



Notice of meeting of

Gambling & Licensing Acts Committee

To: Councillors Alexander (Chair), Ayre, Cregan, D'Agorne, Funnell, Sue Galloway, Horton, Hyman, Merrett, Moore, Orrell, Reid, Runciman, Taylor and Wiseman (Vice-Chair)

Date: Friday, 3 October 2008

Time: 2.00 pm

Venue: The Guildhall, York

AGENDA

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 3 - 6)

To approve and sign the minutes of the meeting held on Friday 6 June 2008.

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. Anyone who wishes to register or requires further information is requested to contact the Democracy Officer on the contact details listed at the foot of this agenda. The deadline for registering is Thursday 2nd October at 5pm.

4. Any other business which the Chair considers urgent under the Local Government Act 1972

5. Disclosure of Personal Details of (Pages 7 - 14) Interested Parties at Licensing Hearings

This report examines the Licensing Act 2003 (Hearing) practice adopted by City of York Council of an assumed none disclosure of interested parties personal details unless written consent to the contrary is received. Members are asked to consider, for future hearings, disclosing the personal details of interested parties during the licensing hearing procedure.

Democracy Officer:

Name: Laura Bootland

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For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting Laura Bootland

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

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If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

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我們竭力使提供的資訊備有不同語言版本，在有充足時間提前通知的情況下會安排筆譯或口譯服務。電話 (01904) 551 550。

اگر مناسب وقت سے اطلاع دی جاتی ہے تو ہم معلومات کا ترجمہ مہیا کرنے کی پوری کوشش کریں گے۔ ٹیلی فون (01904) 551 550

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Holding the Executive to Account

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	GAMBLING & LICENSING ACTS COMMITTEE
DATE	6 JUNE 2008
PRESENT	COUNCILLORS WISEMAN (VICE-CHAIR, IN THE CHAIR), AYRE, D'AGORNE, SUE GALLOWAY, HORTON, RUNCIMAN, TAYLOR AND WISEMAN (VICE-CHAIR)
APOLOGIES	COUNCILLORS ALEXANDER, CREGAN, FUNNELL, HYMAN, MERRETT, MOORE, ORRELL AND REID

1. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda. No interests were declared.

2. MINUTES

With reference to Resolution 1 of Minute 10 (Revision of Statutory Guidance to Licensing Act 2003), Officers confirmed that letters had been written to Government departments and MPs as requested. Members indicated that they would like to be notified of any replies. With reference to Resolution 3 of Minute 10, it was noted that the update on alcohol reduction schemes had been delayed pending publication of a Government report, and was likely to be brought to the Committee in October or November.

RESOLVED: That the minutes of the last meeting of the Committee, held on 5 October 2007, be approved and signed by the Chair as a correct record.

3. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

4. IMPACT OF THE LICENSING ACT 2003 AND HEALTH ACT 2006 (SMOKE FREE PREMISES) ON THE LICENSING TRADE

Members considered a report which provided an update on the current national and local position regarding the impact on licensed premises of the Licensing Act 2003 and the Health Act 2006 (Smoke Free Premises). It also provided information on action being taken by enforcement officers to ensure compliance with the conditions attached to premises licenses.

An evaluation of the Licensing Act, published in March 2008 by the Department for Culture, was annexed to the report. This concluded that the Act was having a beneficial impact upon residents, policy and local councils. In York, over 180 hearings had been dealt with since the introduction of the Act. However, only 4 supermarkets had secured a 24 hour licence and many premises had reverted to closing at 11pm. Crime and disorder levels, after an initial drop, had remained stable, although the issue of noise continued to be a concern. Local benefits had included better partnership working and introduction of the Cumulative Impact Zone in the City centre. A licensing enforcement project had been established to undertake pro-active night time monitoring and enforcement action. During the past 12 months 101 multi-agency inspections had taken place, resulting in the closure of 6 premises due to a breach of conditions. Three premises had been subject to a review.

With regard to the Health Act, there had been few problems in implementing the provisions in licensed premises. Most complaints and enquiries had concerned smoking shelters. There had been an increase in the number of variations for premises, due to the need to secure external smoking facilities. Where this was not possible, and patrons had to smoke on the footpath or highway, there had been problems with noise and litter. In such circumstances, licensees were advised that they were responsible for patrons' behaviour in the immediate vicinity of their premises. Officers provided support, via personal visits and written guidance, with the aim of ensuring a 'win / win' position for both residents and licensees.

Members discussed what could be done to address the issues of alcohol abuse, noise from licensed premises and the licensing of activities in village and community halls. It was agreed that there was a need to avoid duplication of effort and ensure that the Committee acted within its remit. In view of this, Members asked that further information be circulated regarding:

- Action being taken by the PCT to reduce drinking levels
- Manchester City Council's Licensing Enforcement Project
- Call outs of the Noise Abatement Team to incidents involving drink
- The opinion of the Local Councils Association on the system of licensing village and community halls and any problems involved

The issue of drug testing for door staff was also raised and Members asked that a suggestion be made to the Security Industry Authority (SIA) that they consider this idea.

RESOLVED: (i) That the contents of the report be noted and that Members have regard to this information when exercising their duties under the Act.

REASON: So that Members remain informed on local and national trends.

(ii) That Members' comments and suggestions, as recorded above, be noted and that Officers circulate the additional information requested.¹

REASON: To enable the Committee to monitor action being taken to address the issues discussed.

Action Required

1. Circulate information requested and make the suggestion to SIA KS

S Wiseman, Chair

[The meeting started at 2.00 pm and finished at 2.40 pm].

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Licensing and Gambling Acts Committee

3 October 2008

Report of the Director of Neighbourhood Services

**DISCLOSURE OF PERSONAL DETAILS OF INTERESTED PARTIES
AT LICENSING HEARINGS****Summary**

1. The purpose of this report is to examine the Licensing Act 2003 (Hearing) practice adopted by this authority of an assumed none disclosure of interested parties personal details unless written consent to the contrary is received.

Background

2. The Licensing Act 2003 came into force in November 2005 transferring the liquor licensing function from the Magistrates Court to the local authority.
3. The Act created statutory provision of responsible authorities and interested parties both of which can make representation to the licensing authority about any application, to grant vary or review for a premises licence or club certificate.
4. For the first time the new act gave residents living in the vicinity of licensed premises a much greater say in the licensing process. This has resulted in many long standing crime and disorder and public nuisance issues being resolved.
5. Interested parties for the purpose of the Licensing Act 2003 includes :-
 - A person living in the vicinity of the premises in question
 - A body representing persons living in the vicinity, for example residents associations
 - A person involved in a business in the vicinity in question and
 - A body representing persons involved in such business.
6. In the early stages of the implementation of the Act and in the absence of any statutory guidance the authority adopted the practice of disclosing the personal details of interested parties to the applicant with the notice and copies of the relevant representation letters as well as publishing details in the hearing report.

7. This practice was challenged by an interested party who was reluctant to make a representation because of the fears of intimidation if their personal details such as name and address was divulged to the applicant.
8. As a result the practice of keeping all personal details of interested parties confidential unless written consent is given was adopted by the Democracy Support Group. A pro-forma used in this process can be found at Annex 1.
9. The licensing officer/legal department can find no documentation why this procedure was adopted. It appears to have evolved following one genuine challenge to the procedure. This has resulted in the majority of interested parties personal details been kept confidential.
10. New supplementary Guidance was issued by the Department for Culture, Media and Sport in June 2007. This Guidance is issued under section 182 of the Licensing Act 2003. It is now the view of officers that the practice of keeping interested parties personal details confidential is challengeable, as the Guidance in relation to disclosure of personal details of interested parties states.
11. Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearing) Regulation 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.
12. In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fear of intimidation or violence if their personal details, such as name and address are divulged to the applicant. However, withholding such details should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.
13. Should it be considered an exceptional circumstances exist the licensing authority may decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details such as street name or general location within a street which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. A copy of the Secretary of State's Guidance notes can be found at Annex 2.

Options

14. Option 1:
 - (a) To disclose personal details of interested parties during the licensing hearing procedures.
 - (b) That only in exceptional circumstances as outlined in the Supplementary Guidance issued under section 182 of the Licensing Act 2003 are personal details withheld. But consideration must be given to release enough details, which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises.

- c) That all Licensing Act 2003 (Hearings) Regulations correspondence reflect (a) and (b) and the current tick box pro-forma section regarding personal details is withdrawn.

Option 2:

To continue to withhold interested parties details unless written consent is given.

Analysis

15. The reasoning and analysis of the proposal has been set out in previous paragraphs.

Corporate Priorities

16. The effective exercise of the licensing legislation and guidance notes ensures the licensing function will impact on the councils priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

17. **Financial**

None

18. **Human Resources (HR)**

None

19. **Equalities**

There are no equalities implications.

20. **Legal**

In carrying out its licensing functions, the Licensing Authority must have regard to any guidance issued by the Secretary of State. The Licensing Authority may, if it appears appropriate, depart from the Secretary of State's Guidance but would need justifiable and identified reasons for doing so in order to withstand a legal challenge.

21. **Crime and Disorder**

The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authorities responsibility to co-operate in the reduction of crime and disorder in the city.

22. **Information Technology (IT)**

There are no information technology implications.

23. **Property**

None.

24. **Other**

There are no other implications.

Risk Management

25. In compliance with the Council's risk management strategy any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

Recommendation

26. Members are recommended to approve option 1.

Contact Details

Author:

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Licensing Manager
Neighbourhood Services
Tel: 01904 551593

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
(Neighbourhood Services)

Report Approved **Date** 16.9.2008

Specialist Implication Officer

Martin Blythe
Tel 01904 551044

Wards Affected:

All

For further information please contact the author of the report

Background Papers

The Licensing Act 2003.

The Department for Culture, Media and Sport Guidance issued under section 182 of the Licensing Act 2003. June 2007 addition.

Annexes

Annex 1 – Democracy Support Group hearing notification pro-forma.

Annex 2 – DCMS Guidance notes on Disclosure of personal details of interested parties.

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LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005, REGULATION 8

You must complete and return this form to Democracy Support Group, Guildhall, York, YO1 9QN, or fax (01904 551035) by no later than five working days before the date of the hearing. Please use block capitals and tick all that apply.

Name and address of Premises:

Date of Hearing:

Application Ref No:

Your Name:

Daytime Tel No:

Address:

Organisation (if applicable):

I will be attending the hearing and I want / do not want to address the Sub-Committee (please delete as appropriate)

I will be represented at the hearing by:
(eg Solicitor / Ward Councillor - Please contact them directly to arrange)

Telephone: (0)

Email:

I will not be attending the hearing I consider a hearing unnecessary

I want to withdraw the application / notice / representations I have made

I would request that these people be allowed to appear at the hearing for me as witnesses*:

Full Name	What information will they give ?

*NOTE: You must seek permission and make arrangements for any people attending the hearing on your behalf.

I do NOT require my Personal Details to be kept confidential within the Agenda**

I will be attending the hearing and would like a copy of the Agenda**

**NOTE: To ensure your requests are dealt with, you must return this form to us no later than 5pm on

Signed:

Date:

Please Print Name:

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- 9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.
- 9.13 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them.
- 9.17 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
- 9.18 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.

DISCLOSURE OF PERSONAL DETAILS OF INTERESTED PARTIES

- 9.14 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.
- 9.15 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.16 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.

HEARINGS

- 9.19 Regulations governing hearings may be viewed on the DCMS website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is necessary. To this end it may wish to notify the interested parties concerned and give them the opportunity to withdraw their representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

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