

Committee(s):	Date(s):	Item no.
Licensing Committee	18 April 2011	
Subject: Licensing Processes and the links with Planning	Public	
Report of: Director of Environmental Services	For Information	
<p><u>Summary</u></p> <p>At the Licensing Committee held on the 15 November 2010 it was requested by Members that a report be submitted detailing the process involved following receipt of an application for a ‘tables and chairs’ licence.</p> <p>This report details the difference in the roles performed by the Corporation’s licensing and planning services in dealing with applications for premises and ‘tables and chairs’ licences.</p> <p>It notes that the two services work closely together to avoid contradictory trading hours. However, there are certain instances where legislation determines that this can not always be avoided.</p> <p>In these circumstances the applicant is made aware of his/her legal responsibilities to ensure compliance in all relevant legislation.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • For information 		

Main Report

Background

1. Premises which seek a premises licence under the Licensing Act 2003 may require planning permission for that use in order to carry out licensable activities. The planning permission is issued by the Local Planning Authority and may sometimes, but not always, restrict the hours within which the use is permitted to trade.
2. A premises licence is issued to premises for the sale of intoxicating liquor, regulated entertainment or late night refreshments. This licence will also set

times as to the permitted hours when such licensable activity can take place and is granted by the Licensing Service.

3. An individual, or corporate body, wishing to place tables and chairs on the public highway/City Walkway (the 'highway'), must first seek the necessary licence under the Highways Act 1980. Planning permission is not required to place tables and chairs on the highway.
4. Having more than one Department involved in these processes under separate legislation has the potential to cause confusion, although current procedures and the close working relationship between the two Departments reduce this possibility to a minimum.

Current Position

Tables and Chairs:

5. Where an application is made to place tables & chairs on a highway planning permission is not required. This was a decision made previously by the Comptroller and City Solicitor. Under these circumstances the Licensing Service will issue a 'Tables and Chairs' licence which in effect gives the applicant permission to obstruct the highway.
6. A condition attached to the 'Tables and Chairs' licence permits all chairs to be available to the general public whether or not they are using the facilities of the premises to which they are attached.
7. Where it is proposed to place tables & chairs on for example a private forecourt, a 'Tables and Chairs' licence will not be required as there is no obstruction of the highway but planning permission may be required.
8. It is also possible that the intensification of tables and chairs on the highway or private land may result in a material change of use of the premises from one Use Class to another (e.g. from a Class A1 shop to a Class A3 restaurant or café). In this situation planning permission will be required.
9. The City Planning Officer is consulted on all applications for a 'Tables and Chairs' licence. Where an application for such a licence proposes that the tables and chairs are to be used at times which are not permitted by the planning permission in relation to the premises the licence application will either be refused or the times adjusted accordingly.

Licensing Act 2003:

10. Where an application is received for a premises licence a copy is sent to the City Planning Officer for comments.

11. If the times sought within the application exceed those in the planning permission or where no planning permission exists for the premises the City Planning Officer has the right to object to the application in its current format. This would take the form of a representation by a responsible authority.
12. However, the 'objection' would have to focus on why the terminal hours within the planning permission were set and not just because they were different to those proposed in the premises licence application e.g. for reasons of preventing public nuisance.
13. If the applicant is not willing to amend the trading hours within their application then the matter is sent for a hearing to the Licensing Sub-Committee.

Temporary Event Notices (TENS):

14. An application can be made for a Temporary Event Notice (TEN) which permits the applicant to carry on a licensable activity even though a premises licence may not exist.
15. The TEN may specify a terminal hour which exceeds that in the planning permission for the premises. The legislation only permits objections to be made by the Police on grounds that granting the TEN is not conducive to preventing crime and disorder. The City planning Officer is not consulted on an application for a TEN.
16. A premises may therefore have, for example, planning permission to stay open to 23.00 and a licence which permits them to sell alcohol up until the same time. An applicant may submit, and be granted a TEN, which informs the authority that for a specific period of time they intend to stay open until 24.00.

In these circumstances, if the applicant trades within the times stated in the TEN he will be in breach of a planning condition and could be subject to enforcement action under planning legislation. This would be a matter for the Local Planning Authority and not the Licensing Service.

17. The Public Reform & Social Responsibility Bill, which is currently at the House of Lords stage, makes amendments to the Licensing Act 2003 which may eliminate the possibility of the above circumstances occurring. Current paragraphs in the Bill permit a licensing authority to add conditions to a TEN which it currently can not do.

Implications

18. This report is for information only. As such there are no financial or risk, legal, human resource or strategic implications associated with this report.

Consultees

19. The Police, The City Planning Officer and Legal Services have been consulted in the preparation of this report.

Summary

20. The planning and licensing processes are subject to different legislation with some overlapping responsibilities. There are circumstances that occur when the Licensing Service can not refuse to issue a premises licence whether or not the premises has the requisite planning permission.
21. These circumstances are unlikely to occur when issuing a licence for 'Tables and Chairs' as the legislation permits the licensing authority 'greater flexibility' in the grounds for refusal.
22. The one situation that can cause contradictory trading hours on a regular basis is the issuing of a TEN. Essentially, legislation does not permit the Licensing Service to refuse to issue a TEN unless it receives an objection from the City of London Police and only then, on a matter of it not being in pursuance of the crime and disorder licensing objective. However, this situation is likely to be eliminated if new legislation is introduced within the next few months.
23. The procedures that have been put into place by the City's Planning and Licensing Services, together with the close working relationship between those services, have reduced the possibility of premises having contradictory trading hours to a minimum.
24. In situations where it is not possible to avoid contradictory trading hours the applicant is informed that although a licence/planning permission has been granted, care must be taken to ensure that compliance is maintained for all applicable legislation. People tend to know that they need a licence to sell alcohol but they don't always know that they may also require planning permission. Any subsequent breaches of legislation will be dealt with in accordance with the Department's enforcement policy.

Background Papers:

none

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