

PART A

Report to: Licensing Committee (Licensing Act 2003)
Date of meeting: 29 February 2016
Report of: Head of Community and Customer Services
Title: Licensing Act 2003 Annual Report for 2015

1.0 SUMMARY

- 1.1 The Council is responsible under the Licensing Act 2003, which came into force on 24 November 2005 for licensing the sale of alcohol and provision of regulated entertainment and late night refreshment within the Borough. This is the ninth annual report on the operation of the Act within the Borough.
- 1.2 Watford's continuing economic confidence seems to be reflected in the leisure and retail sector, with several new premises being licensed during 2015, with an increase in the number of premises licensed within the Borough overall.

2.0 RECOMMENDATIONS

- 2.1 That the Licensing Committee notes the report.

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Report approved by:

Alan Gough, Head of Community and Customer Services

3.0 Introduction

- 3.1 Under the Licensing Act 2003, Watford Borough Council has responsibility for licensing alcohol, regulated entertainment and late night refreshment. This encompasses the determination, grant, administration and enforcement of premises licences, club premises certificates, personal licences and temporary event notices to authorise those activities to take place.
- 3.2 The Act requires the licensing authority to produce a statement of licensing policy in consultation with specified stakeholders. Any decisions in relation to the Act must be in furtherance of the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The licensing authority is required to have regard to statutory guidance issued by the Secretary of State and approved by Parliament in the exercise of its functions.
- 3.3 There were 320 licensed premises (including 19 qualifying clubs) licensed under the Act as of 31 December 2015. This is an increase of 12 from 2014.
- 3.4 According to the last published national statistics¹ which only reflected figures as of 31 March 2014, there were 204,300 licensed premises. The trend was a very slight increase in premises licences and a more noticeable decrease in Club premises certificates. Statistics were not collected in 2015, so we are not able to comment further on the national picture.
- 3.5 Last year there were 12 hearings scheduled, of which 5 were withdrawn (vacated).

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------------------|------|------|------|------|------|------|------|
| Scheduled hearings | 21 | 28 | 27 | 31 | 26 | 10 | 12 |
| Vacated hearings | 7 | 13 | 7 | 11 | 7 | 1 | 5 |

- 3.6 Interested parties made representations concerning eight applications which is fewer than 2014. The police made representations about eight applications (compared to seven, one, six and three in the previous four years). No representations were received from Councillors this year (compared to one in 2014, three in 2013 and one during 2012). Environmental Health made two representations and the licensing authority made seven representations, the same as in 2014. Representations from the licensing authority are made against applications falling within the town centre or our sensitive licensing areas. We also received two representations each from Public Health and planning, compared to none from last year.

Although there were slightly more hearings scheduled for this year than the previous year, a good proportion of these hearings were vacated due to successful mediation

¹ Alcohol and late night refreshment licensing England and Wales 31 March 2014
(<https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2014/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2014>)

to address concerns and to bring the application in line with our policy requirements. This should be seen as a positive reflection of the success and strength of the current Statement of Licensing Policy and officers' skills in negotiating agreeable applications consistent with the aspirations for the Borough.

- 3.7 27 new premises licences were applied for in 2015 (compared to 15 in 2014, 20 in 2013, 8 in 2012, 18 in 2011 and 12 in 2010) in respect of:

| | |
|--|--|
| <i>Alcohol on-sales and other licensable activities (two applications granted in 2014)</i> | J.D.Wetherspoon Head Office The Spa Attico Art Centre Faborje Bar & Grill Fresh Shop West Herts Hockey Club Walkabout/Highlight Watford Association Football Club Herts Pride 2015 |
| <i>Alcohol off-sales (five applications granted in 2014)</i> | Watford Superstore WH Smith Great Poland Deli Tesco Spar Arora Food & Wine Name TBC, 312 Whippendell Road |
| <i>Restaurants (four applications granted in 2014)</i> | Chutneys Sue Café (30, Vicarage Road) Sue Café (26 Vicarage road) Monsoon Fusion |
| <i>Late-night refreshment only (one application made in 2014)</i> | Quiznos Sub Dominos Pizza Pepe's Piri Piri Woody Express Barracuda Catering Ltd Kaspa's Desserts Woody Express (second application) |
| <i>Regulated entertainment only (two applications made in 2014)</i> | None made this year |

3.8 Licence Variations

The table below sets out the number of licence variations received, both for minor variations and for full licence variations. Two full variations received representations, but neither required a hearing, with one application seeing all representations being withdrawn, and the other application being withdrawn by the applicant. One minor variation was rejected as being invalid, but all others were granted.

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------------|------|------|------|------|------|------|------|------|
| Full variations | 20 | 11 | 12 | 37 | 9 | 8 | 22 | 6 |
| Minor variations* | N/A | 5 | 13 | 19 | 30 | 29 | 10 | 19 |

* minor variations only came into force in July 2009

3.9 Changes to Licences

The table below sets out the number of licence transfers, changes of designated premises supervisors (DPS), and interim authorities received. No objections were lodged by the police to any transfer or change of DPS.

| | | | | | | | | | |
|------|---|------|------|------|------|------|------|------|------|
| 3.10 | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| | Licence transfer | 27 | 26 | 25 | 28 | 23 | 24 | 23 | 30 |
| | Variation to designated premises supervisor | 91 | 94 | 55 | 80 | 50 | 78 | 50 | 59 |
| | Interim authority notices | 2 | 2 | 0 | 3 | 0 | 0 | 1 | 0 |

3.11 An increase in applications this year particularly for new licences is a positive indication that businesses still view Watford as a place to invest in and as presenting opportunities to grow. This can also be seen in the number of licence transfers. The decrease in variations may indicate that most premises are either happy with their existing licences or that they have already been granted the maximum hours as recommended under our policy. For this reason we will continue to monitor our policy and its effectiveness. The slight increase in DPS changes is not a particular concern as the leisure industry historically has high turnover of staff although we have not seen a dramatic increase and businesses are still able to recruit and retain staff.

3.12 Surrendered Licences

The table below shows the number of surrendered licences:

| 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|------|------|------|------|------|------|------|------|------|------|
| 3* | 4* | 3* | 9 | 8 | 5* | 6* | 8 | 5* | 10* |

* new licences were also applied for in lieu of some of those that were surrendered

3.13 There were 10 premises licences surrendered in 2015, compared to three in 2014. Out of those licences which were surrendered, five premises have since obtained new licences, two licences were surrendered because the businesses were moving to other premises (one relocated within Watford and the other relocated outside of the borough), and three licences were surrendered because the businesses closed down. There was also one licence which expired in 2015, for a one-off event in Cassiobury Park.

3.14 Where an annual licence fee has not been paid, the licensing authority suspends the relevant licence until the fee is paid. There are currently seven licences which are

suspended.

3.15 Appeals

There were two appeals heard by the Magistrates Court in 2015, both of which were for applications within the town centre. One was against the decision to refuse a takeaway which the appellant withdrew so the decision of the sub-committee stood. The other appeal was against a refusal to vary an existing licence which was settled by a consent order to the agreement of all parties. No order was made as to costs.

3.16 Temporary Event Notices

The chart below indicates the number of temporary event notices (TENs) received each year by the council, 80 of which were for alcohol sales alone. No TENs were required to go to a hearing because of representations, although one did receive representations from the Police and was withdrawn before a hearing was required.

| Year | Number of TENs Received |
|-------------|--------------------------------|
| 2005 | 88* |
| 2006 | 188 |
| 2007 | 218 |
| 2008 | 237 |
| 2009 | 243 |
| 2010 | 251 |
| 2011 | 237 |
| 2012 | 206 |
| 2013 | 281 |
| 2014 | 325 |
| 2015 | 323 |

* Only relates to 24 November (when the Act commenced) to 31 December 2005

- 3.17 TENs continue to be primarily given in respect of premises that are already licensed. 50 TENs were given by community premises, such as schools, churches and community centres. The most popular months for TENs remain those with bank holidays (such as May and August) to be used as extensions to existing licences, with December being the most popular month by some margin. Ten notices were rejected as being invalid (compared to nine in 2014) and six were withdrawn. Three notices were withdrawn because of concerns of the Police or environmental health, and three were withdrawn because the TEN was no longer needed.

3.18 Personal licences

The table below shows the numbers of personal licences issued since 2005. There were no applications referred to the Licensing Sub-Committee owing to police representations during the year.

| Year | Number of personal licences |
|-------------|------------------------------------|
| 2005 | 303 |
| 2006 | 115 |
| 2007 | 74 |
| 2008 | 80 |

| | |
|------|----|
| 2009 | 81 |
| 2010 | 72 |
| 2011 | 62 |
| 2012 | 80 |
| 2013 | 85 |
| 2014 | 66 |
| 2015 | 69 |

- 3.19 As far as officers are aware, none of the personal licences issued by the licensing authority have been revoked by the courts following convictions for a relevant offence. However there remains concerns nationally that not all licensees appearing before criminal courts disclose the fact they are personal licence holders (as legally obliged to), and that the courts do not properly understand their powers in such circumstances.

3.20 **Statement of licensing policy**

The table below sets out applications for new and varied premises licences within the town centre covered by policy LP3 Creating a Family-Friendly Town Centre, although it should be borne in mind that the area was slightly enlarged in January 2011.

| | Applications | Hearings not required | Applications where cumulative impact policy did not apply ² | Appeals against sub-committee's decisions |
|---------------|--------------|-----------------------|--|---|
| 2005/6 | 27 | 3 | 12 | 3 |
| 2007 | 10 | 1 | 5 | 0 |
| 2008 | 14 | 2 | 4 | 2 |
| 2009 | 11 | 1 | 0 | 1 |
| 2010 | 7 | 0 | 1 | 1 |
| 2011 | 8 | 2 | 0 ³ | 0 |
| 2012 | 6 | 5 | 1 | 1 |
| 2013 | 4 | 3 | 3 | 0 |
| 2014 | 3 | 0 | 3 | 0 |
| 2015 | 20 | 11 | 4 | 2 |

- 3.21 According to Government figures, as of 31 March 2014 (the latest available) there were 208 cumulative impact areas in England and Wales.

3.22 Sensitive Licensing Areas

The three Sensitive Licensing Areas were introduced in 2011 to recognise community concerns about particular pockets of licensed premises. Three applications were submitted, with one in each sensitive licensing area during 2015. Officers were involved in negotiating additional conditions regarding the availability

² This is because either alcohol sales were not the principal activity or where the application was not intended to extend the hours beyond midnight.

³ New exceptions set out in policy LP3 applied to applications from January 2011

of super strength alcohol, and to address any concerns over street drinkers being attracted to these premises. One application went to hearing. All were granted.

3.23 **Compliance and Enforcement**

The Council's licensing enforcement officer, Environmental Health officers, police (including Special Constables) and Trading Standards have continued to work proactively and reactively to ensure compliance with licensing legislation. As shown below the number of complaints received about premises was very low. This is seen as very positive indication of the controls, management and proactive approach taken towards compliance by both officers and operators in Watford. The use of the Best Bar None award scheme is an example of a tool to proactively improve standards without the need for formal enforcement action. At the same time any issues of non-compliance that officers become aware of through regular visits and patrols are dealt with swiftly and in accordance with the Council's published enforcement policy.

- 3.24 The licensing authority continues to receive a small number of complaints about activities which are regulated by the Licensing Act 2003. Out of 149 complaints in total during 2015 only 12 were relevant to the Act, although this was up slightly from eight complaints in 2014. After investigating these complaints, no formal enforcement action has been required, although contact has been made with all premises and their management to work through the issues raised.

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----------------------------|------|------|------|------|------|------|------|------|
| Premises opening hours | 4 | 1 | 4 | 1 | 1 | 0 | 1 | 2 |
| Door supervisors | 2 | 0 | 2 | 2 | 1 | 2 | 1 | 0 |
| Noise from premises | 11 | 5 | 8 | 5 | 1 | 4 | 0 | 1 |
| Underage sales | 4 | 3 | 0 | 2 | 1 | 2 | 1 | 1 |
| Advertisements | 0 | 2 | 0 | 0 | 1 | 1 | 1 | 0 |
| Unlicensed activities/other | 1 | 1 | 5 | 2 | 1 | 0 | 1 | 4 |
| Public safety | 0 | 0 | 1 | 3 | 0 | 0 | 1 | 0 |
| Child protection | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 1 |
| Crime and disorder | 3 | 3 | 1 | 2 | 0 | 0 | 1 | 3 |

3.25 Closure powers

The police, licensing authority and Environmental Health have various powers to close licensed premises where there is a breach of a licence condition; to prevent imminent or serious disorder; or to prevent public nuisance. The table below illustrates the number of occasions those powers have been used:

| | | | |
|------|---|------|---|
| 2006 | 0 | 2011 | 2 |
| 2007 | 0 | 2012 | 1 |
| 2008 | 0 | 2013 | 1 |
| 2009 | 0 | 2014 | 0 |
| 2010 | 0 | 2015 | 0 |

3.26 Test purchases

The Licensing Act 2003 allows the licensing authority to bring prosecutions for under-age sales and proxy sales (where adults buy alcohol for children under 18 from on-licensed and off-licensed premises). Trading Standards have a duty to conduct test-purchasing operations within off-licences and the police take the lead for test-purchasing within other licensed premises.

- 3.27 The table below sets out test purchase operations conducted by Trading Standards in the Borough:

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--|------|------|------|------|------|------|------|------|
| Number of operations | n/a | 1 | 2 | 1 | 2 | 3 | 0 | 1 |
| Number of premises tested | 9 | 5 | 12 | 4 | 5 | 7 | 0 | 1 |
| Number of failures, that is, sales made to under-age volunteer | 3 | 0 | 0 | 0 | 1 | 0 | N/A | 0 |
| Number of passes | 6 | 5 | 12 | 4 | 4 | 7 | N/A | 1 |
| Number of fixed penalty notices issued | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Number of review applications made | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

- 3.28 The Borough average failure rate of 0% compares to the County failure rate of 30%, although this was from only 13 test purchases across Hertfordshire as a whole. Test purchases are conducted on the basis of intelligence about under-age sales, and the low level of visits within the last two years reflect well on our businesses. Over the coming months Trading Standards, the Police and ourselves plan to work with licensees to help them in identifying fraudulent identification. As well as reducing the risks of underage sales the project also intends to help licensees educate young people of the dangers of obtaining false ID such as identity theft.

- 3.29 Licensing Reviews

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------------------------|------|------|------|------|------|------|------|------|------|
| Number of review applications | 1 | 0 | 0 | 3 | 0 | 3 | 4 | 1 | 0 |

- 3.30 There were no reviews submitted within 2015. As mentioned in 3.24 although complaints were received about premises, we have been able to address these concerns through working with businesses without the need for complainants or any responsible authorities resorting to a review.

- 3.31 Safety Advisory Group

Officers continue to play a role in the non-statutory multi-agency Safety Advisory Group advising on safety and licensing. This included advice on the Big Events programme and Cassiobury Park's events.

- 3.32 **Looking forward**

As of 1st January 2016, premises can now give up to 15 TENs in a calendar year

instead of 12. However, In Watford premises rarely reached the limit of 12, so it is not expected that there will be an increase in TENs or an increase to our workload.

- 3.33 The Deregulation Act 2015 has further relaxed the requirement to hold a licence to put on certain entertainment between 8am and 11pm such as live and recorded music. This gives more flexibility for businesses to offer new services without paying for a licence where it is felt that the impacts of the new activities are not significant. Since initial deregulation of live music in 2012 we haven't seen an increase in related complaints so officers do not feel these latest changes will have an impact on the community but of course any complaints will be investigated.
- 3.34 It is anticipated that the Town Centre Business Improvement District (BID) will start to make its mark on the night time economy and will take over the responsibility of reapplying for Purple Flag, running and organising Best Bar None and the administration of the taxi marshal scheme. Officers will work with the BID team to ensure these transfer smoothly and that we explore any further services that may be beneficial to town centre businesses.
- 3.35 The Deregulation Act 2015 also allows local authorities to designate areas where late night refreshment can be provided without needing authorisation under a premises licence or a TEN. Officers have not immediately identified any areas within Watford where this would be suitable. However should the Committee wish to exercise its powers or should officers identify where the adoption of this power would be suitable then it would be necessary to take the report to Committee for discussion and approval.

4.0 **IMPLICATIONS**

4.1 **Financial**

- 4.1.1 There are no financial implications arising from this report.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that there are no legal implications arising from this report.

Background Papers

File Reference None