed at the moment and there is no impact on the licensing objectives.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The cost of a newspaper advert has become prohibitively expensive. In Leeds it can cost around £1,000 for an advert in the local newspaper. In order to assist the local businesses, we have found the national daily newspapers to be more affordable and are advising people to obtain quotes from a number of newspapers before placing their order. Removing the requirement to place a newspaper advert would reduce the financial burden on the business, reduce the potential for error and simplify the application process.

Our view would be that you could safely move the entire requirement for the duplication and distribution of applications to the licensing authority. We already fulfil this requirement for electronic applications and all incoming post is now digitised in order to reduce costs and storage, so it would be simple to do. The small cost of the distribution should be included in the application fee.

The main issue is the constantly changing requirements as successive Governments tweak the Licensing Act to fix small problems. We would welcome a five yearly review of the Licensing Act and all amendments to be undertaken at the same time, so that the local authority policy statement can be adjusted accordingly.

10. What could be done to improve the appeal procedure, including listing and costs?

Leeds Licensing Authority is satisfied with the current appeal listing procedures and costs

Should appeal decisions be reported to promote consistency?

Appeal decisions should be reported to promote consistency across the country.

Is there a case for a further appeal to the Crown Court?

No, there is no need.

Is there a role for formal mediation in the appeal process?

No, the current procedures are adequate.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade?

Clarity over whether locality data/information can be considered during licensing decisions would help control off licence applications, but there is no need for a separate system. The Licensing Act 2003 is flexible enough.

How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?

Supermarkets, large retailers and under age sales can be controlled adequately under the current regime. Leeds has a number of delivery services and we have applied adequate measures that control under age sales and selling to drunks.

Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

In Leeds the issue relating to super strength alcohol is in the package sizes. Many independent off licences, convenience stores and corner shops sell ‘white cider’ which is a high ABV alcohol product sold in 1, 2 and 3 litre bottles at a very low cost. This particular product is mainly purchased by dependant drinkers and by selling it in large bottles leads to people drinking more than their addiction needs them to. Anecdotal evidence from people in treatment services informs us that once they remove the top of the bottle, they will drink it all, despite their best intentions. A three litre bottle of white cider contains 22 units of alcohol and costs around £3.50.

Similarly there is a misconception that restricting the ability to sell single cans will stop dependant drinkers from buying alcohol. This is simply not true, but allowing the sale of single cans means that a dependant drinker can self-dose the alcohol they need to consume to keep them from becoming ill, without putting temptation in front of them to drink more than they need to. More research/information from treatment services is needed to ensure that any restriction on alcohol is designed in such a way to assist rather than hinder people’s ability to overcome their addiction.

It is important that any control of super-strength alcohol is designed in such a way that the undesirable alcohol types, such as high strength lager and white cider is included but craft beer and artisan cider is not. We suggest concentrating on the pack size rather than the ABV.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We support the introduction of a minimum unit price for alcohol, although we understand there are legal considerations stopping this at the moment.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level?

No and all licensing authorities should have the ability to set their own fees, on a cost recovery basis. This should include the costs of other departments such as environmental health and the planning service.

Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

It is not just the major cities that have a deficit in their licensing budgets. The LGA has recently commissioned a fee survey with CIPFA which shows the extent of the deficit.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We are not in a position to comment on the licensing laws of other countries.

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