

TRAINING FOR LICENSING PANEL MEMBERS

Kiran Khanna
Brian Whittall

Introduction

- Licensing functions
 - Sale by retail of alcohol
 - Supply of alcohol by club
 - Provision of regulated entertainment
 - Provision of late night refreshment
 - Licensing objectives
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- Other issues such as moral judgements or business need whether from the public, responsible bodies or Councillors legally cannot be taken into consideration

Scheme of Delegation

- Licensing Panel
 - All applications where a relevant representation has been made and not withdrawn.
 - Must hold a hearing, unless all parties agree to dispense with this.
 - May grant the licence, grant with additional conditions or refuse the licence. Any conditions imposed must be necessary to promote the licensing objectives and must relate to the representations made or be consistent with the operating schedule.

Scheme of Delegation

- Officers
 - Applications where no relevant representation is made.
 - In these cases, the licence will be granted, subject to mandatory conditions and those conditions which are consistent with the operating schedule.
 - Decision as to whether a representation is frivolous or vexatious – if in doubt, the Officer will forward to the Panel for them to determine at the hearing.

Role of Members at hearings

- Personal & Prejudicial Interests
- Common Law Bias
- Members acting in a representative capacity
- Members conduct at hearings

Member interest

- Must make your own decision on what if any interest you may have in any given application
- If in doubt Members should seek legal advice
- Members must comply with the obligations set out in the Members' Code of Conduct

Personal interest

- Part 2 – pages 5A-5 Members code of conduct sets out where a personal interest can arise
- Where any member has a personal interest in any business of the Council, must disclose the existence and nature of the interest at the commencement of the hearing

Prejudicial interest

- Where a member has a personal interest, you also have prejudicial interest:
- Where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant to prejudice the Members' judgment in the public interest

Prejudicial interest

- Any Member that makes a representation will have a prejudicial interest so should declare the interest
- You can attend and speak at a hearing – with same rights as general public only
- Can appoint a representative
- Same rights, therefore you must not improperly influence any other member or officer in a licensing matter

Consultation

- All Members are informed of any licensing application affecting their ward
- Ward Councillors have legitimate right to inform residents of applications
- Can assist with process of making a representation or application
- But must NOT attempt to influence outcome

Common Law Bias

- Occurs where there is pre-determination without hearing the full facts
- Members who do not sit on a panel should not lobby other Members who do
- Members should not pressurise Licensing Officers to make any particular decision or recommendation

Licensing Panel

- Quasi-judicial body – rules of natural justice must be followed
- Most hearings will be in public
- Hearsay evidence is admissible
- Must consider application on its own merits
- Decision must be pass the Wednesbury reasonableness test
- Civil standard of proof
- Take into account all relevant information

Licensing Panel

- Must only make a decision in accordance with the legislation
- Must take into account the national guidance and the Council's own Statement of Licensing Policy
- Must give full reasons for its decision and record the information it took into account

Licensing Panel Procedure

- Set procedure for Panel hearings
- This ensures fair hearing
- Chairman of Panel responsible for ensuring procedure is followed.
- Panel members can intervene to ensure parties are treated fairly and to expedite matters.

Human Rights

- Article 6 – the right to a fair hearing
- Article 8 – respect for private and family life
- Article 1, First Protocol – peaceful enjoyment of possessions

Human Rights

- How to decide whether an act is compatible
- Is there a Convention right at stake?
- Is there an interference with that right?
- Does the interference have a legitimate aim?
- Is the interference required because of a pressing social need?
- Is the interference proportionate to its aim?
- Is the interference acceptable in a democratic society?

Appeals

- Applicant and objectors have a right of appeal to the Magistrates Court
- At the appeal hearing, the Council will call witnesses
- Therefore it is important that the original decision is recorded along with the information taken into account by the panel and the reasons for the decision it took
- On appeal, the court may dismiss the appeal, substitute an alternative decision or remit the case back to the licensing authority

Licensing Act 2003 and Statutory Guidance

- Can only act in accordance with statutory power
- Must take into account statutory guidance, but may depart from it in suitable circumstances
- Relevant parts of the guidance will be set out in Licensing Officer's report

Statement of Licensing Policy

- Must take Policy into account
- May depart from Policy in appropriate circumstances
- Policy will be kept under review and comments on Policy should be referred to Licensing Committee

Temporary Licences

- Temporary Event Notice or TEN
- These are small-scale, temporary events which authorise licensable activities without the need for a premises licence, club premises certificate or designated premises supervisor
- There are certain limitations: no more than 12 Notices per calendar year. No more than 499 persons, no longer than 96 consecutive hours
- TEN'S take precedent over a premises licence/club premises certificate
- A panel cannot limit TEN'S or apply conditions to them
- MUST give a minimum of 10 working days notice

New Mandatory Conditions

- In principle the new mandatory conditions are sensible (if not cumbersome) and the principles are straightforward
- It is doubtful that they are enforceable or will result in any appreciable changes
- The conditions are loosely drafted and prosecutions for their breach are unlikely
- For example.....

"Irresponsible drinks promotions".

- The "responsible person" has to take "all reasonable steps" to ensure that staff do not carry out, arrange or participate in the irresponsible promotions as defined.
- This doesn't prevent 'irresponsible' games in or of itself, it just bans the staff from doing it, or arranging it.
- So customers can still drink a yard of ale, do a "boat race" etc. but the "management" cannot be involved in organising it.

Case Law

- **4 Wins Leisure Ltd v Licensing Committee for Blackpool Council**
Whether or not an individual resides or carries on a business "in the vicinity" of the licensed premises is ultimately a matter of fact to be decided not by the courts but by the licensing authority with the benefit of its own local knowledge
- **Thwaites Plc v Wirral Borough Magistrates Court**
The magistrates' decision was unlawful in circumstances where they proceeded without proper evidence and gave their own views excessive weight
- **Lumina Leisure Ltd v Wakefield District Council**
Evidence of crime and disorder away from the proposed premises can be taken into account, even where those issues arise in areas beyond the direct control of the licensee
- **Birch Hse Business Centre Ltd v Denbighshire C C**
Court awarded £24k costs against Council as the police had misled the Committee in their evidence. The Council also had to bear responsibility for not scrutinising what they were being shown with more care. There was a responsibility on the Council to call for original and reliable evidence

Case Law continued

- **Bassetlaw v Worksoop**
Strictly speaking, the provisions of the 2003 Act cannot be used for punishment. However, deterrence is an appropriate objective, and one contemplated by the Act in relation to the sale of alcohol to underage persons
- **Crawley Borough Council v Attenborough**
It is important that the terms of a premises licence and any conditions attached to it are clear and unambiguous. It must be apparent from reading the licence what the conditions mean
- **St Albans DC v Patel**
Residents who knew about potential disturbance before they moved in had few grounds for challenging the nuisance as the pubman had made his "best endeavours" to reduce that nuisance
- **Murco Petroleum Limited v Bristol City Council**
It is open to a licensing authority to compel applicants for licences under the Licensing Act 2003 to answer its questions concerning the application, and defer consideration of the application until answers have been received. The Committee decided to exercise this power in this case. The power is not limited to the premises referred to in section 176 of the Act in relation to being used primarily as a garage