

GENERAL PURPOSES AND LICENSING COMMITTEE - 16 NOVEMBER 2007

ENFORCEMENT OF NEW FOREST DISTRICT COUNCIL LICENSING FUNCTIONS

1. INTRODUCTION

- 1.1 At the General Purposes and Licensing Committee Meeting on 14 September 2007, a report was requested no later than the January Committee meeting regarding the provision of licensing enforcement facilities and outlining progress under the Licensing Act 2003, public awareness and the impact on the quality of life of local residents, as well as the impact of the Gambling Act 2005.
- 1.2 This report deals with the enforcement facilities of New Forest District Council. A further report covering the impact of the licensing regime on local residents will be submitted in January following final analysis and publication of a Citizens Panel Survey on licensing impact.

2. BACKGROUND

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- 2.1 The number of licences issued by NFDC each year are shown at Appendix 1.
 - 2.2 Licences are issued by Licensing Sub-Committees in contentious cases or by Officers under delegated powers in non-contentious cases.
 - 2.3 All licences are subject to some form of condition, many of which are at the discretion of the authority e.g. premises licences etc under the Licensing Act and Gambling Act. The conditions are generally imposed to promote the four licensing objectives, namely: - the prevention of crime and disorder, prevention of public nuisance, public safety and protection of children from harm.
 - 2.4 In 2007/2008 the issue of licences is estimated to raise £240k in income for the Authority.
 - 2.5 Budget bids for enforcement officers have not been successful. A budget bid for one enforcement officer has been made for the financial year 2008/2009, estimated expenditure £28k. The business case is based on the contents of this report.

3. ENFORCEMENT RESPONSIBILITIES

- 3.1 Put simply enforcement can be split into two areas i.e.:
 - The criminal offences specifically detailed in the various Acts of Parliament; and
 - Regulatory conditions that are put onto licences by the Authority for the running of premises, vehicles etc to control disorder, nuisance, safety and to protect children.

3.2 Agreements and protocols have been set nationally and locally between police, LACORS, local authorities, Gambling Commission etc. The criminal aspects will be dealt with by the Police, Gambling Commission etc with local authorities responsible for checking and enforcing the conditions it places on the licences it issues. Joint enforcement can be beneficial. Appendix 2 shows the main agencies involved in enforcement.

3.3 The Environmental Health Officers of New Forest District Council also carry out enforcement of nuisance issues connected to licensed premises e.g. noise. However, as they are a 'Responsible Authority' in their own right, it is suggested that care must be taken to ensure that they remain within their responsible authority remit and do not blur the boundaries thereby becoming an enforcement arm of the Licensing Authority for matters outside of their responsible authority role.

3.4 All enforcement should be based on a risk assessment and concentrate on the 'worst' premises. The dilemma is that to a certain extent until premises are checked by professional officers familiar with licensing legislation and the conditions imposed, the Licensing Section is totally reliant on information coming from third parties as to perceived breaches etc. The preliminary findings of the Citizens Survey show an approximate 50% lack of licensing knowledge. This could effectively limit public reporting of issues, leaving the professional services e.g. the Police as the main means of reporting issues of concern.

3.5 The Licensing Act 2003 & Gambling Act 2005 give powers to local authority staff to enforce. Although it gives the powers, the legislation does not appear to make it a mandatory responsibility to enforce.

3.6 Appendix 3 shows the reported incidents to date at New Forest District Council. Currently any issues of concern are dealt with by referral to other agencies or action by the Licensing Manager or Officer within current workloads. It is a reactive measure rather than the proactive action required by protocols and guidance, and it is suggested, by the public.

4. PRESSURE FOR ENFORCEMENT ACTION

4.1 Pubs, clubs, gambling and taxis are perhaps the highest public profile areas due to the everyday impact that the services have on the public and the high media attention if 'things go wrong.'

4.2 The *Rogers Review* on National Enforcement priorities for local authority regulatory services set the national enforcement priorities for local regulatory services and have been accepted in full by the Government on publication as part of the March 2007 budget. The review team identified over 60 policy areas enforced by local authorities; an initial sift identified 24 key policy areas for which more detailed evidence was sought, focusing on risk and effectiveness. In carrying out the review, the views of Government departments, local authorities, citizens and business were considered. The review sets out five national priorities for local authority regulatory services to assist them in prioritizing their resources, one of which was alcohol licensing (alcohol, entertainment and late night refreshment licensing and its enforcement) – e.g., protecting people from the effects of the misuse of alcohol through licensing.

- 4.3 The Gambling Commission has published its enforcement guidelines. It expects local authorities to enforce the license conditions it issues. National and local protocols expect the same.
- 4.4 If current enforcement activity by the Authority is considered to be inadequate, it is suggested that the Authority could be subjected to criticism if an enforcement/responsibility argument were based on income –v- cost i.e.:
- Income generated from issue of licenses = £240k per annum
 - Responsible enforcement to ensure compliance with conditions imposed to safeguard the public (some of whom are vulnerable) and to preserve order and reduce the opportunities for crime and nuisance = £28k per annum.

5. CRIME AND DISORDER IMPLICATIONS

- 5.1 There are crime and disorder issues arising from non effective enforcement of the licensing regime. The objectives under the legislation for licensing and gambling list this as a main objective.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are environmental issues arising from non effective enforcement of the licensing regime e.g. noise, litter, light pollution, general nuisance. The objectives under the legislation for licensing and gambling list this as a main objective. See also paragraph 3.3. above.

7. FINANCIAL IMPLICATIONS

- 7.1 There are associated staffing costs and administration costs associated with enforcement. Currently this is met under existing budgets. Dedicated enforcement staff is estimated at £28k per officer. See also paragraph 2.5 above.

8. EQUALITY AND DIVERSITY IMPLICATIONS

- 8.1 There are no equality and diversity implications arising from this report.

9. RECOMMENDATIONS

- 9.1 To consider the current effectiveness of enforcement actions within the New Forest District Council area; and
- 9.2 To make any recommendations the Committee feels appropriate for the future of enforcement activities within the New Forest District Council area.

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Background Papers:
GP&L Minutes 14.9.07

Licence Types and Numbers

Licenses	Number Issued
Licensing Act 2003	
Premises Licences	539
Club Premises Certificate	66
Personal Licence	1089
Temporary Event Notice	492 (per annum)
Gambling Act 2005	
Premises Licence (Off Track Betting)	16
Licensed Family Entertainment Centre	1
Unlicensed Family Entertainment centre	8
Machine/Club Permits	10
Gaming Machine Notifications	Rising to over 300 during the transition process
Small Society Lotteries	198
Taxi and Private Hire Licensing	
Hackney Carriage Vehicles	99
Private Hire Operator	73
Private Hire Vehicle	209
HC & PH Driver	462
Sex Establishments	
	1
Pleasure Boats	
Boatman	28
	28
Motor Salvage Operator	
Scrap Metal Dealer	1
	1
Charitable Collections	
Street Collection Permits	70
House to House Collection Permits	340

Licensing Enforcement Agencies

Police:

Exchange information, attend Safety Advisory Group meetings, attend Pub Watch meetings and Mediation/public meetings. Would be beneficial if we could make joint visits or plan joint operations.

HCC Trading Standards:

Responsible for underage sales education and test purchasing at retail premises.

Would be beneficial if we could make joint visits.

Recent instances of reported underage sales from convenience stores but not able to conduct test purchase operation because no further budget availability for the remainder of the year.

Hampshire Fire and Rescue:

Exchange information, attend Safety Advisory Group meetings, attend joint visits as necessary.

Maritime and Coastguard Agency:

Exchange information regarding applications and enforcements issues, attend joint visits as necessary.

Only 28 pleasure boat licences have been issued and whilst there will be more licensed by the Maritime and Coastguard Agency it is felt that there are unlicensed pleasure boats plying for hire and an operation to determine the numbers is necessary.

Gambling Commission

Expects enforcement of licences/permits by local authority and joint enforcement where appropriate

General

Premises Licences:

There are an increasing number of premises which are reported to be breaking the conditions attached to their premises licences. Our partner agencies are unable to assist due to budgetary constraints. The majority of these incidents occur during the evening and no regular Licensing Services enforcement facility is available.

Reported Licensing Issues Needing Follow-up Enforcement Action

No	Problem	Actions	Result
Premises			
1	Rumoured to be using the extended hours on licence even though they hadn't first carried out the necessary work to the premises	Discussed with Club Secretary and NFDC EHO.	EHO visited and agreed way forward with the Club. N further action required.
2	Complaints of excessive noise from people and music.	Visited premises and discussed situation. Premises being sold/transferred.	Appropriate applications received. No further action necessary.
3	Existing licensee advised sold premises. No transfer currently received for premises or DPS.	Following telephone calls applications to change were received.	Transfer and DPS change received.
4	Suspect unlicensed entertainment is being promoted although the premises are only licensed for the sale of alcohol.	No action taken	Follow-up required.
5	Re-furbishment and decoration works seen to be carried out. No transfer or DPS application received.	Visited and discussed situation with new owner.	Transfer and DPS change received.
6	Complaints of music and voices in the rear garden. Licence currently restricts the use of the garden	Time restriction on use of garden along with restrictions on noise from the premises.	DPS contacted
7	Complaints of loud music outdoors. Licence not includes outdoor music.	Written to licensee and follow up visit.	Followed up with personal visit. No further action required
8	Complaints of noise late at night and anti-social behaviour.	Visited premises and spoke to DPS regarding the complaints.	Follow-up to be carried out by Hants. Police.
9	Premises licence only covers live and recorded music BUT NOT DANCING.	Need to check and confirm that no dancing or other licensable activity is taking place.	Follow-up required.
10	Complaints of unlicensed sale of alcohol.	Interviewed Owner	Agreed unlicensed sale of alcohol had taken place and agreed to submit appropriate applications.
11	Sale of hot food after 11pm without a licence.	Passed to Hants. Police for follow-up.	Hants. Police following up
12	Evidence of unlicensed Karaoke.	Applicant's solicitor contacted who had been instructed to transfer the licence to a new owner.	Appropriate transfers received

13	Several complaints of unlicensed and noisy entertainment being provided with guests disturbing local residents.	Investigated but eventually discovered that the entertainment did not require to be licensed. Good practice information passed on to group management and the investigation was then passed on to Environmental Health to follow through on the noise element.	No further action necessary at this time.
14	Complaint received of unlicensed late night refreshment.	Investigated and found the licence needed to be transferred into the new owner name.	Appropriate applications received
15	Premises re-opened after structural fire.	Need to check that the existing licence is still suitable for the premises.	Follow-up required.
16	Complaints of loud music and people noise late at night.	Discussed situation with EHO. Monitored by EHO and further advice given to DPS.	No further action at this time but follow-up required in two months.
17	Only licensed for alcohol in the Brusher Mills Restaurant. Currently not licensed for any other licensable activity.	Discussed the situation on several occasions with College admin and solicitor acting.	Follow-up required.
18	Complaints of un-licensed alcohol and hot food and drink	Passed to Hants. Police to undertake a test purchase operation	Successful prosecution
19	Re-furbishment and decoration works seen to be carried out. No transfer or DPS application received.	Need to contact premises and discuss situation.	New DPS on site and application received.
20	Complaints of supplying "free" wine with take-way meals. Currently not licensed for alcohol.	Passed to Hants. Police to undertake a test purchase operation	Operation successful and prosecution proceeding
21	Complaints of selling hot food and drink without the benefit of a licence.	Passed to Hants. Police to undertake a test purchase operation	Operation successful and prosecution proceeding
22	Refused TEN (out of time)	The event had already been heavily advertised and it was strongly suspected that the applicant would continue with the unlicensed event.	Information passed to Hants. Police. No further action.
23	The three current licensees advise transfer of the licence to Fullers although transfer application not received.	Discussed situation with Fullers.	After discussing with Fullers both premises and DPS applications received
24	Complaints of hot food and drink being sold 24 hrs per day.	Investigated illegal sale of hot food and drink	Advice given to caravan owner by

		between 11pm and 5am. Passed to Hants. Police for visit.	Police.
25	Report received that the current DPS is registered at another 5 premises over a wide area.	Details passed to Hampshire Police for investigation.	Investigated by Hants. Police. No further action required.
26	Complaints from local residents of loud music and people noise from the premises late at night.	Information given to local residents.	No further action required.
27	Complaints of loud music and people noise late at night. Complainant wanted to instigate a second licence review	Discussed situation with complainant. Out of hours visit undertaken to determine offence. Held combined mediation talks with DPS and complainants. Agreed list of actions.	No further action at this time. However, follow-up needed in due course.
28	Complaints of noise late at night and anti-social behaviour in the alleyway down the side of the premises.	Visited complainants home and held meeting with local residents. Further visit to speak to the DPS. Organised a public mediation meeting of all the parties and those Responsible Authorities concerned. Action plan by DPS agreed.	Follow-up meeting to be held after two/three months to assess progress.
29	Licensee applied too late for a TEN at a different location. Information received that the applicant intended to continue selling alcohol without the benefit of a licence.	No capability to visit out of hours. Police contacted who agreed to visit on our behalf.	Event found to be ongoing. Further action being considered.
30	Information received that premises were being used for unlicensed music and karaoke entertainment on a regular basis.	Contact made with licensee and subject discussed. Promised to cease unlicensed activities.	Follow-up required.
31	Following up on information received it transpired that the DPS for this premises has not been present on the premises since January 07.	Contacted premises licence holder and insisted that they provide a replacement DPS immediately or close the premises until they were able to provide one. Eventually agreed that the premises could open that night providing the original DPS was present on the premises (he was supposedly coming	Police visited and checked DPS details. New DPS application make. No further action at this time.

		over from Surrey). No ability to follow-up that evening so asked Police if they could check details.	
32	Information received that the name of this premises has been changed from the original. Could also be a change of DPS	Contacted premises	No further action at this time.
33	Complaints of loud music and people noise from the garden late at night.	Discussed situation with EHO. Visits to be undertaken to verify. In the meantime variation application received and, after complaints received, a hearing ensued.	Variation refused and instructions given to enforce licence conditions vigorously
34	Complaint os noise from the pub garden.	Discussed with NFNP Planning Enforcement who are now dealing.	Follow-up action being considered.
35	Information received that the premises licence holder was in administration.	Held urgent discussions with licence holder. Licence transferred to new operating company.	No further action necessary
36	Information received that strong possibility of unlicensed alcohol sales being undertaken as part of an overall package.	Currently being discussed with NFDC Legal Services	Follow-up action being considered
37	Complaints of un-licensed alcohol and hot food and drink being sold.	Currently in discussion with Hants. Police to undertake a test purchase operation	Follow-up required.
38	Complaints that the beer garden is being used later than is licensed.	No action taken as yet.	Action required
39	Reports from nearby residents of loud people and music noise until late at night.	Residents deciding whether or not to ask for the premises licence to be reviewed	Follow-up required.
40	Complaint that customers are being allowed to take their drinks outside of the premises and congregate on a small hill directly opposite the premises causing disturbance to the neighbours	Advice given to complainant regarding situation. If a quiet word with the landlord doesn't resolve the situation then a further complaint will be made.	Follow-up required.
41	Following incorrect submission of applications there may be problems with the DPS at these premises.	Visit to premises required to finalise.	Follow-up required.
42	Received complaint that sustomers were leaving the premises late at night in a very noisy manner and disturbing local residents. Furthermore, some customers were sleeping in their cars overnight in the car park and disturbinfg the local	Spoke top the DPS and explained the problem. He denied any problems with people leaving late at night, sleeping in their cars in the car park or making	Follow-up visit required.

	residents during the early hours of the morning when they left thw car park	a noise. Followed up with a letter to the DPS confirming our conversation.	
43	Complaint about a rock band playing intolerably in the garden until 11.30pm and loud people noise heard until after 12.30am.	No action taken as yet	Action required
44	Attended local Pub Watch meeting. Very well attended.	Spoke to members for 30 mins or so about general admin and housekeeping issues to help keep them from falling foul of the law. Reminded licensees that Annual fees will shortly be due again.	Very well received
45	Numerous resident complaints received of noise from customers eating/drinking on the outside patio.	Several telephone calls and a visit later it was agreed that the licensee would organise a mediation meeting between themselves and the complainants which the Council would attend.	Meeting held. Action Plan agreed by licensee. Further monitoring now required.
46	Several complaints received of loud music and people noise (swearing), eggs and stones being thrown from pub garden.	No action taken as yet	Action required
47	A complaint was received of loud music and people noise from premises. Despite conditions being agreed by licensee to control this.	Rang licensee and explained the problem.	Letter sent to Licensee and Club Committee reminding them of their responsibilities.
48	Attended local Pub Watch meeting. Very well attended.	Spoke to members for 30 mins or so about general admin and housekeeping issues to help keep them from falling foul of the law. Emphasised personal responsibility issues and that Annual fees will be due very soon.	Very well received
49	Noise from people gathering outside both front and rear to smoke whilst drinking.	Police and EHO contacted.	May need follow-up action.
50	Complaint of loud noise from premises. Detailed diary sheets submitted as evidence of the problem.	If confirmed the club are clearly in breach of licence conditions	Follow-up action required. Asked Pollution (Verity) to attend if possible.
51	Complaint of regular outdoor music events being held without a licence.	If confirmed the premises are clearly in breach of licence conditions	Follow-up action required. Asked Pollution (Verity) to attend if possible.

52	Complaints received of underage sales of alcohol.	Contacted Police and HCC Trading Standards.	HCC Trading standards arranging "Education" visit. Follow-up required.
53	Complaints received of underage sales of alcohol.	Contacted Police and HCC Trading Standards.	HCC Trading standards arranging "Education" visit. Follow-up required.
54	Reports of entertainment being provided in an unlicensed marquee.	Visited and discussed the issue. Licensee admitted providing the entertainment but alleged did not know about it being unlicensed. Licence and conditions discussed in detail. Licensee agreed not to provide any further unlicensed entertainment.	No further action necessary unless more complaints received.
55	Excessive noise, stone throwing and bad language from the garden affecting adjoining neighbours	Spoken with EHO's who are investigating.	Waiting for input from EH.
56	Complaints that a beer festival had gone on over licensed hours causing disturbance to local people.	Investigated and found that a TEN was in existence.	No further action required.
57	Complaint of noise from the premises and possible unlicensed sale of alcohol.	Noise was of bottles being thrown away and kegs being changed so passed to EH. The premises is licensed for sale of alcohol. However, the licence holder advised that they closed the restaurant at 12midnight and I therefore advised him that the premises were not licensed for late night refreshment. He agreed to cease immediately and apply to vary the licence in the Spring of 2008.	Write to licensee and confirm details. No further action necessary unless more complaints received.
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