

Barry Davies LL.B (Hons)
Solicitor/Cyfreithiwr
County Legal and Democratic Services
Officer
Swyddog Gwasanaethau Cyfreithiol a
Democratiaid y Sir



TO: Councillor: Bernie Attridge
(Chairman)

Councillors: Alex Aldridge OBE, Robin Baker, Emlyn
Cooke, Alan Diskin, Brian Dunn, Jim Falshaw, Grenville
James, Eric Owen, Mike Reece, Gareth Roberts, Tony
Sharps

Your Ref /
Eich Cyf
Our Ref / *Ein Cyf* NG
Date / *Dyddiad* 27/10/2008
Ask for / *Gofynner am* Mike Thomas
Direct Dial / *Rhif Union* 01352 702324
Fax / *Ffacs*

Dear Sir / Madam,

A meeting of the **LICENSING COMMITTEE** will be held in the **DELYN COMMITTEE ROOM, COUNTY HALL, MOLD** on **MONDAY, 03 NOVEMBER 2008** at **09:30** to consider the following items.

Yours faithfully

Assistant Director (Democratic Services)

AGENDA

1. **APOLOGIES**
2. **DECLARATIONS OF INTEREST(INCLUDING WHIPPING DECLARATIONS)**
3. **MINUTES**
To confirm as a correct record the minutes of the meeting held on 30/06/2008 (copy enclosed).
4. **LICENSING MATTERS**
Report of Director of Environment enclosed

County Hall, Mold. CH7 6NA
Tel. 01352 702400 DX 708591 Mold 4
www.flintshire.gov.uk
Neuadd y Sir, Yr Wyddgrug. CH7 6NR
Ffôn 01352 702400 DX 708591 Mold 4
www.siryfflint.gov.uk

The Council welcomes correspondence in Welsh or English
Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

LICENSING COMMITTEE
30th June 2008

Minutes of the meeting of the Licensing Committee of Flintshire County Council held at County Hall, Mold on Monday, 30th June 2008.

PRESENT:

Councillor J.B. Attridge (Chairman),
Councillors S.R. Baker, E. Cook, A.G. Diskin, B. Dunn, J. Forshaw, T.G. James, M.A. Reece, H.G. Roberts and L.A. Sharps.

SUBSTITUTE

Councillor P.G. Heesom for E. Owen.

IN ATTENDANCE

Heath, Safety and Licensing Manager and Democratic Services Manager.

1. DECLARATIONS OF INTEREST

None were received.

2. MINUTES

RESOLVED

That the minutes of meeting of the Committee held on 12th November 2007 be approved as a correct record.

3. INTRODUCTION

The Chairman indicated that this was the first meeting of the Licensing Committee since the County Council elections in May and asked those present to introduce themselves.

4. REPORT OF ACTING DIRECTOR OF ENVIRONMENT AND REGENERATION

The Committee considered the previously circulated report of the Acting Director of Environment and Regeneration which was presented by the Health, Safety and Licensing Manager. The purpose of the report was to update members on progress relating to licensing.

The Chairman had suggested that the meeting be called to allow members to be informed of the current situation with regard to the licensing function.

In presenting the report, the Health, Safety and Licensing Manager identified that the Licensing Committee was responsible for two distinct areas, the Licensing Act 2003 and the Gambling Act 2005. He explained the significance of these. To give an example of the extent of the Licensing function attached as Appendix A of the report was a list of the numbers of Licences/Permit issued. The report also detailed the current staffing levels within the section dealing with the licensing function and he introduced Gemma Brighton, who attended the meeting as an observer, who had recently been appointed as a Senior Licensing Officer.

The Committee was also informed of the working practices of the officers and the relationship that had been built up with the external partners, in particular the North Wales Police. Reference was made to the active liaison arrangements with the Public Protection Section, particularly in relation to pollution control, which dealt with noise issues arising from licensed premises. The role of the Trading Standards department in relation to the licensing function was also explained. As far as current issues were concerned, the ban on smoking in enclosed public places meant that noise and disturbance from customers congregating outside pubs had become a source of complaint and it was suggested that these were likely to increase should we have a warm summer. The Health, Safety and Licensing Manager also referred to issues to gambling licensing and the successful joint operation to seize illegal slot machines in take away food premises across a number of North Wales Authorities, in conjunction with the Gambling Commissioners. He explained the current status of the gambling machines, and advised that as from September 2009 it would be illegal for slot machines to be present in places such a taxi offices and take aways.

The Committee was informed that meetings of the Licensing Sub-Committee were now fairly infrequent because the trade had settled down following the major upheaval of the Act coming into force during 2005 when every premises had to apply for the new licence. He explained that Sub-Committees meetings now only arose if a new premises was setting up or a premises wished to vary their hours or activities and objections were tabled either by residents living in the vicinity or the Responsible Authorities.

He explained that one area that was likely to develop was a Sub-Committee Hearing following application to review a premises' licence. The Committee was informed that this was the

main method by which residents or responsible Authorities could take action if they were concerned by the impact of an existing licensed premises. It was used successfully by the police in 2007 to deal with the unruly behaviour by patrons of the public house and further new applications may be forthcoming in the future.

The leader of the controlling group took the opportunity to welcome the Chairman and wish him well in his new role. In doing so he also referred to the excellent track record of the Licensing Committee which had been ably led by its former Chairman, Councillor Tony Sharps. The Chairman thanked the Member for his comments and also wished to record his thanks to Councillor Sharps for the excellent manner in which he had undertaken his duties and acknowledged that he was well supported by excellent licensing staff. The Chairman reported that he had received excellent reports from throughout the county upon the excellence of the Licensing Service within Flintshire. In concluding he thanked the Members for their attendance and reiterated his view that it was important for members to get together as a Licensing Committee to receive the report presented at this meeting. He reminded members that a training day had been arranged for 8th July 2008 which would cover all aspects of the licensing function.

RESOLVED

That the Report be noted.

DURATION OF THE MEETING

The meeting commenced at 9.30 am and ended at 9.45 am.

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 4

REPORT TO: **LICENSING COMMITTEE**

DATE : **03 NOVEMBER 2008**

REPORT BY: **DIRECTOR OF ENVIRONMENT**

SUBJECT : **LICENSING MATTERS**

1.00 PURPOSE OF REPORT

1.01 To request that Members endorse a Licensing Enforcement Policy and consider extending the remit of the Licensing Committee

2.00 BACKGROUND

2.01 As part of the improvement agenda it is necessary to have an up to date Licensing Enforcement Policy that has been approved by the relevant Member forums.

2.02 Currently the Licensing Committee is responsible for the Licensing Act 2003 and the Gambling Act 2005. There are a number of other areas of Licensing that could come under the jurisdiction of the Licensing Committee.

3.00 CONSIDERATIONS

3.01 The Executive approved the Enforcement Policy of the Licensing Section, Public Protection on 7th October 2008.

3.02 At a meeting of the Constitution Committee on 15th October 2008 the principle of extending the remit of the Licensing Committee to cover additional areas was agreed.

3.03 The most significant area not included at present is the Private Hire/Hackney Carriage licensing function. This involves the licensing of taxi operators, drivers and vehicles.

3.04 At present the Head of Health Safety & Licensing determines all applications for licences in this field under delegated powers and follows well established policies and procedures.

3.05 There are some areas which can cause difficulty, for example, the 'fit and proper person' test. This concept is contained within the legislation and each operator and driver has to satisfy the test prior to being granted a licence.

Judgements are made with reference, in particular, to Enhanced Criminal Record Bureau checks and Police and DVLA information.

- 3.06 In the event of refusal under delegated powers the applicant is currently offered an appeal hearing before a Flintshire County Council Appeals Committee (as a precursor to their statutory right of appeal in the Magistrates' Court).
- 3.07 There is a precedent in the Licensing Act 2003 which enables Officers to deal with all non-contentious applications by the relevant administrative procedures, but requires a Licensing Sub-committee to deal with any other matters.
- 3.08 It is felt that if the Licensing Committee had Private Hire/Hackney Carriage Licensing within its remit then it could be the forum for dealing with any contentious applications and would also serve as a useful reference point for discussing/developing policy in this field.
- 3.09 There are also other areas of licensing that could come under the same remit eg. commercial animal premises (ie. pet shops, riding schools, animal boarding establishments, etc.); motor salvage operators; scrap metal dealers; sex establishments. These do not generally give rise to contentious issues. (Apart from sex establishment licensing, though applications are very infrequent)

4.00 RECOMMENDATIONS

- 4.01 That Members approve the Licensing Enforcement Policy of the Licensing Section, Public Protection.
- 4.02 That Members approve the extension of the remit of the Licensing Committee to cover Private Hire/Hackney Carriage Licensing and other areas of licensing activity that they consider appropriate.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

9.01 None

10.00 CONSULTATION REQUIRED

10.01 Not Applicable

11.00 CONSULTATION UNDERTAKEN

11.01 Not Applicable

12.00 APPENDICES

12.01 Attached

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS**

Relevant Licensing Legislation
Licensing Enforcement Policy
Statement of Licensing Policy

Contact Officer: Michael Lovatt
Telephone: 01352 703393
E-Mail: michael_lovatt@flintshire.gov.uk

Flintshire County Council

Licensing Enforcement Policy

Introduction

Flintshire County Council is committed to protecting its citizens and visitors to the area through the implementation of the statutory licensing systems. The Licensing Section of the Public Protection Division aims to enforce the requirements of licensing law by carrying out its regulatory functions, including the implementation of enforcement actions, in a consistent and transparent manner targeted at areas of higher risk and which are proportionate and flexible enough to allow and encourage economic progress.

The service will adopt a positive and pro-active approach towards ensuring compliance with the requirements of licensing legislation by helping and encouraging people to meet the requirements and by responding proportionately to breaches. Many licensed activities take place outside normal office hours and the service will monitor activity at these times while the operation is taking place.

In carrying out its statutory functions the service consults and liaises widely with internal and external agencies including the Police, Fire and Rescue Service, Trade Organisations, local residents associations, LACORS (Local Authority Co-ordinators of Regulatory Services), Gambling Commission, the SIA (Security Industry Authority), central government and other local authorities.

This statement sets out the current approach to enforcement by Flintshire County Council. The approach is based upon the principles of good enforcement, as detailed by the Regulators Compliance Code. Regard is also taken to the Section's Service Plan and the Department of Culture Media and Sport Section 182 guidance, Guidance issued by the Gambling Commission under the Gambling Act 2005 and the Authorities Statement of Licensing Policies and the principles set out in the Macrory Review.

The enforcement policy is designed to ensure that the licensing service carries out its enforcement procedures in an open and transparent way that applies equally to all regardless of race, gender, disability, age sexual orientation, language, religious belief and non belief. We will review and monitor our services to make sure that they do not discriminate or impose unnecessary burdens and to identify where improvements can be made.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspections and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code and the principles of the Local Better Regulation Office.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Areas of Responsibility

Many pieces of legislation require the implementation of systems of licensing and the service has responsibilities to determine and enforce many licensing regimes. The licensing authority has the responsibility for determining applications for many licences, permits and registrations.

In some areas there is potential for a shared enforcement role with agencies such as North Wales Police, North Wales Fire & Rescue Service, Vehicle Inspectorate and other council departments. Wherever such issues arise the licensing service has put in place liaison arrangements to ensure the law is administered effectively and efficiently and that joint enforcement action complies with the principles outlined in this policy.

Information Requirements

Where the licensing authority is not required to use mandatory forms it will ensure that only relevant and valid information is required from those involved in a licensable activity. Information will only be required which assists in achieving the licensing objectives and enable the licensing authority to carry out an effective risk assessment. Where possible the authority will give explicit consideration ensuring the information is relevant according to the risk and nature of the licensable activity and the frequency and method of collection. Where possible and it is cost effective to do we will share data with other regulators to minimise the need for data to be supplied to multiple bodies.

Compliance and Enforcement Actions

We will take care to help individuals and organisations comply with their legal obligations without unnecessary expense, while taking firm enforcement action, including prosecution and licence revocation where appropriate against those who flout the law or act irresponsibly. Included in the term 'enforcement' are advisory visits, routine inspections and assisting with compliance as well as formal enforcement action. Powers available to officers include :

- Verbal advice;
- Visits and routine inspections;
- Warning letters;
- Enforcement notices;
- Suspension of licence;
- Instigation of prosecution or caution where a criminal offence has been committed;
- Recommendation of revocation, variation or refusal of a licence.

The sanctions and penalties imposed by the licensing authority will :

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender in the circumstances of the particular licensing function, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to restore the harm caused by non compliance with licensing legislation; and
- Aim to deter future non-compliance.

Enforcing the Law

The Licensing Service believes in fair and proportionate regulation based on likely risks while minimising the economic burden on those who must comply with the statutory requirements, and its enforcement activities follow these essential principles :

- *Openness* about how we operate and what the regulated may expect;
- *Consistency* of approach;
- *Risk Assessed Targeting* of enforcement action;
- *Proportionality* in applying the law and securing compliance;
- *Accountability* of our service and actions.

Openness means helping individuals and businesses to understand what we expect of them and what they should expect from us and working with them to minimise the burden of regulation.

The licensing authority will wherever possible provide information and issue advice and guidance on all aspects of the licensing process to ensure that information to assist licence holders to understand the process and meet the requirements is freely available in a range of formats. It will make public the principles it adopts in considering the full range of licensing matters. It will endeavour to make clear why an officer intends to, or has taken enforcement action. This means distinguishing between statutory requirements and good practice. Individuals and organisations need to know what to expect from enforcing authorities and their procedures with regard to regulation. We will ensure that, wherever possible :

- where action is required, it is clearly explained (in writing, wherever possible) why the action is necessary together with a suitable timescale; distinction being made between good practice and what is legally required;
- general issues are discussed on what is required by law before enforcement action is taken, unless urgent action is required to protect service users or prevent evidence being destroyed;

- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Individuals and organisations have the right to expect consistency in the advice given, use of enforcement powers, decisions to prosecute and the use of disciplinary procedures. Officers need to take into account many variables including the scale of impact on public safety, the risk to the licensing objectives, the effect of any non-compliance on others, the attitude and competency of the offender and history of previous incidents. Decisions on enforcement action are a matter of professional judgement and the officer must exercise both consistency and discretion, including effective arrangements for liaison with other enforcement authorities. Where any doubt arises, discussions will be held with senior officers to agree the necessary course of action and to ensure a consistent approach. In addition enforcement activities will be undertaken in accordance with the Council's Equal Opportunities Policy.

Risk assessed targeting means making sure that, whilst all requests for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to the licensing objectives.

A regular reviewed risk assessment methodology will be established and published for licensing functions in consultation with partners and stakeholders. We will take into account the hazards associated with each activity requiring a licence and the nature and extent of the risk involved to the health and safety of the public, likelihood of nuisance, crime and disorder and the protection of the vulnerable. The licensing service will prioritise enforcement activity according to the risks posed by the type and scale of the operation in accordance with the Licensing Objectives.

Proportionality means relating enforcement action to the risks posed. Any action taken by officers to achieve compliance will be proportionate to the seriousness of any breach, whilst upholding current legislation.

Some incidents of breaches of regulatory requirements may put the safety of service users at serious risk. The enforcement action taken will be proportionate to the risks posed and the seriousness of any breach of the law or licensing requirement. Consideration will also be paid to the Code for Crown Prosecutors when considering the instigation of legal proceedings, and advice will be taken from the Council's Legal Officer.

Accountability - Should there be elements of dissatisfaction with the level of service or inspection carried out, we would welcome constructive criticism about what could be improved.

Licensing staff are expected to be courteous and effective in carrying out their duties and we will respond to complaints about their behaviour and activities. Our complaints procedure is well publicised making it easily accessible to businesses, the public, employees and consumer groups. All complaints are viewed as learning

opportunities and are not used as a reason to penalise any of the parties involved, unless there has been evidence of misconduct. Flintshire's compliments, comments and complaints procedures are detailed at www.flintshire.gov.uk.

Taking Enforcement Action

The Licensing Service seeks to secure compliance with the law in a variety of ways. Most of the dealings we have with individuals and businesses are informal, providing advice and assistance over the telephone, during visits and in writing. However, where informal methods have been unsuccessful, or a serious breach of a licensing condition or regulation is likely to occur which may endanger the safety of the public, formal enforcement mechanisms will be taken to ensure compliance with the law.

Such action may involve :

- providing written requirements with reasons;
- the service of Statutory Notices on licence holders;
- issue of informal warning advising of the consequences of future non-compliance;
- requiring reports from professional experts;
- imposition of penalty points;
- legal proceedings in the courts;
- suspension of a licence;
- refusal, revocation or variation of a licence.

Legal or disciplinary proceedings may be instigated against individuals or organisations where a breach of licensing legislation has occurred and is an important part of the enforcement process. It aims to punish those who flout the law, to serve as a deterrent and to set an example to others that breach of legislation is punishable. In severe circumstances, prosecution without prior warning and licence revocation will be pursued.

A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, an alleged breach of criminal law does not necessarily result in action. There must be sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of conviction. Evidence must be useful and reliable. If the case does pass the evidential test, the second stage is whether the action is needed in the public interest. These factors will usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may suggest that another course of action may be more appropriate, such as issuing a simple caution rather than pursuing a prosecution or revoking a licence. Generally, however, the more serious the offence, the more likely it is that a prosecution or disciplinary action will be needed in the public interest. Each case is unique and is considered on its own merits.

With particular regard to the Licensing Act 2003 reference will be made to the Memorandum of Understanding formally adopted by the six North Wales Authorities and North Wales Police.

Prosecution

Prosecution of offenders will be considered where a person has failed to obtain a necessary licence, permit or registration or where any breach of licensing legislation is identified. Instigation of a prosecution will have regard to advice from the Council's Legal Officer and The Code for Crown Prosecutors 2004. In particular, where there is sufficient evidence, the decision to prosecute will also include a consideration of the following :

- the potential of serious consequences for licence service users;
- the potential for harm to community confidence in the licensing regime;
- the position of authority and trust of the licence holder;
- whether the person was a ring leader or an organiser of the offence;
- whether the offence was premeditated;
- persistent breaches of regulatory requirements, including possible previous convictions and response to previous advice and the likelihood of a recurrence;
- if the offence, although not serious in itself, is widespread in the area where it was committed;
- mitigating circumstances or explanations offered for the offence;
- any financial advantage for the perpetrator from the commission of the offence;
- number of people affected by the offence, any circumstances causing public concern, and any views expressed by victims;
- the possibility of a 'reasonable excuse' defence being successfully used by an organisation;
- whether the victim is a vulnerable member of society; and
- whether the conviction is likely to result in a significant sentence.

Alternative to Prosecution

In cases where prosecution is not the most appropriate course of action, the alternatives of an informal written warning or a simple caution will be considered. A 'simple caution' – previously known as a formal caution – is used to deal quickly and simply with those who commit less serious licensing crimes. It aims to divert such offenders away from appearing in court and to reduce the likelihood of them re-offending. A simple caution is the written acceptance by an individual that they have committed an offence and will only be used where a prosecution may have been instigated. When given a simple caution an offender will be officially warned about the unacceptability of their behaviour, and the likely consequences if they commit any further crimes. The main aim of a simple caution is to prevent offenders re-offending. So if the individual offends again, they are likely to be charged with the crime instead of being offered a second caution unless :

- the second offence is a minor offence unrelated to the first
- two years or more have elapsed since the original offence

Immediate Licence Suspension

In circumstances that give rise to immediate public danger or where the continuation of a licence would be likely to bring the licensing system into public disrepute the immediate suspension of a licence may be justified.

Premises Licence Review

The Licensing Authority has a duty to Review a Premises Licence where it receives an application to do so from a Responsible Authority or an Interested Party or in the case of Gambling premises, where it thinks it appropriate to do so. The authority would expect a Responsible Authority to apply to the authority for Review in particular where it has established that three or more contraventions of licensing legislation have taken place within the previous twelve month period, or where two or more offences have been identified within a shorter period. Following a Review the Licensing Authority may take the following actions where it has found it appropriate to do so :

- Modify the conditions of the licence, by altering, omitting or adding to them.
- Exclude a licensable activity from the scope of the licence.
- Remove the Designated Premises Supervisor.
- Suspend the Premises Licence for a period not exceeding three months.
- Revoke the Premises Licence.

Appeals

Where there is right of appeal against formal action, advice on appeal mechanisms will be clearly set out in writing at the time the matter is determined or the action taken.

Monitoring and Review

This policy will be regularly monitored and will be reviewed, particularly in the light of the future guidance expected from the Local Better Regulation Office and the implementation of the Regulatory Enforcement and Sanctions Act 2008.

September 2008