

EAST LOTHIAN LOCAL LICENSING FORUM

Meeting to be held on 3rd September 2013

THE LICENSING BOARD'S DRAFT STATEMENT OF LICENSING POLICY 2013-2016

(Discussion paper by the Secretary)

1. Introduction This paper merely tries to indicate some of the key areas for discussion. It raises a number of questions but it is for the Forum to decide whether there are satisfactory answers and also which topics to cover in its formal response.
2. Documentation The four documents referred to below can be accessed via the link included in Fiona Currie's email to Forum members of 27th June 2013. They are being circulated in paper form prior to the September meeting, along with this discussion paper.
3. General content of the proposals The draft policy statement is much shorter than the current (2010-2013) version. This has been achieved by excluding large sections relating to licences and licence applications, especially premises licences and occasional licences (see below).
4. Licensed hours This is one of the two areas singled out for detailed response in the Licensing Board's questionnaire, although comments are also invited on other matters. The new proposals are set out in Section 15.0 and members might consider that the 'general policy' for on-sales hours listed in Section 15.1 reflects much more closely the current situation than the previous 'guideline terminal hour' of 11pm for every day.

For off-sales, the proposed wording is similar to the previous version except that the words 'the available' have been excluded (from the beginning of line 3 of new Section 14.1). Members might feel that the inclusion of these words would give a more accurate reflection of the Board's policy.

Members might also wish to consider whether the deletion of the previous section entitled 'Lack of Demand and Duty to Trade' is a good idea? This section seemed to give useful guidance on a difficult issue which can be of particular relevance to rural premises.

5. Overprovision The new Sections 17.1 to 17.3 (not numbered consistently with the rest of the document and not listed in the Index) represent a dramatic change from the previous policy, which stated simply: "The Board have concluded that currently there is no overprovision of licensed premises or licensed premises of a particular description in any locality within the Board's area".

In the proposed policy, new premises licences (or any increase in capacity of an existing licence) in Whitecraig/Wallyford and Prestonpans will be automatically refused. In three further areas, Dunbar, Haddington and Musselburgh there will be a 'rebuttal presumption'. At the forum's last meeting it was explained that this would require an applicant to demonstrate their proposals met the five licensing objectives before the Board would even consider them.

Note that the above policies seem on paper to be qualified by the statement in Section 17.3 that application will still be considered 'on their merits' but it is unclear whether this will allow the Board to overturn the stringent rules described above.

How has this change in the Board's view come about? The Board has taken the advice of Alcohol Focus Scotland and others by moving towards an 'Evidence-based Overprovision Policy'. Hence the two tables of statistics included along with the other paperwork.

The Forum has already considered the table on alcohol-related hospital admissions and numbers of licences at previous meetings. Certain curiosities were noted, such as the apparent exclusion of Gullane (which has at least 11 licensed premises) from the figures. Observe also that in the note on page two of the 'Health' paper the authors comment that the five areas with the highest hospital admission rates are 'the areas with the greatest deprivation'. Incidentally, these areas only contain five or six pubs in total!

6. Overprovision – questions In relation to the Overprovision proposals, here are some issues which the Forum may wish to consider prior to formulating its response to the very detailed questions on this subject in the questionnaire:

- i In the 'Health' paper, is it satisfactory that the 'hospital admissions' data virtually pre-date the current licensing regime (the 2005 Act having been implemented from 1st September 2009)?

- ii In the 'Health' paper, what is the date of the data on numbers of licences?
- iii In the 'Police' paper, what is the definition of 'incident'?
- iv In the 'Police' paper, what is the date of the figures given? (one assumes that they are for 2007-2009 to be consistent with the hospital admission figures).
- v In both papers, what are the postcodes covered by each geographical area and how, if at all, will they match the postcodes yet to be inserted in new Sections 17.1 and 17.2?
- vi The overall rate of alcohol-related police incidents in Whitcraig and Wallyford is not above the average for East Lothian as stated in Section 17.1. The overall rate for these areas is 4.23% (40 out of 945), which is below the East Lothian average.
- vii Other factors which the Board state that they have taken into account include the following:
 - "Having more licensed premises than the average for a locality in East Lothian" (17.1 and 17.2)
 - "Having *easy access to* (my emphasis) more licensed premises than the average for a locality in East Lothian" (17.1 and 17.2)
 - "Local knowledge about patterns of alcohol purchase and consumption" (17.1)
 - The type *and capacity* (my emphasis) of licensed premises in all areas of East Lothian (17.1)

However, the second, third and fourth of the above are not fully, or even partially, quantified. Moreover Wallyford and Whitecraig, for example, have only 70% of the average East Lothian rate of licensed premises per 10,000 population.

7. Overprovision – practical issues From the Board's point of view, any move towards this kind of Overprovision policy has to be watertight so that challenges from potential licence holders can be defended. The Forum will wish to consider whether that is the case based on their analysis of the papers and the questions raised above.

Should there be exclusions for proposals having a measurable economic benefit? Even the architects of a strict overprovision policy, West Dunbartonshire Licensing Board, have recently approved a new Wetherspoon premises in Dumbarton because of the job creation offered, although the area was said to be formally overprovided.

More locally, in Whitecraig it was reported recently in the 'Courier' that the new owner of the Mercat Grill (previously the Dolphin Inn) wishes to embark on a 5-year expansion and modernization plan, creating up to 15 jobs. This would be after the completion of the current upgrading. If the proposed Board policy is in place (with no flexibility for economic benefit) then the necessary applications for increased capacity will have to be refused.

8. Other issues The exclusion of the current section on *Occasional Licences* means that there is no longer any clear statement by the Board about the minimum 42-day notice period, the maximum 14-day length of such licence, multiple applications, what can happen if late applications are made, etc. Given the fact that those applying for such licences may not be part of the current licensing regime (they can be representatives of voluntary organizations) is this an area that could still be usefully included?

The exclusion of the current section on *Management of Licensed Premises* means that there is no longer a statement that the 'best practice' approach is to ensure that, where possible, a personal licence holder is present on the premises to authorise the sale of alcohol during licensed hours. At a time when personal licence accreditation is already under pressure (because of the likely cost of refresher training) is this a retrograde step? It has always been the understanding in the trade that if something bad happened in a licensed premises and this 'best practice' was not being followed then the Board would view the matter very unfavourably.

The references to Pubwatch membership have now been strengthened to refer to 'active participation' in Sections 9.4, 10.2 and 11.4, which should be commended.

Sections 9.4 and 12.3 refer to the need to offer different sizes of glasses of wine. Would it not be better to refer to different *measures*? Many establishments offer up to three sizes of measure for wine but use only one or two actual glass sizes.

Section 22.0 on Licensing Standards Officers should perhaps be re-written in gender-neutral language.

There are some minor typos eg the misspelling of 'Saltire' in Section 21.3 and the reference to the wrong Appendix number in Section 21.5.

The *population* of East Lothian was 98,170 in 2011 according to the GRO, not 82,000 as stated in Section 2.2.

9. The Forum is invited to formulate its response based on the above observations and members' own views.

Pat Hanson

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