

## Scrutiny Review of Planning Enforcement

### Response from Richard Parkins, Southwark Health Safety & Licensing Manager

1. The relationship between licensing and planning is not a straightforward one. To help clarify this, I feel it would be best if I firstly set out the guidance provided to local licensing authorities by the Department of Culture Media and Sport (DCMS) under section 182 of the Licensing Act 2003 (consolidated version published 28 January 2010).

"13.64 The (council's) statement of licensing policy should indicate that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority.

13.65 The planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity. As such licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals taken by that committee. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

13.66 The granting by the licensing committee of any variation which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate.

13.67 There are also circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

13.68 Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap. A planning authority may also make representations as a responsible authority as long as they relate to the licensing objectives."

*Gary and Richard:*

*Are “regular reports” issued? Have the planners made any representations to licensing recently (eg last 2 years)? If so, any useful lessons to be learnt?*

### **Response from Head of Development Management**

*Development management have been consulted and made representations on licensing applications. The process was reviewed and restructured in 2008. The planning enforcement team is now responsible for consultation responses. The important lesson learnt has been that responses should be based on licensing objectives rather than planning considerations. However responses provide information on whether the licensable activity or variation benefits from planning permission. A number of planning enforcement investigations has resulted from such consultation.*

2. The position established by DCMS guidance is reflected within the Southwark Statement of Licensing Policy (November 2009 revision). Section 6 on “Other policies, objectives and guidance” sets out

“... Lastly, it should be made clear that the planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency.

Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications should not be a re-run of the planning application and should not cut-across decisions taken by the local authority planning committee or permissions granted on appeal. Similarly, the granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve of the need to apply for planning permission or building control where appropriate.

While the licensing authority is conscious that there is no legal basis for a licensing authority to refuse a licence application solely because it does not have planning permission, it may be inconsistent for the authority to give a licence for an activity when it has refused planning permission for the same activity to take place. In such cases the council would expect the applicant to address the reasons why planning permission had not been granted and provide reasons as to why licensing consent should be.

*Gary and Richard:*

*How does the above operate in practice? Any examples to assist the scrutiny? See also para 4 below*

### **Response from Head of Development Management**

*Development management has advised licensing where licensable activities do not benefit from planning permission. In turn, licensing notify applicants who then consult development management to address the planning issues. This has resulted in a number of retrospective planning applications for example, around a number of restaurants operating as night clubs without planning permission and other buildings being used without planning permission. In some cases, joint meetings have been held involving applicants, licensing officers, police and planning enforcement officers where applicants have clearly been advised to seek planning permission first before proceeding with their licensing application. The same applies to premises in breach of hours of operation imposed on planning permissions.*

There may also be circumstances when as a condition of planning permission, a terminal hour has been set for the use of the premises for commercial purposes which carry different hours to the licensing hours. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to enforcement under planning law.

Borough-wide and area based planning guidance exists through the Southwark Plan and supplementary planning guidance. Where relevant representations are made on applications, the Licensing Authority will have regard to the appropriate relevant guidance.

Proper integration with the planning regime will therefore be assured. This will include, where appropriate, the provision of regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder.”

*Gary and Richard:*

*Same as para 13.68 of the guidance quoted in para 1 above?*

3. A similar position exists with regard to the situation between licensing and planning in respect of gaming and betting premises under the Gambling Act 2005 and guidance from the Gambling Commission.
4. Crucial to the relationship between licensing and planning, however, is the inclusion of planning as one of the stated ‘responsible authorities’ under both Acts. Through this nomination as ‘responsible authority’ every applicant a for new or varied premises licences is required to provide a full copy of their application to the planning team and the team, in turn, is enabled to make representations to the licensing service about any particular application. Such representations must concern one or more of the four licensing objectives under the Act, which are
  - The prevention of crime and disorder;
  - Public safety;

- The prevention of nuisance; and
- The protection of children from harm

but there is cross-over around the issue of public nuisance which affects both amenity and the licensing objectives. Although, admittedly, there were teething problems with the system we do now have a process that works well. Planning receive and consider every premises licence application; representations are being made by the planning team as appropriate (and good evidence has been provided on occasions which have contributed toward the licence determinations reached by the licensing committee at public hearing - a case in example being that of premises at 5-7 Rockingham Street, SE1); and every licence application report in front of the sub-committee now contains information on the planning position, irrespective of whether a representation is considered necessary or not. This situation should ensure that planning are aware of and, if necessary, have contributed toward all licensing decisions.

*Gary:*

*Any comments on the improved situation described above, eg any staffing/resource implications?*

### **Response from Head of Development Management**

*As discussed above, the planning enforcement team is responsible for licensing consultation responses. The team manager is currently responding to all consultation responses. However, as part of a review of the roles and responsibilities within the team, there is a recommendation for area officers to respond to licensing consultations within their area in liaison with the relevant development management teams under the overall supervision of the team manager.*

5. As per our policy, licensing officers will urge applicants to seek planning consent for their premises before they apply for a premises licence. **If applicants insist on applying for licences and consent simultaneously or the licence firstly**, the licensing officers will ensure that the applicant understands that both licence and consent must be obtained before lawful operation can commence. Similarly, if officers are aware that any application is granted without planning permission they will be reinforcing advice that the new licensing consent cannot be enacted until planning permission is obtained. By way of this system it should be rare that any premises commences operation without both licence and consent in place or without planning being ready and able to take action.

*Richard:*

*Can you advise why applicants would wish to seek a licence prior to seeking planning consent? Any examples to assist the scrutiny?*

6. Situations where a planning breach remains a possibility are

- a) Where a premises transferred into the new licensing regime back in 2007 under 'grandfather rights' without appropriate planning permission. During the 'conversion process' existing licence holders were entitled to transfer their existing justices, entertainments and night cafe licences into the new system as a paper exercise. If any premises was operating under the old system without appropriate planning consent the conversion process would not have identified this; and
  - b) Where a licensed premises evolves into a different entity without any amendment to its licence being necessary. The most likely situation here is where a bar or restaurant holding a licence allowing alcohol sales and music and dancing entertainment with a late licence moves incrementally toward providing what is effectively a night-club environment.
7. Licensing officers are mindful of planning issues and are directed to contact planning should they believe a planning breach is being committed. They are willing and able to provide evidence of operation if this should be required. However, in the case of a) this situation may not come to light unless the premises management decide to put in an application for a new or varied licence and, in the case of b), it is difficult to identify the point at which a premises operation may be deemed to have become something different to that which it originally was.
8. In all, I consider the working relationship between licensing and planning to be greatly improved and fairly effective (though I recognise there is always further room for improvement). The applications process works well and planning are contributing. Planning, as a responsible authority, are also consulted upon and have contributed toward licensing policy development (including on the council's saturation policies which deal with cumulative impact of licensed premises on the Southwark community). In turn the licensing service is consulted on local planning development and the environmental protection team has input into both licensing and planning applications around nuisance issues.
9. Some steps that could be taken that might further improve the working relationship are
  - a) A formal training session for licensing enforcement staff from planning on planning consent to be followed by discussion and agreement around when 'changing circumstances' should be drawn to the attention of the planning team;
  - b) Electronic access to planning registers for licensing staff (if possible) which might provide ready confirmation of planning status where concerns arise;

- c) Notification to licensing of planning applications enabling licensing officers to flag up current licence status, whether premises are situated in saturation areas, or other relevant information; and
- d) If this were to be helpful to the planning committee, the regular six-monthly partnership analysts reports received by the licensing committee on alcohol related violence against the person, crime and disorder and ambulance pick-ups which inform saturation policy development could be forwarded on for consideration. (At present while planning are included in all consultations on saturation policies the regular reports are not provided to both committees).

*Richard:*

*What are the agencies which provide input into the above reports? Could the scrutiny see an example? Are the reports (redacted if necessary) provided to Safer Neighbourhood Team panels?*

- 10. I hope that these comments are helpful. I am, of course, happy to provide further information if needed.

Richard Parkins  
Health Safety & Licensing Manager  
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