

Guidance Note for Licensing Committee Members

Planning and Licensing – Reconciliation or Alignment?

Background

Planning and Licensing are two separate regimes used by the council to achieve strategic aims and perform statutory duties as a Licensing Authority and Planning Authority. This siloed approach to decision making can create difficulties at local authority level, where a joined-up approach to decision making is the preferred approach.

Sometimes it is difficult to align licensing applications with planning decisions so a pragmatic approach that reconciles the perceived differences in outcome may be needed.

This guidance note is intended to help Licensing Committee members facing reconciliation or alignment issues when making decisions about a licence application.

It summarises the legal context, different strategic outcomes expected by key stakeholder and the practical measures available to officers and members to secure alignment or reconcile differences.

Legal Context

Most applications considered by the Licensing Sub Committee are applications submitted under the Licensing Act 2003.

The legal principles are:

- Planning and Licensing are separate regulatory regimes both in terms of application process, permissions and enforcement.
- Each licence application should be considered on its merits.
- Where applications do not result in a representation from a responsible body nor interested party the application must be approved at officer level.
- Licensing decisions should relate to one of more licensing objectives i.e.
 - Preventing crime and disorder
 - Ensuring public safety
 - Preventing public nuisance
 - Protect children from harm.
- As a responsible authority Planning Service
 - Receives notification of any new or variation application for a premises licence
 - Can submit comments relating to the planning history, lawful use and/or relevant planning conditions on a new or variation application
 - Can submit a representation regarding a licence application.

- Attend the Licensing Sub Committee hearing the application, summarise their representation and answer questions posed by the Committee, applicant, other responsible authorities and interested parties.

Licensing Policy

Policy statement 1 states:

The Licensing Authority expects applicants to ensure that they have planning consent for the intended use and hours of operation, or otherwise have lawful planning status, before making an application for a premises licence.

Strategic Objectives

The strategic goals of each stakeholder involved in the licencing process will be different, for example.

1. The Licensing Authority encourages and supports the alignment of planning and licensing permissions but cannot require it.
2. Residents may expect planning and licensing decision to be aligned, but sometimes this is not possible.
3. Business expects the Licensing Authority Licensing Committees to adhere the legal framework, i.e. to run separate regimes for planning and licencing and to decide licence applications that may not have the correct planning permission.

Securing Alignment or Reconciling Differences

Officers

These are the arrangements that we have in place at officer level during the application and pre application stage:

1. Planning Enforcement Team reviews every application for a new and variation premises licence applications to research and assess lawful use and note any relevant planning conditions. Planning status can sometimes be unclear and subject to historic or multiple permissions . Planning Enforcement will consider historical permissions, gained permissions over time.
2. Planning will provide factual information and where possible advise on the most likely permitted use.
3. Planning can be contacted for advice and clarification.
4. The Committee report will include details of the planning permission and the and where possible the officer's assessment of most likely permitted use.
5. Planning will also say if the premises is subject to a planning enforcement investigation.
6. Planning and Licensing will discuss and liaise to provide Licensing Committee members with the best possible information to aid decision making.

7. Licensing Officers will highlight any planning inconsistencies with applicants to provide them with an opportunity align planning permission with the licensing application before a committee hearing.
8. Applicants can ask that their licence application is put on hold to give them time to realign planning with their licensing application. Neither the Licensing Officer nor Licensing Committee can defer licensing application decisions beyond the 28 day statutory deadline. This included applications that do not appear to have the correct planning permission.
9. Applications not dealt with by the statutory deadline are deemed refused and liable to be granted on appeal by the magistrate's court.
10. Planning is invited to attend officer meetings to clarify details of licensing applications and receive updates from applicants.
11. A Planning Officer will attend LSC to clarify complex planning issues if needed.

Licensing Committees

The Committee report will have information on the current planning status of the premises.

The Committee will need to assess how this information could be used when making decisions about applications. They may need to:

- Reflect on the requirement to consider each application on its merits.
- Assess the extent to which difference in planning permission and the licence application requirement could be relevant.
- Consider the relevance of planning information in terms age of the planning requirement and placing more weighting on recent planning decisions.

The Chair may need to use judgement to:

- Advise interested parties (residents) that specific planning issues are outside the remit of the Licensing Committee and to raise these directly with Planning.
- Ask the applicant how they intend to align planning permission with licencing if the committee decides to approve the application.

Class E

Class E of the Planning Use Class Order permits a range of commercial, business and service uses (and any mix of such) within a premises. This means that should a premises be within Class E usage, it would not require planning permission to change use between any of the Class E uses, which include, retail, sale of food and drink, financial and professional services, indoor sport and fitness, medical or health services, creche/nursery/day centre, offices, research and development and light industrial processes. Of particular interest to the licensing committee is that if a premises has permission as a restaurant but intention is likely to be pub this could be a potential class E issue.

Occasionally a licence application could, on the basis of the information provided in the application form, appear to fall between two use classes, particularly Class E and Sui Generis (where bespoke planning permission is required for a pub or drinking establishment. In these situations it may not be possible to reconcile planning and licensing at the licence application stage.

Licensing Committee may need to question applicants' intention and consider imposing appropriate licensing conditions.

Some activities that are now covered by class E have had beneficial impacts, for example the recent Nags Head Market has enabled planning to exert control over the management of the venue. Licensing has limited controls as most business operating in the market do not require a licence.

Hours of Operation

There are several issues to bear in mind when licensing and planning hours are not aligned:

1. Planning will often go for the lowest common denominator when making decisions about hours as they have no ability to amend planning decisions.
2. Planning may condition more limited hours where this has been requested by the applicant
3. Planning hours are absolute and do not take account of drinking up time
4. Licensing has more controls when deciding licensing hours and they may also revoke a licensing permission later if they receive a review application.
5. A judgement may be required in relation to the intention and credibility of the applicant.

A typical example could be a premises with historical planning permission until 10pm but the licence application is for midnight.

Alignment of hours is the preferred outcome and licensing will engage with applicants during the consultation period.

A licence can be granted for later operating hours and it will be the responsibility of the licence holder to align planning with licensing before trading beyond planning hours or run the risk of planning enforcement action.

Planning Restrictions on Multi-occupied Buildings

Licensing Committee need to be mindful that some restrictions relating to a multi-occupied building may not be relevant to an individual applicant.

For example there may be planning restrictions on building air-conditioning or ventilation systems but if the licence application relates to a premises that is not connected to the air conditioning plant then planning restrictions will not be relevant to the premises licence application under consideration

General Approach

Where planning and licensing do not appear to be aligned LSC can explore this with the applicant and can ask questions to assess extent to which applicant is or intends to engage with planning to resolve issue.

Careful questioning may elicit useful information to aid the committee to assess the confidence in the applicants experience and ability to:

- a. implement the operating schedule.
- b. complying with conditions
- c. promote the licensing objectives.

Jan 2024