

# **House of Lords Select Committee on the Licensing Act 2003**

## **Call for Evidence**

### **Response of Licensing Advice Project, Citizens Advice Westminster**

#### **Introduction**

The Licensing Advice Project (“the Project”) is provided by Citizens Advice Westminster and funded by Westminster City Council.

The Project provides free, independent and confidential information, assistance, advice and representation to residents of the City of Westminster (including residents’ associations and amenity societies) and businesses in respect of their rights and responsibilities under three licensing regimes:

- Licensing Act 2003 (“the Act”)
- Gambling Act 2005
- Local Government (Miscellaneous Provisions) Act 1982

An important part of the service is representing residents at licence hearings, and negotiating with applicants’ representatives prior to or at hearings, and ensuring that residents can play a full role in the hearing.

The Project is the only service of its kind in the country. It was set up shortly before the Act came fully into force in 2005. Westminster City Council had identified a need to provide an independent source of expert advice and assistance to its residents, in order to assist them in engaging effectively with the new licensing regime which gave those rights and responsibilities.

The twin aims of the Citizens Advice service nationwide are:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people’s lives.

The Project therefore focuses not only on casework, but also on wider issues in licensing law, for example responding to consultations at both local and national level.

This response is based on our experience of advising, assisting and representing residents at licence hearings, on feedback we have from residents and amenity societies in the course of our work, and feedback specifically solicited as part of this Call for Evidence.

## **Summary**

- 0.1** The role of residents under Licensing Act 2003 (“the Act”) is a vital check and balance in the otherwise permissive nature of the legislation. This is clear from the s182 Guidance (as amended) states that one of the key aims and purposes of the legislation is to encourage ‘greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.’ (Para 1.5)
- 0.2** Our view is that the Act does provide a framework in which the right balance can be struck. Whether or not the right balance is in fact struck on a day to basis is dependent on numerous factors; effective engagement by residents being one. We believe that the Act provides important rights for residents, but not necessarily the wherewithal with which to exercise these rights effectively.
- 0.3** Significant barriers still exist which inhibit the appropriate balance being struck.
- 0.4** We strongly believe that residents have an important role to play, and that more should be done to ensure that those who wish to can engage effectively with the process.

## **Licensing objectives**

### **1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?**

**1.1** Our view, which is also informed by feedback from some City of Westminster amenity societies, is that the four licensing objectives are indeed the right objectives. There is some support for the inclusion of 'protection of health and wellbeing' as an additional objective but, while supporting the principle that it can be appropriate to take these matters into consideration, we retain reservations as to the subjective nature of the concept. We feel that it would be difficult, although by no means impossible, to give a sufficiently clear definition of what the concept includes.

**1.2** Some residents feel that their health and well-being is being put at risk, particularly due to the proliferation of licensed premises.

### **2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?**

**2.1** We do not feel that this is something which would assist or positively augment the licensing process.

**2.2** A licensing authority already has the ability to set out ways in which it will seek to facilitate the enjoyment by the public of all licensable activities.

**2.3** Whilst recognising the primacy of the 4 licensing objectives, the Guidance makes it clear that the legislation also supports a number of other 'key aims and purposes' which are 'vitally important and should be principal aims for everyone involved in licensing work. They include: 'recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises'.

**2.4** The s182 Guidance makes it clear that licensing authorities are free to add to the recommended core content of a licensing policy. For instance, para 13.18 of the Guidance states that 'Statements of licensing policy should set out the extent to

which the licensing authority intends to facilitate a broad range of entertainment provision for enjoyment by a wide cross-section of society.'

**2.5** By way of example, City of Westminster's Statement of Licensing Policy (SLP) 2016 sets out its vision at para 2.3.3: 'The council wishes to see a less alcohol led and a more diverse range and variety of entertainment available later at night, and will allow for greater flexibility to those premises that add a more varied offer of entertainment and cultural activity. The council wishes to encourage a wider range of people to frequent the West End, both so that they can enjoy what it has to offer and because a wider range of age groups can act to curb anti-social behaviour.'

**2.6** We feel that the existing objectives engage the right issues which ought to be considered, but that a 'health and well-being' objective may be helpful as an additional objective, subject to our comments above.

### **The balance between rights and responsibilities**

**3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?**

**3.1** We consider that the Live Music Act 2012 has gone far enough. Many forms of regulated entertainment do not now require a licence and cannot be controlled by conditions unless such conditions have been imposed as a result of a review of the premises licence. We are aware that some residents would argue that the Act did not impose 'unnecessarily strict requirements' in the first place, particularly since the enactment of the Live Music Act 2012 but before further deregulation.

**3.2** Our view on the levy is that not enough authorities have implemented one for long enough to gauge accurately its effect. However, a more targeted version of the levy, along the lines of a 'polluter pays' principle, may be an alternative which more local authorities would be minded to consider.

**3.3** The introduction of the power to implement an EMRO has not been effective.

**3.4** A consultation in 2010 on rebalancing the Act asked the question ‘How can licensing authorities encourage greater community and local resident involvement?’ It is a quandary which has yet to be fully resolved.

**3.5** Whether the Act now achieves the right balance between the rights of the trade and the rights of objectors is a difficult question to which to give a concise answer. Our view is that the Act as it now stands does so more effectively than as originally enacted; principally due to passage of time and experience, and the changes implemented by subsequent legislation. Lack of resources for licensing authorities has been and continues to be a barrier in some circumstances.

**3.6** Accordingly, we believe that the Act does provide a framework in which the right balance can be struck. We believe that the Act provides important rights for residents, but not necessarily the wherewithal with which to exercise these rights effectively.

**3.7** There will no doubt be responses to this question on both sides of the fence. Para 133 of the Memorandum to the Select Committee notes that criticisms were raised during the 2010 consultation that removing the ‘vicinity’ test could lead to an increase in frivolous and vexatious representations. On the other hand, and in a neat encapsulation of the sometimes polarising nature of these issues, many welcomed a greater community involvement.

**3.8** Similarly, a recent study by Institute of Alcohol Studies (IAS) received responses on both sides of the ‘balance’ debate. Some of the trade participants saw too much engagement as problematic for business. One view was that it is too easy to object.

**3.9** Our view is that there are issues which can tip the balance in favour of industry. For example, there can be a clear disparity in the resources of the parties, both financial, practical (e.g. time) and in expertise. Nuances of practice can be confusing to residents, for example repeat applications, ‘shadow’ licence applications, and their rights on appeals (particularly on an appeal by a licence holder from a review initiated by residents). Some residents react with surprise when we advise them that if no representations are received in respect of an application for a licence, it must be granted subject only to conditions consistent with the Operating Schedule (if any).

**3.10** Organisations such as residents associations and amenity societies are usually voluntary, and roles unpaid. The volunteers care deeply about the areas in which they live and wish to see the correct balance struck between the wishes of

residents and the equally legitimate wishes of the licensed trade. One amenity society states that 'We believe that we have achieved a balance in our area of London but this has been at the cost of a very significant level of effort and has been achieved despite rather than because of the Act and Guidance.'

**3.11** It is perhaps noteworthy, particularly when considering if residents have too much power or influence, to consider the information at Annex A of the Memorandum to the House of Lords Select Committee. Table A2 shows that 97% of new premises licence applications and variation applications in the year to 31 March 2014 were granted. Only 3% were refused. These figures are consistent going back to 2008.

**3.12** A point we often make to residents and at Licensing Sub-Committee hearings is that contested applications are almost never about a simple 'grant as applied for' or 'refuse entirely'. There are many areas for negotiation and measures and compromises that can address objectors' concerns. It is this, we suggest, where the informed and effective engagement of residents can be of great benefit both to them and to the process in general. Licensing can appear to be a minefield of jargon and procedure. Relatively benign proposals can appear out of context on the bare pages of an application. An understanding of the process, the terminology and the practice can assist all parties.

**4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?**

**4.1** Some responsible authorities engage very effectively. Our experience of the work of police, the licensing authority and Environmental Health is positive.

**4.2** Other responsible authorities do not participate to a great extent, but perhaps through no fault of their own. For instance, although the local Public Health department is a responsible authority, 'promotion of public health' is not itself a licensing objective.

**4.3** It is vitally important to the democratic nature of the licensing process that residents are empowered and informed.

**4.4** The recent IAS study found that the view of interviewees was, generally, that accessibility to the process had increased, although significant practical barriers

were identified. There are a number of ways in which effective engagement can be encouraged. Some of these are noted in the following paragraphs.

- 4.5** The extent of engagement of local communities varies. There are helpful initiatives and ways in which authorities seek to involve local residents. Whether in fact there is *effective* engagement depends on many factors e.g. whether an authority has a practice of notifying residents in the vicinity of applications; whether residents can sign up to weekly notifications; whether good advice is accessible to residents; when hearings take place; whether residents have access to advice or assistance prior to or at hearings; the extent to which residents are aware of their rights and responsibilities.
- 4.6** Improvements in technology and the development of social media have made it potentially easier for residents to become involved. Some authorities send notification letters to residents within a certain vicinity of the application premises. Easily accessible lists of pending applications on a Council websites, or readily available information publications keeping interested residents updated, are vital.
- 4.7** Acceptance of representations via email and systems such as Public Access make it easier on a practical level and less time-consuming for residents to participate. It seems somewhat anachronistic that, according to Regulations, a representation sent by email should be followed by a hard copy.
- 4.8** An easily accessible and navigable online Licensing Register can be a mine of information which can assist residents in putting forward their views effectively.
- 4.9** Clear guidance on the statutory requirements, and the easy availability of application documents and licences is also helpful. Residents can then address the specifics of an application rather than the generalities which may appear on the blue notice in the window.
- 4.10** There are other difficulties. For instance the nature of the evidence required of residents is sometimes misunderstood, which can contribute to tilting the balance away from residents. Representations are sometimes not made or withdrawn because the objector is fearful of intimidation. Representations are sometimes not made or withdrawn because the objector does not want his or her contact details and home address made public.

**4.11** Licence hearings in particular can still be regarded as ‘daunting and challenging’ which weights the system against resident, according to one amenity society. This is surprising given the clear direction that the ‘hearing’ should really take the form of a discussion led by the licensing authority. Our experience of licence hearings is positive, in a large part due to the opportunity which residents are afforded to be represented and/or speak for themselves, and be part of the discussions which frequently result in changes to the application or suggested compromises during the hearing itself.

**4.12** Residents who have made representations on ostensibly very similar grounds can nevertheless often have slightly different perspectives which can be teased out by sensible questioning or affording them the opportunity to speak. The nuances of each resident’s concern can be highly relevant when considering the local context, which is where residents’ ‘expertise’ lies. On a more practical level, a resident who feels that they have not been given a fair chance to express their concerns is not likely to give up their time to attend another hearing.

**4.13** We explain to residents what the hearing process entails. We always encourage residents to speak at hearings even if we are representing them, as we feel that it is an important part of the process for a Licensing Sub-Committee to hear, however briefly, from those affected by the proposals.

### **Licensing and local strategy**

**5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?**

**5.1** No comment to make.

**6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**

**6.1** We are frequently asked to explain to residents why an application for a licence can be granted in the absence of planning permission, or where there is a breach of planning control. It is not unusual to see representations which have as their

main focus the contention that a licence cannot or should not be granted for these reasons.

**6.2** An applicant would make a submission that the absence of planning permission is not a relevant factor. Of course, the reverse is also true- the presence of planning consent should also not be relevant. Nevertheless, we have had feedback from residents who feel that the licensing and planning regimes are being 'played off' against each other.

**6.3** There is certainly an argument for a more 'joined-up' approach. The difficulty is that the regimes, although clearly sharing common elements, are separate. There are significant differences.

### **Crime, disorder and public safety**

**7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?**

**7.1** The closure powers in the Act and in other legislation and the introduction of s53A 'summary' reviews do give the police wide-ranging powers.

**7.2** As with various aspects of the other powers available to bodies and individuals under the Act, whether the police are adequately trained and resourced in order to utilise these powers proportionately and effectively is another matter, and one on which we are not able to comment.

**8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?**

**8.1** No comment to make.

### **Licensing procedure**

**9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?**

**9.1** We agree that parts of the Act are very technical and complex, and not easy for the lay person to understand. However, we do not agree that it has become

increasingly complex in general, with the exception of regulated entertainment and s53A reviews. In fact, certain changes such as the abolition of the 'vicinity' test have made it less complex.

**9.2** There are of course various nuances which have developed since the Act came in to force, based on everyday practice and procedure. One example is 'shadow' licences.

**9.3** It is natural that as the Act has been in force for 10 years, parties have looked to interpret provisions the Act in different ways. Case law has honed some areas of doubt and challenge arising from the blank canvas of the Act in 2005. In this way the Act is now more complex inasmuch as a sound working knowledge of the case law is necessary, but this is a natural result of the balance which the Act requires a licensing authority to strike, and the inevitable tensions which this causes between the equally legitimate aims of the different stakeholders.

**9.4** The most complex parts of the Act in our view are those that regarding regulated entertainment - the amendments to which were put forward in order to 'cut red-tape' - and the s53A 'summary' review procedure. The latter is in the process of being rectified.

**9.5** It is very difficult for residents to know what regulated entertainment is licensable, when it is licensable, where it is licensable, and when and in what circumstances conditions on licence apply or do not apply. We often have to explain this at length.

**9.6** We would also reiterate our previous comments regarding licence hearings, and the importance to the decision making progress of residents who are well-informed about their rights and responsibilities.

**10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?**

**10.1** It is vital that the views of residents are taken fully in to account on appeals, particularly on appeals arising from a review instigated by residents, to prevent them feeling disenfranchised.

- 10.2** There is no automatic right to be joined as a party to the appeal and in any event, possible adverse costs orders are discouraging.
- 10.3** Dissemination of decided cases in the higher courts is extremely useful. The Institute of Licensing has an online facility where many can be viewed. Perhaps the Government could have a central register of case law from the higher courts?
- 10.4** Reporting of Magistrates' Court decisions could be useful in promoting consistency although a decision is not binding.
- 10.5** We do not see a need for a further appeal to the Crown Court.
- 10.6** We believe that there is a role for mediation in the appeal process. Our experience is that matters can progress swiftly following mediation between parties at the application stage, and there is no reason why this should not be the case on appeal, particularly when there are costs implications.

#### **Sale of alcohol for consumption at home (the off-trade)**

**11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?**

- 11.1** Issues such as pre-loading and post-loading can lead to the on-trade bearing the brunt of disproportionate regulation where the burden should perhaps be with the off-trade.
- 11.2** The regime does control supermarkets etc effectively, particularly where conditions can be imposed on licences to address concerns. We have some concerns however that the regime may not afford sufficient regulation of delivery services of alcohol where an order is taken and processed by a third party platform, but appropriated to the contract at the premises (e.g. a restaurant), and then delivered by a third party contractor on behalf of the platform but not employed by them. Given that under s151 of the Act it is not an offence to deliver alcohol to a person under 18 if the delivery takes place to the buyer's home, the holder of the premises licence in these circumstances must be able to either carry out age verification or satisfy themselves that age verification has been carried out.

- 11.3** It is common for conditions to be added to premises licences restricting sales of 'super strength' alcohol, although some argue that such conditions may not be lawful. Street-drinking is often of great concern. One amenity society states that it is linked to the availability of super-strength alcohol, and the 'associated problems of litter, public urination and general anti-social behaviour.'

### **Pricing**

- 12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**

**12.1** No comment to make.

### **Fees and costs associated with the Licensing Act 2003**

- 13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?**

**13.1** Yes. The challenges faced by licensing authorities differ from one area to another in nature and extent. As one amenity society states, '...although the Act has provides tougher powers...it has not provided the resources to allow these to be exercised.

**13.2** There is a strong argument that fees should reflect as closely as possible the actual costs incurred by a licensing authority of exercising its functions under the Act in the manner which the legislation envisages.

### **International comparisons**

- 14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?**

**14.1** No comment to make.