

Report to Licensing Committee

Date of meeting: 13th October 2021



**Epping Forest
District Council**

Subject: Direct resident Consultation within 150m radius

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Committee Secretary: Adrian Hendry, 01992 564246

Recommendations:

The Licensing Committee is requested to note the implications and consider alternative proposals contained within this report.

Background

1. The Licensing Committee have requested a report detailing the cost and implications of the Councils current process of writing to all residents within a 150 metre radius to notify them of applications for the grant or variation of a premises licence or club premises certificate.

2. Statutory Requirements on Advertising Applications

The Licensing Act 2003 places a legal obligation on applicants for the grant or variation of a premises licence or club premises certificate to advertise the application in a prescribed manner, this includes:

- Prominently displaying a notice at the premises to which the application relates where it can be conveniently read from the exterior of the premises. The notice must be pale blue in colour, A4 or larger in size and printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. The notice must be displayed for a minimum of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.
- Publish the notice in a local newspaper on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the licensing authority.

The notice must provide the following information:

- the name of the applicant or club;
- the postal address of the premises or club premises;
- the relevant licensable activities that it is proposed to be carried on or from the premises or describe the proposed variation;
- the postal address and, where applicable, the web address where the register of the relevant licensing authority is kept and where and when the record of the application may be inspected;
- the date by which an interested party or responsible authority may make written representations to the relevant licensing authority;

- that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

It is also a requirement that the local authority publish a register on its website detailing applications received.

Epping Forest District Councils register can be found here [Current licensing applications – Epping Forest District Council \(eppingforestdc.gov.uk\)](http://eppingforestdc.gov.uk)

3. Statutory Consultation

It is a legal requirement that the following responsible authorities are consulted directly;

- The licensing authority itself
- Essex Police
- Essex Fire and Rescue authority
- The body responsible for enforcing health and safety at work
- EFDC Planning authority
- EFDC Public Health
- EFDC Environment & Neighbourhoods Team
- County Council Child Protection Team
- Trading standards
- County Council Public health
- Home Office Immigration

4. Current consultation above statutory requirements

In addition to the statutory consultation stated above, the Council also directly consults with residents within a 150-metre radius, Ward Councillors, Town/Parish Councils, Residents Associations (Loughton only) and details are included in the Members bulletin.

5. Benchmarking with neighbouring Councils

Whilst it is permissible for the Council to undertake consultation over and above that set out in the regulations, there is no legal obligation for it to do so. We are currently undertaking a bench marking exercise with neighbouring authorities and whilst we are still waiting for a number of responses, the early indication is that the majority, if not all, do not undertake additional consultation with residents.

Full details of the outcome of the consultation will follow in due course, once complete.

6. Cost Analysis

The Licensing Act 2003 provides for fees to be payable to the Licensing Authority in respect of the discharge of their functions. The fees are set by central Government, at a level to allow the full cost recovery for the administration, inspection and enforcement of the regime.

The fee payable for the grant or variation of a premises licence or club premise certificate is determined by the non-domestic rateable value of the premises. The fee bands are as follows;

BAND	A	B	C	D	E
FEE	£100	£190	£315	£450	£635

The Act does not allow for Local Authorities to levy addition fees to recoup additional costs incurred. The majority of premises sampled fall within band B & C.

Cost analysis shows:

- Application fees generated = £6,760 (28 applications)
- Printing and postage cost associated with writing to residents = £12,397
- Additional cost to the Council (excluding income) = £5,637
- Cost associated with 86% of applications (24) exceeded the application fee

It should be noted that the true cost to the Council will be much higher than £5,637 quoted as this figure does not include officer time processing applications or the cost to the Council in holding Licensing Committee hearings etc.

Analysis also shows that 48% of applications received attracted representations and required determination by the Licensing Sub-Committee. This figure, will in part, be attributed to the additional consultation being undertaken.

The above information is based on the current printing arrangements with an outside contactor, that commenced following the outsourcing of the Council's reprographics service. Following a recent tender and procurement process the Council has now contracted a new printing solution, PSL, that is more competitively priced and includes a print to post solution, that can be used for Licensing consultations. It is estimated that the printing costs can be reduced by at least 70%,

However, this reduction does not take into consideration the additional officer time in preparing the mail-merge process for printing, which may take several hours per consult depending on the location of the premises and the number of properties within the 150 metre radius. Therefore, the true overall saving will be far less than the 70% figure stated.

7. Implications/Risks

Whilst the current process undoubtedly brings some benefits in terms of increased community engagement and greater awareness of applications etc. it also presents additional reputational and financial risk to the Council.

Where the Council has adopted consultation over and above that what is legally required, in doing so, it has created a reasonable assumption that all residents within a 150 metre radius will be directly advised in writing.

Should the Council inadvertently fail to contact some residents in accordance with this policy, it may be at risk of legal challenge or judicial review.

Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association [2011].

In summary, Westminster Council had adopted a policy whereby they send written notification letters to residents within a 100-metre circle around the premises to which an application relates.

In this instance the Council's software did not capture some residents in the 100 metre radius of the Royal Albert Hall and as a result some residents were not notified.

Once the residents realised that an application had been submitted, they made written representation opposing the application. However, as the statutory consultation period had ended, the representations were rejected by Westminster Council and the licence was granted.

The decision was challenged by residents by way of appeal in the High Court. In determining the appeal, the Courts held that Westminster's decision to refuse to consider late representations was lawful, but its decision to grant the variation was unlawful because it had failed to fulfil the legitimate expectation of the residents that it would send them notification of the application.

The Courts determined that neither the Licensing Act 2003 nor the Regulations imposed any duty on a licensing authority to advertise an application or to take any steps to notify anyone affected by it that it had been made. The sole duty to advertise and to give notice of an application was placed on the person making the application.

Whilst this decision was subsequently overturned by the High Court of Appeal, in doing so Lord Justice Burnett stated;

"This did not mean that a decision by an authority to refrain from notifying persons affected by a licensing application could not be challenged. In theory, if it was thought that an authority was acting irrationally or otherwise unlawfully, an order could be sought requiring it to reconsider its decision, and if made sufficiently promptly the Court might grant relief, if it would have any practical value,"

150 Metre Radius

In 2010 the Government undertook public consultation 'Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing'.

Following that consultation, the Police Reform and Social Responsibility Act introduced a package of measures to overhaul the Licensing Act 2003.

One of those measures was to remove the requirement for interested parties to live or work in the "vicinity" of the premises to which the application relates. Its intent was to allow any person, body or business to make a relevant representation regardless of where they live.

The Council introduced the 150m rule for Licensing Act 2003 and Street Trading Consents a number of years ago (earliest reference in Licensing Committee reports is 8 October 2014), presumably as an area that could be reasonably be perceived to be subjected to any negative impact caused by the subsequent grant of a licence. However, neither the Licensing Act 2003 or its associated regulations and guidance make reference to a 150-metre radius.

Whilst this may be a reasonable approach, as it would be pointless and impossible to Consult with every resident in Epping Forest District Council, in doing so it could be perceived or implied that the Council has inadvertently introduced its own vicinity rule.

By adopting a 150-metre radius, it could be seen to infer that only residents living within that area, can reasonably be expected to suffer any potential negative impact, should the licence be granted. This is at odds with provisions of the Licensing Act 2003 which has no such restrictions and specifically removed the term "vicinity" under the Police Reform and Social Responsibility Act.

This also causes confusion with residents. Regular feedback questions why some households receive a letter but others, sometimes next door, do not?

Increased representations & burden on business and the Council

Analysis under point 6. indicates that 48% of applications received representations and subsequently required determination by the Licensing Sub-Committee. This

particularly high percentage will in part be attributed to the additional consultation being undertaken by the Council.

It is likely that increased consultation has also led to an increase in frivolous or otherwise unnecessary representations due to residents not being completely clear as to what is being applied for.

This was the case at a recent hearing where a number of residents withdrew their representation once it was made clear to them what the application was for.

Many businesses instruct legal representation to represent them at Committee, this comes at additional cost to the applicant. The Council also incurs the cost of the hearing and potentially any subsequent appeal.

In some instances, hearings could be avoided thus saving unnecessary financial and administrative burden on both the business and the Council.

8. Summary & Recommendation

Neither the Licensing Act 2003 or the associated Regulations impose any duty on a licensing authority to advertise an application or to take any additional steps to notify anyone that may be potentially affected by an application.

If Government felt that it necessary, it would have made additional consultation a statutory requirement, instead it places the sole duty to advertise and to give notice of an application on the person making the application.

This view is shared by the majority of Local Authorities who do not undertake consultation over and above that legally required.

Whilst it is permissible for the Council to undertake additional consultation with residents within a 150-metre radius, it implies that a "vicinity" rule applies and carries an unnecessary risk in terms of legal challenge.

It also brings an avoidable additional financial burden to both the Council and business.

The Act provides for fees to be payable to the Licensing Authority in respect of the discharge of their functions. The purpose of the fee is to allow the full cost recovery for the administration, inspection and enforcement of the regime.

The cost incurred through the additional 150 metre consultation currently far exceeds the revenue generated through the application process. Even with the new printing solution in place and the reduced costs that will bring, the cost is still likely to exceed the revenue generated due to the administrative burden on preparing the mail merge. This is not sustainable.

The Council already exceeds the statutory requirements by consulting directly with Ward Councillors, Town/Parish Councils, Residents Associations (Loughton only) and by including details in the Members bulletin.

Town/Parish Councils, on receipt of an application, could themselves consider if wider consultation through its own methods (residents' newsletters, website, community forums and consultation with resident's associations etc.) is warranted and discuss applications with residents should they wish.

This would maintain a high level of community engagement whilst avoiding the

unnecessary financial and administrative burden on the Council.

The Council will also strive to facilitate additional resident engagement, by advertising applications on its website and encouraging applicants to hold informal discussion with local residents, businesses and responsible authorities prior to submitting applications.

It will also continue to ensure that applicants meet their statutory obligations; advertising in a local newspaper and placing a notice at the premises to which it relates.