

LICENSING COMMITTEE

25 APRIL 2007

(7.15pm – 9.05pm)

PRESENT: Councillors John Bowcott (in the Chair), Steve Austin, Jeremy Bruce, Richard Chellew, Gilli Lewis-Lavender, Barbara Mansfield, David Simpson, Ron Wilson, Philip Jones, Judy Saunders, Gregory Udeh and Martin Whelton.

ALSO PRESENT: Steve Clark (Head of Planning and Public Protection), Richard Nash (Licensing Manager), Mike Barrett (Environmental Health Manager), Solomon Agutu (Principal Lawyer) and Lynne Hartley (Democratic Services Officer).

Apologies for absence were received from Councillor Krysia Williams.

1 DECLARATIONS OF INTEREST (Agenda Item 1)

No declarations were made.

2 MINUTES (Agenda Item 3)

RESOLVED: That the minutes of the meeting held on 24 January 2007 are agreed as a correct record.

In agreeing the minutes it was noted that progress on the guidance for Members dealing with licensing issues had been deferred pending the publication of the revised Code of Conduct for Members.

3 REVIEW OF MERTON'S STATEMENT OF LICENSING POLICY (Agenda Item 4)

Steve Clark introduced the report, stating that the reduction in crime figures in the Cumulative Impact Zones was believed to be due to the success of the policies and their retention was therefore recommended.

The Committee considered the first review of the Policy Statement, Appendix A to the report, and agreed the following changes –

paragraph 3.8 – add Merton and Sutton Primary Care Trust

paragraph 4 – this section to be amended to include reference to the Community Plan and the Council's Business Plan

paragraph 4.2.1 – delete "On 15 March 2004" and replace with "In 2004"

paragraph 4.2.7 – delete the second and third paragraphs as unnecessary, the GLA Transport Strategy having been referred to in the first paragraph

paragraph 4.2.8 – opening sentence to be amended to reflect the position after July 2007 and the following added "The prohibition of smoking in enclosed licensed

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premises will not necessarily be used by the Licensing Committee as a reason for the lifting of any relevant restrictions or conditions”.

paragraph 7 - the Committee considered and agreed a draft prepared by the Chairman, as follows –

“7. Cumulative Impact

- 7.1. The Council will not take ‘need’ into account when considering an application for a licence, as this is a matter for the market.
- 7.2. However, the Council recognises that the cumulative impact of the number, type and density of licensed premises in a given area, may lead to serious problems of nuisance and disorder outside and within the vicinity of these premises. In such circumstances the impact of those premises when taken as a whole can be far greater than that arising from individual premises and it may not be possible to distinguish a specific premises as being the sole cause, or even a major contributing factor to a particular problem. It is acknowledged that it is the “Cumulative Impact” of all of the premises that causes problems for a wider area.
- 7.3. It may become apparent to the Council by way of representations made to it by responsible authorities and/or interested parties that an area has or is becoming saturated with premises, making it a focal point for many/or large groups of people to gather and circulate away from licensed premises, creating exceptional problems of disorder and nuisance over and above the impact from the individual premises.
- 7.4. In these circumstances the Council may consider that the attachment of conditions is unlikely to address these problems and it may then consider the adoption of a special policy of refusing new premises licences or club premises certificates because the area is saturated with licensed premises and the granting of any more would undermine one of the licensing objectives.
- 7.5. When consulting upon its original Licensing Policy Statement the Council took the following steps in considering whether to adopt a special policy:
 - Identification of concern about crime and disorder or public nuisance
 - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises and if so identifying the area from which the problems are arising

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and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;

- Consultation with those specified by section 5(3) of the 2003 Act as part of the general consultation required in respect of the whole statement of licensing policy;
- Subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of the Guidance in the statement of licensing policy;
- Publication of the special policy as part of the statement of licensing policy as required by the Act.

The Council still considers these steps to be appropriate for reviewing existing Special Policy areas and for contemplating new ones.

- 7.6. In 2005, the Council considered that the evidence available justified two specific areas in Merton where a special policy was appropriate and necessary. Those areas were Wimbledon Town Centre and Wimbledon Village. Having regard to the evidence currently available the Council considers that it is appropriate to continue the special policies in these two areas.

Wimbledon Town Centre

There has been a significant increase in the number and scale of licensed premises in Wimbledon Town Centre over recent years. This has resulted in a significant number of alcohol related crimes and of complaints being made to the Council concerning nuisance. The Police have provided evidence regarding alcohol related crime and disorder and the connection between the offences and licensed premises. Anti social behaviour has led to the Metropolitan Police designating part of the town centre as a dispersal area the Anti Social Behaviour Act 2003. Residents and Residents Associations in Wimbledon Town Centre have made representations that the Town Centre is at saturation point. The Police support the designation of Wimbledon Town Centre as a cumulative impact zone.

Wimbledon Village

Wimbledon Village has not experienced the same development pressures as Wimbledon Town Centre. However, the usage and opening hours of existing

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public houses and conversion of shops to restaurants has impacted on the locality. There are fewer crimes recorded in the Village as compared to the Town Centre. However, it is clear from the significant number of consultation responses received from residents and Residents Associations that many people experience regular disturbance and nuisance as a result of the proximity of a large number of licensed premises. The Police again support the designation of Wimbledon Village as a cumulative impact zone. By designating these areas as cumulative impact zones, the Council is promoting the licensing objectives and complying with its statutory duty under Section 17 of the Crime and Disorder Act 1998 to prevent crime and disorder in its area.

7.7. The areas subject to the special policy are as shown in the plans attached to this policy. The Wimbledon Town Centre cumulative impact zone applies to the following roads:

- Wimbledon Hill Road from the junction with Mansel Road and Woodside Road to the Broadway including Wimbledon Bridge;
- The Broadway to its junction with Merton Road;
- Kings Road from its junction with The Broadway to South Park Road;
- Stanley Road from its junction with The Broadway to South Park Road
- Merton Road from its junction with The Broadway to its junction with Griffiths Road and Quicks Road;
- Hartfield Road from its junction with Wimbledon Bridge to Sir Cyril Black Way
- Sir Cyril Black Way
- Gladstone Road from its junction with The Broadway to Sir Cyril Black Way;
- Worple Road from Wimbledon Hill Road to its junction with Raymond Road and Francis Grove; and
- Centre Court Shopping Precinct.

The Wimbledon Village cumulative impact zone applies to the following

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roads:

- High Street (including Hampton House), from its junction with Marryat Road to Wimbledon Hill Road.
- Church Road from its junction with the High Street to its junction with Belvedere Square; and
- The Ridgway from its junction with the High Street to its junction with Sunnyside including 120 Wimbledon Hill Road (120 Wimbledon Hill Road has frontage on the Ridgway).

7.8. The Council considers that it is appropriate and necessary to continue a special policy within the designated cumulative impact zones. Where relevant representations have been received the policy will affect applications for new premises' licences or club premises' certificates or variations of existing licences or certificates. It will be for the applicants to show in their operating schedules that their proposals will not add to the cumulative impact already being experienced. Responsible authorities and/or interested parties will need to see the steps proposed by an applicant in order to decide whether to write representations. The presumption will be that where proposed operations are material to the policy they will normally be refused, however, the process allows applicants to rebut the presumption in their applications, and to make the case before a licensing sub-committee. Where an application is material to the special policy the burden of proof lies on the applicant to rebut the presumption.

7.9. The presumption of refusal does not, however, relieve responsible authorities or interested parties of the need to make a relevant representation, as the special policy can only lawfully be invoked by a licensing sub-committee, which has been convened in response to valid representations that refer to that special policy. If no representation were received it would remain the case that any application must be granted in terms that are consistent with the operating schedule submitted.

Responsible authorities, such as the Police, or interested parties, can make a written representation maintaining that it is necessary to refuse the application in order to meet the licensing objectives. In doing so they should refer to the special policy and any information, which had been before the licensing authority when it developed its Statement of Licensing Policy.

Responsible authorities, where they have promoted or provided the evidence to support a special policy, should consider carefully any implications that

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maybe drawn from their not making a representation

- 7.10. The special policy is not absolute. The circumstances of each application will be considered properly and it is possible for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. As a consequence of the presumption that underpins the special policy such cases are likely to be exceptional. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the Licensing Authority will consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. Notwithstanding the significance of the special policy the Licensing sub committee will announce its reasons for any decision to refuse an application.
- 7.11. The special policy cannot be used as a ground for revoking an existing licence or certificate when relevant representations are received about problems with those premises. The special policy can also not be used to justify rejecting applications to vary an existing licence or a certificate except where refusal of those modifications are directly relevant to the policy and are strictly necessary for the promotion of the licensing objectives, which is to say, that the modifications matter to the policy.
- 7.12. The special policy relating to cumulative impact does not include provisions for a terminal hour in a particular area. The Council acknowledges that it would be wrong not to apply the special policy to applications that include provisions to open no later than, for example, midnight, but to apply the policy to any other premises that propose opening later. The effect would be to impose a fixed closing time akin to that under the “permitted hours” provisions of the Licensing Act 1964. The Council recognises that terminal hours were abolished by statute to avoid the serious problems that arise when customers exit licensed premises simultaneously. The Council does not intend to attempt to fix a terminal hour in any area so as directly to undermine a key purpose of the 2003 Act.
- 7.13. This special policy does not impose quotas – based on either the number of premises or the capacity of those premises – that restrict the consideration of any application on its individual merits or which to seek to impose limitations on trading hours in particular areas. Quotas that indirectly have the effect of pre-determining the outcome of any application will not be used because they have no regard to the individual characteristics of the premises concerned.

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Public houses, night clubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting styles and characteristics. Proper regard will be given to those differences and the differing impact they will have on the promotion of the licensing objectives.

- 7.14. Notwithstanding the special policy the Council will continue to work with all appropriate partners to help meet the licensing objectives through local initiatives and good practice, including the provision of CCTV surveillance, police enforcement of general law, ongoing measures to create a safe and clean environment, and working in partnership with licensees.
- 7.15. This special policy will be reviewed regularly to assess whether it is needed any longer or whether it needs expanding.”

paragraph 12.1 – wording to be improved to show the functions will be separated in accordance with statutory requirements

paragraph 12.4 – “where appropriate” to be inserted after “reports” in the first sentence and deleted from the end of the second bullet point

paragraph 13.6 – insert “including external areas” after “itself” in the first bullet point

- add “and representations relating to public nuisance” to the end of the sentence relating to shops, stores and supermarkets.

The Committee thanked the Chairman and officers for their work in drafting paragraph 7.

It was noted from Steve Clark that guidance on the revised policy would be available on the website.

In respect of paragraph 4 Solomon Agutu advised that the Statement should recognise Council policies and that it was for the sub committee to decide in each case if the licensing policy should take precedence.

RESOLVED: That (1) officers incorporate the changes shown above into the Draft Licensing Policy Statement, and

(2) the amended document to be reviewed by the Chairman and Vice-Chair prior to its submission to Cabinet on 25 June 2007.