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| REPORT OF: | HEAD OF ENVIRONMENTAL HEALTH SERVICES |
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| TO: | LICENSING COMMITTEE |
| DATE: | 6 MARCH 2008 |

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| AGENDA ITEM NO: | 5 | WARD(S) AFFECTED: | ALL |
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| SUBJECT: | LICENSING ACT 2003: EXERCISE OF DELEGATED FUNCTIONS BY OFFICERS |
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RECOMMENDATIONS:

- 1. That the Committee note the level of activity as detailed at Annex 2.**

SUMMARY

1. On the 8 March 2007, the Licensing committee were advised that the Guidance issued by the Department for Culture, Media and Sport (DCMS) under Section 182 of the Licensing Act 2003 (the Act) stated that 'the Licensing Committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation.'
2. In noting the information provided at that meeting the Committee agreed that it should receive similar update reports at each of its meeting in future (Licensing Committee Minute Number 21 2006/7). This report completes that instruction.

STATUTORY POWERS

1. The Act provides that the functions of the licensing authority are to be carried out by its licensing committee except; matters relating to the making of a statement of licensing policy, or licensing matters that have been referred to another committee by the authority.
2. The licensing committee may delegate their functions to sub-committees or in appropriate cases to officers supporting the licensing authority. The current Scheme of Officer Delegation as it appears in the Licensing Policy is reproduced at Annex 1.

ISSUES

3. The officer delegated functions, as detailed in Annex 1, and the corresponding activity level is indicated in bold at Annex 2.
4. In November 2007 the DCMS released a statistical bulletin: Alcohol, Entertainment and Late Night Refreshment Licensing – England and Wales, April 2006 – March 2007. The report collated some of the most regularly requested information about licensed premises and is informed by data returned from 87% of Licensing Authorities in England and Wales. It does not make comparisons with previous national data due to changes in collection methods and coverage of different statistics to previous reports. This bulletin will form the basis for future collections and therefore the activity levels recorded by this Council in Annex 2 have been collated in similar time periods to allow initial and future comparisons with the national figures.
5. Applications for new premises licences and variations are slightly below the national averages, but higher than officer original estimates. On 1 July 2007 all enclosed or substantially enclosed public places became smoke free. As a result twelve premises submitted variations to include smoking shelters for patrons, or to amend conditions regarding the use of outdoor areas.
6. Included in the new applications for the past 2 years have been 6 major outdoor events for music festivals and a family day. These do not appear as officer delegated functions, but nevertheless have required considerable input from officers in dealing with the complexity of the application, volume of representations and the subsequent appeals.
7. Local applications to vary the designated premises supervisors are also higher than the national percentage. It is not clear why this is the case, but this may be due to the transient nature of the trade and the ease of accessibility to neighbouring locations with similar job opportunities.
8. The DCMS bulletin reported that South East Region had the highest proportion of Temporary event notices (TENS) (19%) in England and Wales. When comparing the number of TENS issued to the total number of premises licences issued, the local figure of 82% compared to the national figure of 57%, supports this finding. The majority of TEN applications are made by schools

and village halls, with occasional notifications from licensed premises seeking to have one off events.

9. The DCMS have just completed a consultation on the introduction of a simplified, low cost process for minor variations to premises licences and club premises certificates. If taken forward, it is proposed that officers will be able to determine any variation that does not impact adversely on the promotion of the licensing objectives, whilst other variations will continue to be dealt with under the current scheme. This proposal will have an impact on the level of activity delegated to officers, and will be the subject of a further report once the details are known.
10. During the last year, officers completed the 3-year Licensing policy review and Council adopted the revised policy on 6 December 2007 (Minute 65). During the consultation, a Resident's Association (RA) commented that the *'definition of vicinity was drawn far too tightly to be of any use to residents.... A better definition is required so that affected residents cannot be prevented from having a voice in licensing applications, purely on a decision made by a Borough Officer as to what the 'vicinity' is.'* The officer response confirmed that the Council have not determined a set distance for vicinity, but consider each case individually based on local circumstances and geographical considerations. In the appeal in which the RA were involved, (The Mint Public House, Banstead), the Magistrates considered and determined the same boundary for vicinity as set previously by officers.
11. It was further confirmed, in the policy review, that in general, officers would give borderline cases the benefit of doubt. This provides an opportunity for the person or body making the representation to amplify and clarify the circumstances at the hearing, and the Sub Committee to consider or reject the representation.
12. The Licensing section has also been contacted on a number of occasions this year regarding the public notification procedure for applications. Some residents consider the statutory procedure, which requires notices on the premises and advertisements in a local newspaper, to be inadequate. Requests have been made for officers to send notifications to nearby residents as is undertaken by planning officers. It has been explained that the notification process is quite specific, and to go beyond this could risk challenge, particularly with regard to soliciting representations. A further concern is that any notification could be perceived as prescribing vicinity, and the applicant could argue that anyone outside of the area covered by the notification cannot be an interested party.
13. The revised policy has also sought to clarify and emphasise the difference between the planning and licensing regimes. The following extract appears at paragraph 11.3 of the revised policy;
'Planning applications are determined in accordance with different parameters, albeit that some overlap with the licensing regime. Planning can refer to the amenity of a locality and may need to consider the vibrancy of local businesses, local employment or housing needs, suitability of sites for use due to contaminated land etc. Many of these issues are unique to planning and as such licence applications should not be a re-run of the planning application and should not cut across decisions taken by the

Local Planning Authority or permissions granted on appeal. Conversely, the Council will not seek to use its planning powers to duplicate or predetermine issues more relevant to licensing.'

LEGAL IMPLICATIONS

14. The DCMS proposal to implement a new process for minor variations (as outlined in paragraph 11 above) will require an amendment to the Officer Scheme of Delegations as identified in Part 3 of the Council's Constitution.

FINANCIAL IMPLICATIONS

15. Many of the delegated functions are administrative in nature and have been delegated in the interest of speed, efficiency and cost- effectiveness.

Background Papers: None

Annexes:

Annex 1 Scheme of Officer Delegations.

Annex 2 Table of activity of delegated functions.