

PLYMOUTH CITY COUNCIL

Subject:	Enforcement Activity Report – 2012/13
Committee:	Licensing Committee
Date:	23 July 2013
Cabinet Member:	Councillor Brian Vincent
CMT Member:	Anthony Payne – Place Directorate
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Ref:	PPS/LIC/Enforce
Key Decision:	No
Part:	I

Purpose of the report:

This is the fourth report of its kind and has been compiled to give the Licensing Committee an overview of the various aspects of the work undertaken by agencies involved in regulating the various licencing regimes. The report will also highlight future work plans and potential changes in legislation or guidance which will have an impact on the Committee.

Corporate Plan 2012 – 2015:

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

1. Delivering Growth - The leisure and night time economy are an important employer.
 2. Reduce inequalities – Certain licensable activities, such as sale of the alcohol, gambling, entertainment, can have an impact on the health and wellbeing of individuals and communities
 3. Provide value for communities – Licence fees must be set to recover all costs legally available and agencies must work in partnership to ensure effective and efficient operation of the licensing regimes.
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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. Child Poverty, Community Safety, Health and Safety and Risk Management:

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.

Child poverty and individual wellbeing can be affected by activities such as alcohol consumption and gambling. The licensing regimes must be used proportionately to minimize any negative impact.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

That Committee note the attached report.

Alternative options considered and rejected:

None.

Published work / information:

For more information please see the below links.

[Licensing Policy 2011 - 2014](#)

Background papers:

None.

Sign off:

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Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes													

Enforcement Activity Report – 2012/13

1.0 Introduction

- 1.1 This report has been compiled to give Members of the Licensing Committee an update of the work undertaken by agencies involved in regulating licensable activities and in particular management of the Evening and Night Time Economy (ENTE). It will also outline specifically the work of the licensing team from the 1 April 2012 to the 31 March 2013.

2.0 Licensing Act 2003

- 2.1 Licensing Officers with administrative support, undertake all aspects of the licensing function covered by the Licensing Act 2003. During the twelve months to the 31 March 2013, Officers processed the following number of applications:

	2012/13	2011/12
Licensing applications, transfers and variations	370	357
Personal licences	301	168
TEN's (of which 38 were 'late' TEN's)	392	425

This provides an increase of approximately 12% in the volume of reactive work over the last 12 months and 63% increase since 2009/10.

- 2.2 Responsible authorities, in particular the Police and Environmental Health continue to submit formal representations in respect of licensing applications. In the majority of cases the applicant **will** agree with the advice given, thereby allowing them to be mediated out. Members receive regular updates of all the mediated applications by way of a report.

- 2.3 The Licensing Sub-Committee (Miscellaneous) undertook the following activities:

	2012/13	2011/12
Meetings	19	14
Number of reports	20	23
Applications or variations	13	12
Review of premises licences	3	5

This resulted in **3** licence revocations.

2.4 Legislative changes

The Police Reform and Social Responsibility Act 2012 provided for some major changes to the licensing Act 2003. The main changes are outlined below.

2.5 Suspension Powers for Non-Payment of Annual Fees

Amendments to the Licensing Act 2003 effective from the 25 April 2012 enabled licensing authorities to suspend a licence for non-payment of an annual fee. This power has proved effective in targeting licence holders who

consistently do not pay their annual fee at the specified time. Since this time 39 suspension notices have been served of which 26 have been lifted following settlement of the outstanding debt. Where suspension notices remain in place, this is due to the business no longer trading.

2.6 Late Night Levy and Early Morning Restriction Orders (EMRO)

Officers have undertaken an informal consultation exercise with key agencies and the trade regarding these two new provisions.

The Late Night Levy allows the Council to require a levy payment from premises which trade beyond midnight for the sale of alcohol. EMROs provide the Council with the power to restrict the licensing hours of existing premises for the sale of alcohol.

The use of these new powers is currently being considered by the relevant Cabinet members. A consultation will be undertaken during the course of this year which will include a review of the existing policy.

Committee members will be notified of the consultation and have the opportunity to comment

2.7 Changes to Temporary Event Notices

As from April 2012 the following changes to the TENS system occurred:

- Environmental Health were able to make representations as well as the Police
- Representations could be made on any of the licensing objectives
- The period for a TEN to operate was increased to 7 days from 3 days
- A certain number of TENS could be submitted with only a 5 working day notification period – these are known as late TENS
- Conditions could be transferred from the existing licence to the TEN

These changes have generally been positive but have led to increased resource requirements.

3.0 Noise and Public Nuisance

3.1 During 2012/13, 156 (217) formal noise complaints were registered against licensed premises, which represent a 23% decrease on the previous year. 1 noise abatement notice was served on licensed premises as a result of noise that materially affected the use and enjoyment of near-by residential properties.

3.2 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. In most cases the complaint can be resolved by way of an action plan or minor variation with the agreement of the licensee.

3.3 An Out Of Hours noise service operates between 8pm and 1am on Friday and Saturday nights to respond to noise complaints involving licenced

premises. Specific visits outside of these hours can be made by arrangement where necessary.

4.0 Under Age Sales Test Purchase Initiatives

- 4.1 Access to alcohol, from on and off licenses, by young people presents a risk to them and local communities from violence and crime or anti-social behavior. Officers in partnership with the police conducted three operations during February, March and April 2013 to review under age sales management controls and a 'mystery shopping' assessment where plain clothes police officers reviewed how premises were being managed. The test criteria included monitoring for the service of drunks, customer behaviour, glass management, safe access to fire escapes and general cleanliness (including toilets).
- 4.2 After the completion of each operation each licensee was informed of the outcome and the action necessary to improve their operating practices. The results of these operations are set out below.

Table 1: Results of alcohol test purchase operations for Operation Hoff

	Test Purchase for Alcohol (Off Licence)	Test Purchase for Alcohol (On Licence)
Operation 1 13 – 17 February 2013	Total of 27 tested Total of 4 failed TP <u>15% failure rate</u>	Total of 16 tested Total of 11 failed TP <u>69% failure rate</u>
Operation 2 15 – 17 March 2013	Total of 14 tested Total of 2 failed TP <u>14% failure rate</u>	Total of 7 tested Total of 3 failed TP <u>43% failure rate</u>
Operation 3 26 – 28 April 2013	Total of 23 tested Total of 3 failed TP <u>13% failure rate</u>	Total of 12 tested Total of 4 failed TP <u>33% failure rate</u>

- 4.3 Where licensed premises failed a test purchase they were advised that they would be re-tested. Any person that sells to an underage person is issued with a fixed penalty notice which attracts a fine of £80.
- 4.4 Three premises sold alcohol to the underage volunteer on two separate occasions within a three month period and these are considered as persistent sellers and are subject to on-going enforcement action. Members recently revoked an off-sales premises licence for persistent selling of alcohol to children.

- 4.5 The mystery shop exercise provided very useful feedback with common areas for improvement being glass management, cleanliness of toilets, behaviour management of customers and inadequate door supervision. Over the operation period licensees introduced improved controls which were observed during later visits.
- 4.6 There will be an on-going commitment to maintain test purchase and mystery shop initiatives as they have been proven to be of value in highlighting poor performance and obtaining improved standards.

5.0 Gambling Policy

- 5.1 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. The latest fees were approved by Members on the 14 February 2011 to remain at the maximum levels specified by Gambling (Premises Licence Fees) (England and Wales) Regulations 2007. Income generated has remained stable since its introduction.

Income for 2012/13 totalled £56,193, with expenditure estimated to be the approximately £55,500. The Committee on the 14th February 2011 resolved that the fees would not be reviewed unless the difference between future fee income and future expenditure is 10% or more. As such fee levels will remain at the maximum level.

- 5.2 The Council's Gambling Policy was the subject of an extensive consultation exercise throughout 2012. The revised policy was approved by Cabinet on the 13 November 2012 and ratified by Council on 3 December 2012. The policy came into effect on the 31 January 2013.

6.0 Sex Establishments

- 6.1 A new Sex Establishments Policy was approved by Council on the 30 January 2012 to be 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.
- 6.2 Applicants were invited to apply for a licence to be issued under the new regime and on the 13 November 2012 Members considered two applications, one from an existing premises the other from a new premises. Both applications were granted subject to conditions.
- 6.3 During the hearing Members considered representations that managers/supervisors should undertake training to be able to better identify child sexual exploitation and after due consideration attached training conditions. I would confirm that the training has been successfully completed by both businesses.

6.4 Two sex shops also remain licenced under the same legislation. Members considered a renewal application for one of these licences earlier this year at which time it was granted subject to additional conditions.

7.0 Scrap Metal Dealers

7.1 The introduction of a revised Scrap Metal Dealer's Act is expected later this year. This will reform licensing requirements and will support recent changes designed to curtail the profitable activities of metal theft. These changes prevent cash transactions (which are not traceable) and revised police powers of entry to check that these prohibitions are being complied with.

7.2 Officers have participated in joint operations with the police where vans believed to be carrying scrap metal vans were stopped and driver's advised of the recent legislative changes.

7.3 An exemption to these requirements does apply to itinerant collectors if they are registered as a scrap metal dealer and over the past few months officers have been processing exemption applications.

7.4 Liaison work with the Police and the other Devon local authorities is ongoing to ensure a smooth introduction of the new licensing controls and effective enforcement.

7.5 The Act will allow for a fee to be charged for scrap metal dealer licences. The fee level is yet to be set and will be subject to further guidance and legislation.

8.0 Designated Public Places Orders (DPPO)

8.1 Designated Public Places Orders (DPPO) remain in place covering the City Centre and Stonehouse area; Freedom Fields Park; Tothill Park, Mutley Plain and North Hill. The application of these orders remains a central part of the enforcement process for controlling incidences of street drinking within these areas.

8.2 The Anti-Social Behaviour, Crime and Policing Bill 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.

8.3 Officers are still awaiting the outcome of passage of the new legislation after which Members will be updated as to the implications of any changes.

9.0 Partnership Working

9.1 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.

- 9.2 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.
- 9.3 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.

10.0 Work Initiatives for 2013

- 10.1 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.
- 10.2 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.
- 10.3 Test purchasing operations for alcohol sales will continue at licensed premises. Further test purchasing will be undertaken at targeted facilities for gambling.
- 10.4 Early Morning Restriction Order and Late Night Levy provisions are at a pre-consultation stage after which the Council's proposals will be subject to a full public consultation. The outcome of the consultation will then be carefully considered to ensure that the introduction of any provisions will be in the interests of the city.
- 10.5 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 fee structure will require careful consideration following the enactment of legislation and publication of further statutory guidance. The implications of local fee setting have yet to be properly considered as officers are waiting for further legislation and guidance to be issued.
- 10.6 The implications of the new provisions for scrap metal dealers will become clear and queries concerning fees, vehicle licenses, authorisations, offences and whether the new provisions will apply to recycling centres should be resolved. Joint enforcement operations with the Police will continue.
- 10.7 There are further changes planned for the licensing Act which will reduce the range and number of activities licensable as regulated entertainment. These will be activities such as plays that occur before an audience of less than 500 undertaken between 8am and 11pm. As more details are available the Committee will be informed of the changes

11.0 Insight patrols

Opportunities exist for Committee members to be escorted around the night time economy to observe the operation of business, see how the night time economy is managed, and observe the operation of street pastors and the CCTV system and Policing methods. Officers can liaise with the Police to facilitate these evening visits should any members wish to take up this opportunity.

12.0 Conclusion

12.1 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 2012. 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.

12.2 Officers in tandem with the police will arrange an 'in-sight' patrol for any Members who would like to visit the ENTE areas at night, which would include access to the CCTV control room.

12.3 In summary the main initiatives in 2012/13 were as follows:-

- Adoption of a revised Gambling policy
- Approval of licenses issued under the new Sex Establishments Policy
- Under Age Sales test purchasing and mystery shopping initiatives
- Implementation of suspension powers for non-payment of annual fees
- Assessment of the options to introduce a Late Night Levy and Early Morning Restriction Orders
- Scrap Metal Dealers – exemption orders
- Introduction of changes to the Licensing Act 2003