



Report of the Chief Officer (Health and Environmental Action Service)

Licensing Committee

Date: 16 November 2010

Subject: Premises Licences - Prevention of Public Nuisance

Electoral Wards Affected:

ALL

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report advises Members of a presentation by the Environmental Protection Team of the Health and Environmental Action Service focusing on issues relating to the assessment of applications when considering whether or not to make representations in respect of the prevention of public nuisance, and the evidence to be provided to committee in support of those representations.

1.0 Purpose Of This Report

- 1.1 This report is to advise members that they are to receive a presentation from the Environmental Protection (EP) Team of the Health and Environmental Action Service (HEAS), based within the Neighbourhoods and Environment Directorate

2.0 Background Information

The chair of the Licensing Committee, Councillor Armitage, requested that representatives from the EP team attend the Licensing Committee to provide information to members on how applications are assessed by the team in relation to the prevention of public nuisance and the evidence subsequently provided to the Licensing Sub-Committee.

3.0 Main Issues

- 3.1 The EP team is a responsible authority under the Licensing Act 2003 in respect of the prevention of public nuisance. It is served with copies of all applications for the grant or variation of a premises licence or club premises certificate. It is also able to instigate review proceedings
- 3.2 HEAS shares the Licensing module of the IDOX (Caps Uniform) computer system with the Entertainment Licensing section, and applications can be viewed and responses are made electronically within the 28 day period.
- 3.3 Each application is considered in relation to potential nuisance issues – mainly noise but also anti-social behaviour, lighting, odour, and litter. The application, *pro-forma*, and any supporting documents in relation to the prevention of nuisance are scrutinised taking into account the proposed activities, hours of operation and mitigating factors. The history of the premises i.e. whether there have been previous complaints is also considered. Other factors taken into account are the location of the premises in relation to noise sensitive premises and the character of the area. Liaison with the enforcement section of the development directorate also take place at this stage. A site visit will be carried out and there will often be discussions with the applicant. Officers will also draw on their experience of assessing similar applications and on the problems that can be caused by the type of application.
- 3.4 Having assessed the application there will be three possible options:
- No objection
 - Qualified objection
 - Full objection

In each case a letter is sent to the applicant setting out the response and the reasons for it.

In the case of a qualified objection there is an option for the applicant to agree to certain conditions which are listed in Part 2 of the qualified objection letter. If these conditions are agreed this will result in the objection being withdrawn. These conditions and the applicant's agreement will form part of the agenda item with which members will be familiar.

Full objections are normally made in the following circumstances:

- where there is a history of significant problems which have not been resolved
- where there is a history of poor management and lack of co-operation in resolving issues
- where a notice is in force or legal action is in progress
- where there is widespread public objection which could be supported by the EP team
- where the application is for inappropriate activities having regard to the location and structure of the premises

3.5 If the matter is to be heard by a Licensing Sub-Committee an officer will attend to speak to any qualified objection which has not been resolved, or to any full objection. Evidence will be provided as far as possible but this may not always include complaint history. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations and in fact this would not be possible for new premises.

3.6 The 2003 Act and the guidance produced by the Secretary of State requires the Licensing Committee and EHS to 'make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences'. Public nuisance is not narrowly defined in the guidance and may include the reduction of the living and working amenity and environment of interested parties in the vicinity of licensed premises.

3.7 The guidance states that conditions may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990 (EPA), the Noise Act 1996 or Clean Neighbourhood and Environment Act 2005 adequately protect residents but the approach of licensing authorities should be one of prevention and when their powers are engaged licensing authorities should be aware that other legislation may not adequately cover concerns raised and additional conditions may be necessary.

3.8 The legislation mentioned above is reactive. In particular, the EPA is a reactive measure for dealing with statutory nuisance. It is necessary for a problem to occur, for a complaint to be made, the matter to be investigated, witnessed and possibly measured before formal action can be taken. There is then an appeal provision which can considerably delay the process before any notice can be enforced. If a breach of notice is eventually witnessed there can then be a further delay before the matter reaches the court and is dealt with. In many cases the legislation mentioned above will not be effective in dealing with subsequent problems.

3.9 The licensing objective is the prevention of public nuisance and it will be necessary to anticipate problems in the case of new applications or for many variation applications rather than relying on reactive legislation.

3.6 If complaints are subsequently received in respect of licensed premises they will all be investigated. There may be liaison with other enforcement agencies (Licensing enforcement, development control, police) and appropriate action may be taken under the provisions of the Licensing Act 2003 in respect of breach of licence conditions, and also under the provisions of the Environmental Protection Act 1990 if the complaint justifies the service of a noise abatement notice.

4.0 Implications For Council Policy And Governance

4.1 Licensing sub-committees have delegated authority to determine applications where relevant representations have been made. The quality of the representation made and supporting evidence is important for the sub-committee in making its determination. An increased understanding of how the EP team assess applications will aid the quality of decision making.

5.0 Legal And Resource Implications

5.1 There are no legal or resource implications to this report or the presentation

6.0 Conclusions

6.1 Members are asked to note the information presented by the EP team representatives and ask any appropriate questions.

7.0 Recommendations

7.1 That members note the content of the report and the presentation.

8.0 Background Papers

8.1 None