

Subject: Enforcement Activity Report – 2011
Committee: Licensing Committee (Miscellaneous)
Date: 26 June 2012
Cabinet Member: Councillor Brian Vincent
CMT Member: Anthony Payne – Place Directorate
Author: David Hughes
Contact: Tel. 01751 - 304742
e-mail: licensing@plymouth.gov.uk
Ref: PPS/LIC/Enforce
Key Decision: No
Part: 1

Executive Summary:

This is the third report of its kind and has been compiled to give the Licensing Committee (Miscellaneous) an overview of the various aspects of the work undertaken by agencies involved in regulating the Evening & Night Time Economy during 2011.

Corporate Plan 2011 – 2014:

This report links to the delivery of the City and Council priorities. In particular:

1. Delivering Growth

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

There are no financial implications associated with this report.

**Other Implications: e.g. Section 17 Community Safety, Health and Safety,
Risk Management, etc.**

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reason for recommended action:

That Committee note the attached report.

Alternative options considered and reasons for recommended action:

None

Background papers:

[Licensing Policy 2011 - 2014](#)

Sign off:

Fin		Leg	AG/14901/ 12.6.12	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member : Anthony Payne											

Enforcement Activity Report – 2011

1.0 Introduction

1.1 This report has been compiled to give Members of the Licensing Committee (Miscellaneous) an update of the work undertaken by agencies involved in regulating the Evening and Night Time Economy (ENTE) and the licensing team during 2011.

The main initiatives were as follows:-

- An annual review of fees payable by Gambling establishments
- Adoption of a new Sex Establishments policy
- Consideration of an application for a DPPO for Freedom Fields and Tothill Parks
- A public consultation on a new Street Collection and House to House Charitable collection policy
- Preparation for and the implementation of changes to the licensing legislation
- Members room licensing web page

2.0 Licensing (Miscellaneous)

- 2.1 Licensing Officers with administrative support, undertake all aspects of the licensing function covered by the Licensing Act 2003. These responsibilities cover the regulatory process for premises and club premises certificates, personal licences, and Temporary Events Notices (TEN's). During 2011, Officers processed 357 licensing applications, transfers, DPS and variations; 168 personal licences; 425 TEN's. There was a significant increase on the number of TENs submitted during 2011 when compared to previous years although there is no obvious reason that would explain this increase.
- 2.2 Responsible authorities, in particular the Police and Environmental Health continue to submit formal representations in respect of licensing applications having regard to the licensing objectives. In the majority of cases the applicant will agree with the submitted representations thereby allowing them to be mediated out. Members receive regular updates of all the mediated applications by way of report.
- 2.4 The Licensing Sub-Committee (Miscellaneous) has held 14 meetings to consider 23 reports which included 12 applications (new, variations, transfers) where representations could not be mediated. Committee has also considered 5 applications for review of premises licences (including one summary review) submitted by the Police, Environmental Health and/or local residents.

On the 14 February 2012, Officers updated Committee Members of the outcome of an appeal against a decision not to grant a late night refreshment licence. After a two day hearing the Magistrates Court dismissed the appeal. This was significant in that it involved an appeal in a cumulative impact policy area. The case involved a huge amount of work for Officers from legal services, licensing, environment health, the police and for those Councillors

involved. Other appeals have been lodged but withdrawn by the applicant prior to the hearing.

3.0 Gambling Establishments

- 3.1 Licensing Officers with administrative support are also responsible for licensing establishments such as casinos, betting shops, adult gaming centres, bingo halls covered by the Gambling Act 2005. Licensing Committee has delegated responsibility for the setting of annual fees payable by gaming establishments and was approved by Members on the 14 February 2011. All establishments are the subject of inspection to ensure compliance with regulatory standards.
- 3.2 Officers first set up a test purchase operation of gambling establishments in October 2010 to ascertain whether young persons could access age restricted activities. The outcome was disappointing as 7 adult gaming centres and 4 betting shops did not have adequate controls in place to prevent a young person from using age restricted machines. Up to this time it was the second largest operation of its kind undertaken anywhere in England.
- 3.3 A further operation was undertaken in August 2011 retesting betting shops that previously failed and to test purchase those that had not been visited during the first operation. The outcome was again disappointing in that in one betting shop the test purchaser was not challenged in that he was allowed to play an age restricted gaming machine and then place a bet. 9 betting shops allowed the test purchaser to play a gaming machine before being challenged.
- 3.4 After detailed discussions, the Gambling Commission decided that it would not pursue formal proceedings against any of the companies. However Officers followed up each failure and after discussion with representatives of national companies a range of measures were put in place to address the specific reasons for failure in each to the premises concerned. These measures included the re-training of staff; the issue of formal warnings; re-location of machines; installation of door buzzers and re-location of CCTV cameras. In all cases officers received the full co-operation of the licensed operators in resolving the failures at each of the premises.

4.0 Sex Establishments Policy

- 4.1 A new Sex Establishments Policy was approved by Council on the 30 January 2012 effective from the 5 March 2012. This brought premises such as lap dancing clubs within the legislative control of the Local Government (Miscellaneous Provisions) Act 1982 as opposed the Licensing Act 2003. Officers are now in the process of discussing the new arrangements with those operators that fall within the new provisions and requesting that formal applications are submitted for consideration by this Committee. Any applications submitted by existing operators will be considered together but not before the 5 September 2012.
- 4.2 Following the receipt of representations Committee recently considered an application for a renewal of a sex shop licence which resulted in an additional condition that the premises should only display signage showing the business name with no reference that the premises is licensed as an adult shop or other description of products sold.

5.0 Application for a DPPO to cover Freedom Fields and Tothill Parks

- 5.1 Members considered a report for a Designated Public Places Order (DPPO) to cover Freedom Fields and Tothill parks on the 15 March 2011 and after due consideration granted the request. This Committee has previously approved an application for an order to cover the City Centre and Stonehouse Neighbourhood to be effective from the 1 August 2009.
- 5.2 The Government has just published a White Paper entitled 'Putting Victims First – More Effective Responses to Anti-Social Behaviour'. The paper sets out changes in the way that anti-social behaviour will be dealt in future and that Criminal Behaviour Orders are set to replace Anti-Social Behaviour Orders (ASBO) to tackle crime and nuisance behaviour. It is intended to replace the DPPO with a more generic Community Protection Order (public spaces); the main advantage is that the new order will be used in a variety of situations allowing areas to respond flexibly to local issues as they arise.
- Committee will be updated during the progress of any draft Bill that may result.

6.0 Street Collection and House to House Charitable Collection Policy

- 6.1 Throughout 2011 officers have undertaken a public consultation on the adoption of a new updated street collection and house to house charitable collection policy. It is anticipated that a Delegated Decision report is considered by in due course to adopt a new policy that will regulate the activities of charities so that they do not put an unnecessary burden on the residents of Plymouth and protect from fraud.
- 6.2 Professional 'face to face' canvassers commonly referred to as 'chuggers' who are employed to collect direct debit details for their nominated national charity currently fall outside of the street collection regulations, as they collect bank details rather than cash. The City Centre Management Company have a formal agreement with the Public Fundraising Regulatory Association (PFRA) who are the nominated 'gatekeepers' to manage the activities of these fundraising organisations within the city centre to an agreed frequency and location schedule.
- 6.3 A recent survey undertaken by the Local Government Association (LGA) revealed that the majority of local council's who responded, considered that chugging was a problem and had the potential to put shoppers off visiting their local high street. The LGA has called on the Government to improve powers to intervene in city and town centres to enable local restrictions to be put in place controlling when and where street fundraising can take place.

7.0 Changes to Licensing Legislation

- 7.1 The Police Reform and Social Responsibility Act 2011 has introduced a number of changes to the Licensing Act 2003. The most significant changes that came into force on 25 April 2012 are as follows;
- Health Bodies (Primary Care Trusts) will become one of the Responsible Authorities and will be entitled to make representations to licence applications.

- Licensing Authorities (as well as the statutory agencies) will be entitled to make their own representations to licence applications.
- Residents, businesses or associations will be able to make representations to applications even if they do not live or work in the 'vicinity' of the premises – the only test on validity is whether their representation is 'relevant' to the licensing objectives.
- In determining an application, a licensing committee will be required to consider what is "appropriate" to promote the licensing objectives rather than what is considered "necessary".
- There are new entitlements for Temporary Event Notices (TENs). In addition to the Police, Environmental Health are now able to submit representations. Where representations are submitted a responsible authority will endeavour to mediate a modification to the notice if this is not possible a hearing will be required where Members will consider the application. There is also a new facility for "late" TEN that can be submitted between 5 – 9 days prior to the event which may be accepted in exceptional circumstances.
- Licensing Authorities will be able to suspend a licence for non-payment of an annual fee.
- Further sanctions for the persistent selling of alcohol to children.
- Licensing Policy Statements will be reviewable every 5 years as opposed to 3 years.

Further proposals planned for October 2012 include;

- Allow licensing authorities to set their own fee structure (up to a statutory maximum) to allow for full cost recovery.
- An 'Early Morning Restriction Order' will allow licensing authorities to introduce a terminal hour from midnight and 6am where the licensing authority considers it to be appropriate for the promotion of the licensing objectives.
- A 'Late Night Levy' where licensing authorities may levy a charge for premises that have an alcohol licence. Whether or not the levy is introduced will be left to the discretion of the licensing authority. The revenue generated would be split between the licensing authority (30%) and police (70%).

7.2 The aim of the levy is to ensure their businesses contribute financially for the extra costs generated in the police and local authorities on managing the late night economy.

7.3 Early Morning Restriction Orders and the Late Night Levy will be the subject of further national public consultation and it is unclear at present as to the operational requirements, restriction or exemptions that would be applied. The adoption of either option would require careful consideration prior to its implementation.

8.0 Members Room Licensing Web Page

- 8.1 An information page has been developed to assist Ward Councillor's access information on existing licensed premises and monitor new applications. The page offers guidance on how a councillor can submit a representation on their own behalf or if representing a local resident(s). The page also sets out a step by step guide on how to use the licensing register to review current licensing applications or existing premises licenses.

9.0 Noise and Public Nuisance

- 9.1 During 2011, 217 formal noise complaints were registered against licensed premises, which represent an increase with previous years. Three noise abatement notices were served on licensed premises as a result of noise that materially affected the use and enjoyment of near-by residential properties.
- 9.2 Environmental Health Officers continue to use an escalation process when investigating noise complaints, discussing the circumstances of the complaint with the responsible person at the earliest opportunity in order to allow them to resolve the matter quickly without the need for further formal action, such as the issue of simple cautions for non-compliance with licensing conditions.

10.0 Partnership Working

- 10.1 Enforcement agencies meet on a regular basis to discuss enforcement options and consider strategies for dealing with 'problem premises'. Premises operating in the evening and night time economy (ENTE) continue to receive constructive advice from enforcement agencies such as Licensing, Environmental Health, Fire Service, Trading Standards and the Police to help encourage a responsible ENTE.
- 10.2 Interventions include unannounced and announced visits to assess the licensed premises against licensing conditions and other workplace regulations. The licensees, managers and staff are encouraged to participate in community schemes for the licensed trade such as Best Bar None, Pubwatch and Clubwatch.
- 10.3 Officers from all enforcement agencies do undertake joint inspections where appropriate to ensure a consistent approach to enforcement and demonstrates to the licensee and designated premises supervisor that agencies work together. Enforcement agencies also undertake night-time inspections in order to assess how licensed premises comply with their regulatory responsibilities.

11.0 Under Age Sales

- 11.1 The Police Licensing Team continued to undertake test purchase operations of licensed premises. 42 off sales premises were tested of which 7 (16%) were positive which is in line with national failure rates. In every case where a sale was made no identification was asked for and the age of the purchaser was not challenged. In each case the seller received a £80 Penalty Notice for Disorder and the premises Designated Premises Supervisor received a letter advising of the consequences of further failures. No premises sold more than once.

12.0 Work Initiatives for 2012

- 12.1 The responsible authorities will continue to support licensed premises to ensure that they are best placed to contribute towards providing a positive and well managed ENTE.
- 12.2 All agencies will continue to meet quarterly to discuss enforcement strategies, best practice and on-going operations to ensure that resources are best targeted at those premises that contribute significantly to undermining the licensing objectives.
- 12.3 Test purchasing operations will continue to test procedures at licensed premises where age-restricted products are on sale.
- 12.4 The Early Morning Restriction Order and Late Night Levy provisions will require careful consideration. The necessary research, consultation and analysis will be undertaken during a decision making process on whether to adopt either of the proposed provisions following the enactment of legislation and publication of further statutory guidance.
- 12.5 The Gambling Act policy will be subject to its 3 year review in preparation for implementation on the 30 January 2013.
- 12.6 The Government has proposed that licensing authorities will have the power to set their own fee structure (up to a statutory maximum) to allow for full cost recovery. The introduction of a local structure will require careful consideration following the enactment of legislation and publication of further statutory guidance.

13.0 Conclusion

- 13.1 This report has sought to provide members with an insight into the range of work initiatives and enforcement operations undertaken by enforcement agencies responsible for regulating the evening and night time economy throughout 2011. In addition to provide details of the work initiatives planned for the coming year and how partner agencies will continue to interact to ensure that limited resources are targeted effectively.