

CORPORATE SERVICES DEPARTMENT

COMMITTEE: Licensing Board
DATE OF MEETING: 8 November 2011
REPORT TITLE: Categories of Licensed Premises
AUTHOR: Andrew Fraser

Chief Officers Consulted (please tick):

| Corporate Services Department | Date |
|--|-------------------|
| <ul style="list-style-type: none">• Legal Services | 25/10/11 |
| <ul style="list-style-type: none">• Human Resources & OD | |
| <ul style="list-style-type: none">• Information Services | |
| <ul style="list-style-type: none">• Finance | |
| Educational Services | |
| Social Work and Health | |
| Housing, Environmental & Economic Development | |
| Other (e.g. Community Planning) please state: | |

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I confirm that the attached report has been proof-read by me personally, has been discussed with the appropriate Director/Heads of Service and is, in my opinion, of a quality suitable for submission to Council.

Signature: 

Date: 25 October 2011

Executive Summary of Report (including actions for use in Covalent)

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|--|---------------------------------|-------------|----------|
| Committee | Licensing Board | Date | 08/11/11 |
| Title of Report | Categories of Licensed Premises | | |
| Department | Corporate Services, LDRS | | |
| Author of report | Andrew Fraser | | |
| Summary of Contents of report | | | |
| <p>To consider the categories of licensed premises adopted by West Dunbartonshire Licensing Board at the start of its consultation on overprovision. This will also provide clarification of the categories of premises covered by the Board's overprovision policy.</p> | | | |

'SMART' Actions (based on recommendations) to be included on Covalent, if approved by Committee.

| Covalent Code* | Action (this wording will be copied into Covalent) | Target Date | Officer action to be 'Assigned to' | 'Managed By' |
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*To be completed if the action is already linked to an objective on covalent. Please note that such actions will not be duplicated by Committee Admin.

WEST DUNBARTONSHIRE LICENSING BOARD

Report by the Clerk to the Licensing Board

Licensing Board : 8 November 2011

Subject: Categories of Licensed Premises

1. Purpose

1.1 To consider the categories of licensed premises adopted by West Dunbartonshire Licensing Board at the start of its consultation on overprovision. This will also provide clarification of the categories of premises covered by the Board's overprovision policy.

2. Background

2.1 The guidance issued by the Scottish Ministers under Section 142 of the Licensing (Scotland) Act 2005 stated that in considering overprovision, proper regard needs to be given to the contrasting styles of operation in different licensed premises and the differing impact they are likely to have on the promotion of the licensing objectives. In other words if crime, health etc problems are caused by one or two types of licensed premises, the Board can make an overprovision finding in respect of these types of premises, leaving scope to allow other types of premises. To do so the Board need to distinguish between different categories of licensed premises.

2.2 The guidance provides examples of the different categories of licensed premises. On 24 September 2009, prior to commencing the consultation on overprovision the Board agreed to adopt the categories of premises detailed in the guidance. These are:-

- Vertical drinking establishments – distinguishable from those catering predominantly and exclusively for persons taking meals (e.g. pubs).
- Restaurants – premises catering predominantly or exclusively for persons taking meals.
- Nightclubs.
- Adult entertainment venues.
- Mixed or chameleon premises – in which the facilities offered during the day are markedly different from those provided in the evening with, for example a switch from a food led operation to a nightclub style of operation.
- Town hotel – where the bar facilities are ancillary to the accommodation.
- Large supermarkets.
- Off-sales and local convenience stores.

- 2.3** The initial data gathered as part of the Boards overprovision assessment showed that there was a causal link between particular alcohol related problems and different types of premises. For example:-
- Noise nuisance issues detailed by Environmental Health were predominantly related to vertical drinking establishments, e.g. bars and nightclubs.
 - Youth crime/under age drinking – alcohol generally obtained from off-sales and local convenience stores.
 - Town Centre crime and police incidents – particularly on a Friday and Saturday night are linked to the number vertical establishments (e.g. pubs) within the town centre.
 - Alcohol related deaths, alcohol hospital admissions, domestic abuse, crime and police incidents outwith town centres and fire statistics are predominantly linked to alcohol bought from large supermarkets.
- 2.4** The Board on 30 June 2010 also found that having regard to the evidence there was no clear causal link between alcohol related problems and the following categories of premises.
- Restaurants – premises catering for predominantly or exclusively for persons taking meals.
 - Adult entertainment venues.
 - Town Hotels – where the bar facilities are ancillary to the accommodation.
- 2.5** The Board decision on 30 June 2010 did not consider the impact of mixed or chameleon premises as there were none in West Dunbartonshire. The impact of such premises would depend on the nature of the underlying uses.
- 2.6** As a result of this the Board decided to consult on overprovision in relation to the following types of premises.
- Vertical drinking establishments (i.e. where the majority of the capacity is for patrons standing up to drink as opposed to premises which cater predominantly for person taking meals – this includes most pubs but will also include hotels where the bar facilities are not ancillary to either accommodation or restaurant facilities).
 - Nightclubs
 - Off-sales and local convenience stores.
 - Supermarkets
- 2.7** Following consultation in October 2010 the Board adopted an Overprovision Policy which applied to the categories of premises detailed in the foregoing paragraph (2.6).

3. Main Issues

- 3.1** The principle of applying an Overprovision Policy to some types of premises but not others is sound. This is because different types of premises give rise

to different problems. However the examples of categories provided in the statutory guidance and adopted by the Board suffer from being unclear. In particular, use of the categories gives rise to the following problems.

- i) It is unclear as to the extent to which these categories are the same as those use classes detailed in the Town and Country Planning (Use Classes) (Scotland) Order 1997. In some cases it appears clear that the intention is that they are the same, in other cases new categories have been introduced. This uncertainty is unfortunate as all new premises licence applications require to provide a Section 50 planning certificate, confirming that planning permission has been granted for the use.
- ii) The use by the Board of categories where there are presently no licensed premises falling within this category creates uncertainty as to how new applications are treated under the Overprovision Policy. The use of the categories of adult entertainment venues and mixed or chameleon premises fall within this category. Both of these categories are essentially variations of the other categories. For example, a mixed or chameleon premises in which the facilities offered during the day are markedly different to those provided in the evening with perhaps a switch from a food led operation to a nightclub style of operation is a mix of the restaurant and nightclub categories. The use will give rise to the problems if any, created by the underlying restaurant and nightclub uses. In the case of the mixed/chameleon premises example, the restaurant use will not have any clear causal link with alcohol related problems, whereas the nightclub use will. The same goes for adult entertainment venues which are either a type of pub or nightclub, both of which will give rise to alcohol related problems.
- iii) The definition of vertical drinking establishment is particularly unclear. On the face of it this implies that premises where the pub use is ancillary to providing meals will fall outwith this category. However in planning terms, a public house use cannot be ancillary to a restaurant Class 3 use, the public house use being sui generis in the Use Classes Order. This creates uncertainty.

3.2 To provide more certainty it is recommended that:-

- i) The Board agree to amend its decision of 24 September 2009 and no longer consider the following categories of licensed premises:-
 - Adult entertainment venues
 - Mixed or chameleon premises in which the facilities offered during the day are markedly different from those provided in the evening with, for example a switch from a food led operation to a nightclub style of operation
- ii) Where applications for either or these types of premises arise they should be considered under the remaining categories. In other words

they would be considered by reference to their underlying use, whether restaurant, nightclub, public house etc.

- iii) That clarification is provided that the more detailed definition of the remaining categories will be by reference to the definitions contained in the Town and Country Planning (Use Classes)(Scotland) Order 1997. The categories would fall into the following uses:-
- Vertical drinking establishments – sui generis use as a public house, paragraph 3(5)(h) of the Town and Country Planning (Use Classes)(Scotland) Order 1997. This also includes use as a hotel or hostel licensed for the sale of alcoholic liquor to persons other than residents or persons other than consuming meals on the premises (exclusion from Class 7 Use Classes Order).
 - Restaurants – Class 3 Use Classes Order.
 - Nightclubs – Class 11(d) Use Classes Order.
 - Town Hotel – Class 7 Use Classes Order.
 - Large supermarkets – these are primarily Class 1 Use Classes Order but may contain other uses in addition.
 - Off-sales and local convenience stores – Class 1 Use Classes Order.

3.3 This will make it easier for the Board to align the type of premises as detailed in the planning permission and Section 50 Certificate with the categories of premises detailed in the Overprovision Policy. It is recommended that a footnote is added to the Overprovision Policy stating that the categories detailed therein are defined by reference to the relevant provisions of the Use Classes Order.

4. People Implications

4.1 There are no people implications.

5. Financial Implications

5.1 It is important that the Board's policies are as clear as possible, avoiding expense for both applicants and Board. This clarification attempts to achieve this end.

6. Risk Analysis

6.1 There are two main risks at present. The first is that the Board will receive an application for a mixed or chameleon premises or adult entertainment venue which is apparently outwith the Overprovision Policy when the impacts it will create are identical to the impacts created by the categories of premises within the Overprovision Policy. As these categories are not mentioned in the Overprovision Policy they can be removed by the Board. The second risk is

that uncertainty over the wording of some of the categories will lead to applications attempting to open a loophole in the Overprovision Policy. As the planning categories are quite clear and as the original categories in the guidance appear to try and reflect these, albeit imperfectly, the best solution is to simply apply the planning categories.

7. Equalities Impact Assessment (EIA)

- 7.1** The key aim of the Board's Overprovision Policy is to minimise the health impacts from alcohol benefiting those who are disabled through alcohol.

8. Strategic Assessment

- 8.1** As detailed in the report to the October Board, West Dunbartonshire's alcohol related problems have an impact on the area's ability to attract new business, to train a suitable workforce, on work absence rates and in the attractiveness of the area as a place to live and work. All of these issues impact on the long term regeneration of West Dunbartonshire.

9. Conclusions and Recommendations

- 9.1** The use by the Board of the categories of licensed premises detailed in the statutory guidance potentially results in a lack of clarity. It also means that applicants might attempt to use this lack of clarity to try and exploit loopholes in the Board's Overprovision Policy. The present categories are not well aligned with planning legislation and this also creates problems over Section 50 Certificates. For these reasons it is recommended that:-
- i) The Board agree to amend its decision of 24 September 2009 and no longer consider the following as categories of licensed premises:-
 - Adult entertainment venues
 - Mixed or chameleon premises in which the facilities offered during the day are markedly different from those provided in the evening with, for example a switch from a food led operation to a nightclub style of operation
 - ii) Where applications for either of these types of premises arise they should be considered under the remaining categories. In other words they would be considered by reference to their underlying use, whether restaurant, nightclub, public house etc.
 - iii) That clarification is provided that the more detailed definition of the remaining categories will be by reference to the definitions contained in the Town and Country Planning (Use Classed)(Scotland) Order 1997. The categories would fall into the following uses:-

- Vertical drinking establishments – sui generis use as a public house, paragraph 3(5)(h) of the Town and Country Planning (Use Classes)(Scotland) Order 1997. This also includes use as a hotel or hostel licensed for the sale of alcoholic liquor to persons other than residents or persons other than consuming meals on the premises (exclusion from Class 7 Use Classes Order).
- Restaurants – Class 3 Use Classes Order.
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Appendices:

Background Papers:

Wards Affected: All