



Licensing Committee

Date: MONDAY, 22 OCTOBER 2012
Time: 1.45 pm
Venue: COMMITTEE ROOM - 2ND FLOOR WEST WING, GUILDHALL

10. **LICENSING CODE OF PRACTICE**

Attached is the results of the Consultation.

John Barradell
Town Clerk and Chief Executive

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Responses to consultation on proposed Code of Good Practice for Licensed Premises and Traffic Light Scheme.

Response to Consultation

Observations and proposed actions (in italics & underlined)

Planning	
Comment 1	
<p>The Good Practice document could refer to the planning process including planning enforcement and make clear that it will be used in conjunction with licensing policy to ensure compliance with the Good Practice Guide.</p>	<p>The code is specific to good practice for the promotion of the licensing objectives and is intended to avoid the need for enforcement. Therefore it would not be appropriate to refer to enforcement action, and in particular other regimes.</p> <p>Page 2 of the code sets out how responsible authorities, which includes planning, will use the code.</p> <p>It is intended that the wording on how the code will be used (page 2, 3rd paragraph) could be amended to include an additional point as follows:</p> <ul style="list-style-type: none"> • <u><i>When offering advice to applicants either at the design and planning stage or during pre-application discussions</i></u> <p>The code is not a statutory document therefore there can be no compliance with it. Licensees are expected to adopt the code but the authority has no power to impose it.</p> <p>The code will form part of the Corporation's licensing policy and the licensing policy makes a wider reference to linking planning policy and licensing policy in</p>

	its introduction. It may be that references to Planning in the licensing policy need to be enhanced.
Comment 2	
<p>Licensees should be advised to check that they have the correct planning permissions and consents in place and are complying with any relevant planning conditions and obligations before proceeding. For example noise from deliveries can be an issue and a planning permission may place restrictions on such activities.</p>	<p>Any such statement would be inconsistent with Home Office S182 guidance. The HO guidance acknowledges that there are circumstances where planning consents and licensing consents can differ (paragraph 13.57 and 13.58). Revised S182 guidance does make provision for planning & licensing consents to be mutually agreed where premises licence applications indicate that planning permission is simultaneously under consideration.</p> <p>It would also not be appropriate to refer to compliance with a statutory regime as good practice.</p> <p>Paragraphs 102-105 (originally 97 – 100) of the licensing policy set out the Corporation’s approach to licensing applications and planning. Planning may wish to amend these paragraphs to better reflect current practice and policy.</p>
Comment 3	
<p>Page 4 (Prevention of crime and disorder), page 13 (Public Safety) and page 18 (Prevention of public nuisance) makes reference to the need to take account of these objectives in the design of new and refurbished premises. These sections could usefully refer to the use of the planning system to ensure compliance and the potential for planning to use opening restrictions and planning enforcement where necessary.</p>	<p>The code to be amended in the fourth paragraph on pages 4, 13 and 18 as follows:</p> <p>‘For new premises or refurbishment of existing premises, preventative measures should be factored in during the <i>planning and</i> design stage.’</p> <p>It would not be appropriate to refer to compliance with a statutory regime as good practice. Enforcement under planning law is clearly set out in paragraph 13.58 of the S182 guidance.</p>

Comment 4

When designing premises they should be well planned so they deal with the planning issues including the external lighting, signage, cameras, bottle/bin stores, installation of external plant and screening, barriers on private land, alterations to the external appearance of the building including windows and doors, and alterations to listed buildings both internal and external. (Please note this list is not inclusive).

It would be useful to include a link to the planning application guidance.

- The dispersal policy needs beefing up a bit to say they ought to have one
- Page 18 (safety of customers when leaving premises PS26(b)) could be expanded to say 'Care should be taken so that lighting does not impact on neighbours, particularly in and close to established residential areas.'
- There should be some reference to tables and chairs in relation to pavement blocking
- Businesses need some peace and quiet as well and should be referred to in the guidance.

No observations on this paragraph.

A link to planning guidance to be added to the licensing pages on the website.

The code's aim is to promote good practice therefore nothing within in it is or can be compulsory. The requirement for a dispersal policy is included within the Corporation's pool of model conditions.

The measure already states 'Care should be taken so that lighting does not impact on neighbours' and will be *amended to read 'Care should be taken so that lighting does not impact on neighbours, particularly in and close to established residential areas.'*

Tables and chairs are subject to a separate licensing regime and any breaches should be dealt with under the provisions of that regime. There is already a section in the main policy document covering tables and chairs.

References in the Code to 'residents' to be amended to 'persons living or working'.

<ul style="list-style-type: none"> • Substantiated complaints of noise from plant which may be located outside the premises should also attract penalty points • Planning should be included in the useful contacts list 	<p><u>To be included in points table attracting 2 penalty points assuming that the noise generated can be linked to the operation of the licensing functions of the premises.</u></p> <p><u>Planning to be added to the list.</u></p>
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<p>Officer (legal services)</p>	
<p>Comment 1</p>	
<p>I'm in favour of the code of good practice and traffic light scheme because it'll mean there's more proactive monitoring of premises and implementation of action plans.</p>	<p>Noted.</p>
<p>Comment 2</p>	
<p>I note substantiated complaints of noise from customers entering/leaving premises or using external areas will attract penalty points, as will substantiated complaints of noise from within premises. I think it needs to be made clear in the scheme that substantiated complaints of noise from plant (which may be located outside premises) also attract penalty points.</p>	<p><u>To be included in points table attracting 2 penalty points assuming that the noise generated can be linked to the operation of the licensing functions of the premises.</u></p>

Pollution Team	
Comment 1	
<p>The scheme is too complex and potentially bureaucratic relative to the problem</p>	<p>The proposed traffic light scheme is a simple monitoring tool that brings together the findings of all the agencies involved in managing premises licensed under the provisions of The Licensing Act 2003. The scheme is consistent with the Home Office guidance 'The practical guide for preventing and dealing with alcohol related problems'.</p> <p>Recent government amendments to The Licensing Act 2003, which create the provision for Licensing Authorities to introduce Early Morning Restriction Orders (EMROs), come into effect on 31st October 2012. These provisions have not been welcomed by the licensing trade, trade representative organisations or leading licensing barristers across the country. This is because an EMRO could affect well run premises as well as irresponsibly run premises.</p> <p>In contrast, the traffic light scheme flags up problematic premises where relevant incidents have occurred at an early stage. Trade representative organisations and leading licensing barristers welcome alternative approaches to EMROs such as good practice and traffic light schemes.</p>
Comment 2	
<p>Will there be adequate resources to make it work?</p>	<p>The scheme relies on existing data already captured by the relevant enforcement agencies and should require no further resources on their behalf in collecting data. The scheme will be managed by the licensing team and will require additional resources to bring the data together, analyse the results, liaise with the relevant responsible authorities and licence holders to agree</p>

	<p>action plans and to coordinate reviews where appropriate. It is intended that this will be funded either through a Late Night Levy (if adopted) or through a very small increase in premises licensing fees</p>
Comment 3	
<p>I don't think it promotes consistency and transparency in enforcement by different responsible authorities.</p>	<p>The scheme provides a holistic partnership approach to dealing with licensed premises for the promotion of the licensing objectives. It promotes consistency and transparency in how the licensing authority and responsible authorities will monitor licensed premises to ensure the promotion of the licensing objectives.</p> <p>The Licensing Act 2003 requires each premises to be considered on its own merits and this approach is maintained within the traffic light scheme. The scheme does not impact on statutory functions and enforcement powers enabled by other legislation.</p>
Comment 4	
<p>There is a potential for it to undermine reviews taken outside the scheme and even enforcement of EPA legislation (it may be used by lawyers to challenge enforcement decisions)</p>	<p>The scheme is simply a monitoring tool. It does not define when a responsible authority should review a licence. The overriding power to review a licence falls within the provisions of the Licensing Act 2003 and this is unaffected. The scheme makes this perfectly clear.</p> <p>Similarly, the overriding power for an enforcement agency to take a prosecution falls within the relevant legislation they enforce. This remains unaffected and a responsible authority may proceed with a prosecution at any stage irrespective of the traffic light zone the premises is in, if it is in the public interest to do so. This is also made clear in the scheme.</p> <p>The traffic light scheme was established by South Wales Police, Cardiff Council and their local licensees' forum in 2006/2007 to reduce crime and disorder in the city centre. The scheme won a Home Office award in 2009 and has since</p>

	<p>been implemented in a number of authorities across the country. The scheme proposed in the City of London is similar but with the addition of a Code of Practice.</p> <p>The scheme proposed does not undermine recent appeal cases in that it does not attempt to fetter the licensing authority's discretion or the discretion of any responsible authority to take formal action at any time where it is in the public interest to do so. Neither does the scheme suggest that a review will be commenced if premises go into the red zone. Each premises will still be considered on its individual merits, with the scheme providing the tools to monitor all premises in a fair and consistent manner.</p>
Comment 5	
<p>Scoring: The points scheme is too 'lenient' and will result in anomalies. I don't agree that premises should receive credits for complying with legal requirements; credits should only be awarded where they go into the good practice arena over and above legally required</p>	<p>It is not felt that the scheme is too lenient but if put into operation the scheme will be kept under constant review and any anomalies dealt with as discovered. The scheme must acknowledge any successful measures implemented by a licence holder that remedy a problem but, <u>clarification will be added to ensure it is known that credits cannot be gained for simply complying with statutory requirements.</u></p>
Comment 6	
<p>There is no dispute resolution process.</p>	<p>Points will be allocated against premises where there is evidence of an incident that is clearly linked to the operation of the premises and complaints about premises must be substantiated. The information will come from the relevant responsible authorities. License holders will be made aware of when they move into amber or red zone and will at each stage be given opportunities to remedy problems.</p> <p>If a decision is made to review a licence, the applicant is given a right to attend a hearing at which they can give evidence before the determining panel.</p>

	Following this, they have a right of appeal to a magistrates' court pending the outcome of the review hearing. This is the dispute resolution process.
Comment 7	
I think that if the scheme goes ahead it should be as a pilot.	<u><i>It is not intended to run the scheme as a pilot but if members are so desirous a report could be submitted to the Licensing Committee after the scheme has been in operation for twelve months reviewing its operation and future proposals.</i></u>
Others	
General comments were received from one Common Councilman and one member of the public supporting the code of practice and traffic light scheme.	Comments noted.