

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

INFORMATION

meeting date: TUESDAY, 12 APRIL 2022
title: UPDATE ON WHALLEY NIGHT-TIME ECONOMY
submitted by: CHIEF EXECUTIVE
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1 PURPOSE

1.1 To inform Committee of issues reported by residents of Whalley and actions which might be taken to address those issues, and to explain the Council's role as a responsible authority.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives }
 - Corporate Priorities }
 - Other Considerations }
- Consideration of these issues will promote the Council's aim to be a well-managed Council.

2 BACKGROUND

2.1 The village of Whalley has a history of a busy night-time economy. Under the previous licensing regime (pre implementation of the Licensing Act 2003), there were 4 public houses in the centre of the village, together with various registered clubs and dining establishments. At one time there were 2 night clubs, one located on George Street and one in the premises which were the former village assembly rooms on Accrington Road. The premises on George Street closed approximately 50 years ago; the premises on Accrington Road remain open. The village has attracted visitors to enjoy its night-time economy from surrounding towns and villages over many years. This remains the case.

2.2 Since the Licensing Act 2003 came into force' premises have had the ability to close later than what had been more tightly regulated hours under the Licensing Act 1964. The earlier legislation involved a closing time for public houses in the Ribble Valley at 11pm (10.30pm on Sundays) unless a special order of exemption had been granted by the Magistrates. Night clubs enjoyed later opening hours provided they were able to offer a substantial meal to customers. There are no such restrictions under the current regime.

2.3 Over recent years, one of the pubs has closed, and is now a supermarket. There have been a number of new premises which have opened, quite often offering a wine bar type experience including provision of food for at least part of the day. Some of these premises have applied for relatively restricted opening hours, whilst others have applied for permission to open until early morning.

2.4 There has always been a mix of residential and commercial premises in the village centre. This does give rise to tension and complaints, particularly regarding noise. Some of this is reported to emanate from premises themselves. The premises about which the greatest number of complaints have been received regarding music volume is a premises which was a former registered club, in which events had been held for many years. Issues have also been raised with regard to two of the premises which have received new licences in recent years.

- 2.5 Residents also complain about the behaviour of people passing between different venues or leaving the village at the end of the night. This includes complaints about people shouting, littering, urinating or vomiting in the streets, and some complaints relating to taxis. Whilst it may be possible to watch people progress from one premises to another, the premises themselves have little control over this behaviour once a customer has left the immediate vicinity of the premises. A number of premises do have conditions on the licence requiring them to request customers to leave quietly and/or to have door staff and/or to implement a dispersal policy. Generally, these conditions are adhered to, and complaints regarding behaviour tend to arise when customers are away from the premises and the control of the door staff.
- 2.6 Anti-social behaviour is the subject of many complaints in the village. Some, but not all of this, arises from the conduct of customers at licensed premises. However, a significant amount of anti-social behaviour occurs well away from licensed premises, and earlier in the day/evening than is related to the night-time economy.
- 2.7 Currently, the police do not report any issues with the conduct of licensed premises in the village. As with other cities, towns and villages where there is an active night-time economy, the police do carry out unannounced visits to premises, regularly accompanied by drug sniffer dogs. The Council's licensing enforcement staff have attended a number of these visits. The police have not sought to review the licence of any premises in the village.
- 2.8 Where reports have been received with regard to noise from premises, the Council's environmental health staff have engaged with those premises.
- 2.9 At the last meeting of Committee, representations were made inviting the Council to become a 'responsible authority' under the Licensing Act. Residents also reported that they had attended a meeting with the police, the Police and Crime Commissioner, the MP and the Council Leader at which they were advised that they should not initiate any licence review.

3 ISSUES

3.1 The Council as responsible authority and review of licences

- By section 13za of the Licensing Act 2003, the Council is a responsible authority for the purposes of the Act. Section 51(1) provides that, where a premises licence has effect, a responsible authority or any other person may apply to the relevant licensing authority for review of that licence. Section 53 of the Act provides, where a local authority is both the relevant licensing authority and a responsible authority in respect of any premises, the authority may apply for a review under Section 51 as a responsible authority, and in its capacity as licensing authority determine the application.
- The Council, as local authority, has a scheme of delegation to officers under part 3(2) of the Constitution. Amongst matters, this authorises the Head of Legal and Democratic Services to commence or instigate legal or other proceedings. Thus, if appropriate evidence is available, a licence review could be initiated by officers as a responsible authority.
- The Council's Statement of Licensing Policy for 2021-2026 states at section 10 Licence reviews

The grounds for an application for review of a premises licence must be relevant to one or more of the licensing objectives. An Interested Party (eg a

local resident, local organisation and Councillor) or a Responsible Authority (including the Council) can initiate a review at any time....

- The revised statutory guidance under section 182 of the Licensing Act states at 11.5:

Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons such as local residents or community groups. These individuals or groups are entitled to apply for a review of a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions in the area in which the premises are situated to make the application review.

- At 11.10 of the same guidance, it states:

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Cooperation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.

- Attention has been drawn to a decision of South Ribble Borough Council where authority was delegated to their Head of Legal and Democratic Services to act as a responsible authority on behalf of the licensing authority. It is noted that the South Ribble Statement of Licensing Policy does not specify, in its sections regarding reviews, that the Council is a responsible authority; this is so specified in the Ribble Valley policy. The delegated authority was then used to initiate review of a premises licence for a restaurant which had been suspended due to non-payment of an annual fee. No other responsible authority or interested party had applied for or supported the application for review. The application was principally focused on resolving administrative issues, and in fact concluded by adoption of revised agreed conditions (the fee having been paid). This application for review reflects the approach that reviews by the Licensing Authority as Responsible Authority occur principally where there is a breach of the licence or its conditions. Very often, where there is alleged to be a breach of one or more of the licensing objectives, the review will be more properly instigated by one of the other Responsible Authorities or an interested party, in accordance with 11.5 of the Guidance.
- Reference was also made to the number of reviews held by various licensing authorities. There have been two applications for review determined by Ribble Valley Borough Council's Licensing Sub-Committee. The first, in 2011, was instigated by the police in relation to the licensing objective of protection of children from harm. The second, in 2014, was initiated by a resident as an

interested party in relation to the licensing objective of prevention of public nuisance and crime and disorder.

- Limitation on officer time and resources mean that it has not been possible to carry out a full survey of the circumstances of applications for review of licences elsewhere in Lancashire. A review of records as far back as late 2016 shows that there were approximately 12 reviews carried out in total in Blackpool, Wyre and Fylde. Of these, only 2, in Blackpool (were initiated by the Council as responsible authority). One case related to the employment of illegal workers (discovered in a multi-agency visit) and the other arose after a licence had been suspended for failure to pay the annual fee for many years.
- To summarise, the Council is a responsible authority; residents are encouraged to apply for review themselves where appropriate evidence exists; a graduated approach is recommended; application for review should be submitted, when appropriate, by the relevant body or individual in relation to particular licensing objectives.

3.2 Early Morning Restriction Order (EMRO):

- The statutory guidance regarding EMRO's is as Appendix 1.
- This power was introduced in 2011, to replace provision in relation to Alcohol Disorder Zones (none of which had been introduced since their inception in 2006). Like their precursor, no Council has adopted an EMRO in over 10 years.
- 3 Councils did seek to adopt an EMRO in the three years after their introduction. However, following hearings lasting several days, with one or more partners sometimes represented by experienced licensing Queen's Council, none of Blackpool, Lambeth or Hartlepool decided to make an EMRO. In each case, representations had been made by the police in support of an EMRO.
- Rather than make an EMRO, the Councils decided to engage with the premises in the area concerned. In the case of Blackpool, the Chief Constable was to be contacted to consider an increased level of policing the night-time economy. In Lambeth, encouragement was given for a more user friendly manner for residents to report matters, and for premises to engage with the proposed Business Improvement District (BID). Hartlepool heard from the police and representatives of the local and national licensed trade and decided against an EMRO as they were mindful of the impact on businesses.
- The House of Lords Select Committee review of the Licensing Act, carried out in 2017, believed it appropriate that no EMRO's had been introduced and recommended that, in due course, the provisions on EMRO's be repealed. The Government reply noted that an EMRO is a powerful tool, requiring rigorous gathering of evidence and extensive consultation before adoption, and that there was a small minority of evidence to support the retention of the power.
- Notwithstanding the continued ability to exercise the power, no EMRO's have been adopted, other mechanisms being preferred.

3.3 Late night levies (LNL's):

- LNL's were introduced in 2011 to address the costs of alcohol related crime.

- The levy applies to holders of premises licences or club premises certificates during the late night supply period (determined locally and between the hours of midnight and 6am). The levy would apply to the whole licensing area (Ribble Valley) and all premises licensed to supply alcohol during the late night supply period (both on and off sales). The levy amount is specified nationally based on the rateable value of premises. 70% of the levy goes to the police (via the PCC) with the balance being retained by the licensing authority. The police can spend the levy anywhere in the county. The licensing authority is entitled to deduct the cost of administering the levy, as prescribed in regulations.
- A Home Office Impact Assessment before its introduction estimated that the levy would be viable in 94 licensing authorities in England and Wales. The projected cost (in 2012) was £9,981 for an authority to set up the levy, and ongoing annual administration cost of £12,880.
- Amending legislation from 2017 enabling a licensing authority to introduce a LNL in only part of its area has not yet been introduced. Therefore, notwithstanding that only the village of Whalley is under consideration, premises throughout the Ribble Valley, including potentially at least one village hall, would be subject to the levy.
- There are currently 10 authorities with a LNL, 6 of which are in London. Those outside London are Liverpool, Nottingham, Newcastle and Chelmsford. Of those, Chelmsford has the smallest population of 180,000 about 3 times that of Ribble Valley.
- Whilst no calculation has been carried out on viability, there is the risk that operation of the levy in a small authority could be a charge on businesses which does not cover the cost of administration, with no positive result in funding the PCC or the authority in addressing underlying issues.
- Where a LNL has been introduced, there is no clear evidence of its impact in reducing alcohol related crime. When introduced about a quarter of premises apply for a minor variation of their licence to reduce their permitted hours (no fee is payable for this).

3.4 The current position:

- There has been recent co-operation between licensed premises in Whalley, with most of the licence holders attending regular meetings involving the police and licensing enforcement staff. Licensees are also communicating with each other much better than previously.
- Over recent weeks, the police and licensing enforcement have not received complaints with regard to people behaviour between premises, although residents state that Whalley is not like it used to be and there is a lot of litter on the streets at weekends before the arrival of the Council's street cleaning team on those days.
- Consideration could be given to encouraging licence holders to invest in a scheme such as Best Bar None or Licensing Savi (Security and vulnerability initiative). These are quality markers, reflecting knowledge and commitment of licence holders. There is a cost to licensees to achieve such a standard.

- The position does remain fluid, and officers are continuing to monitor, respond and advise and act where appropriate. This will continue as the nights become warmer and days are longer.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – The Council’s licensing enforcement, environmental health, and licensing staff administer and enforce the licensing process in relation to the Council’s duties.
- Technical, Environmental and Legal – Where complaints are received or evidence is gathered, decisions will be made upon the appropriate action in the circumstances.
- Political – None.
- Reputation – The Council seeks to promote better lives for the residents of the Ribble Valley and an improved environment for businesses.
- Equality & Diversity – None.

5 CONCLUSION

5.1 That Committee note the report.

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REF: SB/EL/CMS/LICENSING/12 APRIL 2022