

Report to: Executive Board – 30<sup>th</sup> November 2004  
Licensing Committee – 25<sup>th</sup> November 2004

**LICENSING ACT 2003 – RESOURCE NEEDS**

<b>Report of:</b> <i>Strategic Management Board</i>	<b>WARDS AFFECTED</b>
<b>Report Author:</b>	<b>ALL</b>
<b>Lead Members Responsible:</b> <i>Councillors Turner (Licensing Committee Chair) and Brown (Portfolio Holder, Crime and Community Safety)</i>	
<b>Overview and Scrutiny Committee Responsibility:</b> <i>Finance</i>	
<b>Key Decision:</b> <i>No</i>	

**SUMMARY AND RECOMMENDATIONS**

This report describes the need for additional resources to discharge the Council's statutory obligations under the Licensing Act 2003.

It also describes the need for resources to meet consequent demands on its enforcement role under other legislation, which are increasing.

The Licensing Committee is asked to consider this report and to offer advice to the Executive Board.

The Executive Board is recommended:

- (a) to approve a project budget of £ 244,818 (allowing rollover from 2004/05 to 2005/06) to enable the Council to undertake its statutory obligations under the Licensing Act 2003; and to recommend Council to agree the budget variation for 2004/05 and to commit the base budget for 2004/06 in respect of the project;
- (b) to note that estimated income of £192,000 is expected over the same period, but that the allocation between the years can only be guessed;
- (c) to identify a source of funding for a contingency sum of £ 115,000 to meet costs that may result from appeals during 2005/06;
- (d) to note that a further report will be made, if required, during 2005/06 about further temporary budget needs arising from variances during the transitional period;
- (e) to note that a report will be made during 2005/06 about the baseline resources needed for licensing for future years; and
- (f) to approve a bid of £74,030 to meet the annual cost of inspection and enforcement, commencing in 2006/07.

## **1. Purpose of Report**

- 1.1. This report seeks urgent allocation of the necessary budget to enable the Council to undertake its statutory obligations as a Licensing Authority for the transitional period and immediate post-transitional period under the Licensing Act 2003. It therefore relates to the residue of the 2004/05 year and to the full 2005/06 year. It advises the Committee on officers' estimates of the resources needed.
- 1.2. It advises the Committee on the officers' estimate of the associated contingency sum necessary for meeting potential costs of any judicial reviews and of successful appeals against the Licensing Authority's decisions.
- 1.3. This report is also to advise members that a further report, requesting additional budget provision, may be needed once the Licensing Authority has operational experience and once Government has made the Order on Temporary Event Notice Regulations, on which it proposes to start consultation in March 2005.
- 1.4. It also provides an estimate of the cost of enforcement, on the assumption that the Council will want to regulate the new regime to a level similar to that applied under the current Public Entertainment Licensing regime. This Council function is outside the limited Licensing Authority role and specifically excluded from coverage by licensing fees.

## **2. Council Stance**

- 2.1 Members have previously indicated that they cannot consider a bid for resources for undertaking licensing responsibilities under the 2003 Act until officers can predict fee income. That income depends upon the Government setting the national fee structure. However, when this report was drafted, the Government had yet to issue the draft Fee Regulations for the consultation, which it had proposed would start in October. The matter is now urgent because the Council has to prepare for licence applications arriving from Monday 7th February, only 6 working weeks from the date of the Council meeting that will decide the matter.
- 2.2 Mindful of resourcing implications, members have previously decided that the administration of the licensing function should not include notifying nearby residents and businesses of applications received, but should place a weekly list on the Council's website.
- 2.3 In this same vein, officers have made every effort to limit any new budgetary requirements by maximising the contributions possible from existing budgets and seeking economies in the work design.
- 2.4 It is assumed that the PEL staffing resources will be reallocated into the new licensing regime when the PEL income falls away.

### **3. Corporate effects**

3.1 The main impact of the new regime will fall upon the Council's Environmental Health and Legal & Democratic Services Business Units. This report addresses that impact. In addition, there may be an impact upon those business units that have a landlord function for property which may be used for licensable activities and upon those business units that will seek licences. These impacts cannot be costed until the policy is set and intentions are known. There will also be an impact upon the Planning Business Unit arising from its role as a responsible authority in considering applications for variations, new licences, and any associated planning applications.

### **4. Licensing Impacts**

- 4.1 Significant preparation costs will necessarily be incurred before any fee income is received. This is because the Council will need to have its operational systems and trained staffing in place before February 2005 when the first applications will be received. In particular, the Government expects local licensing authorities to have in place appropriate technology to achieve the e-gov requirements. The Local Government Association has estimated that the average licensing start up costs per authority will be about £120,000.
- 4.2 Additional temporary staff will be needed to cover the temporary administrative burden for the transitional period in both Environmental Health and Legal & Democratic Services. (The Kendrick Ash external assessment of Environmental Health demonstrated that there was no spare staffing capacity for the new licensing responsibilities.)
- 4.3 Licensing applications will be received at the end of the 2004/05 year and throughout much of 2005/06. It is expected that most licence applications will be received over the first six months (7<sup>th</sup> Feb – 5<sup>th</sup> Aug 2005) of the transitional period but there will inevitably be peaks and troughs.
- 4.4 Those applications must be determined within tight timescales set by Government. There will be little opportunity to control the rate at which applications are received, and virtually no flexibility in those timescales to enable smoothing of peaks and troughs in workflow.
- 4.5 It is expected that the Council will receive between 750 and 1500 applications for personal licences, but that very few of these will have to be determined by sub-committee.
- 4.6 Similarly about 770 applications for premises licences or club premises certificates under the 2003 Act are expected, based upon records held by the magistrates and Environmental Health. The Council currently issues public entertainment licences (PELs) to about 130 of those premises.
- 4.7 About 440 applicants for conversion to premises licences are likely to seek simultaneous variations for changes in hours or activities. About 90 applications are also expected for new premises licences. Applicants are required to advertise such applications in any local newspaper. However, the licensing authority is not required to do so, so local residents without internet access will not have convenient access to an index of the latest applications received. If the Council wishes to regularly publish such a list it

needs a separate budget, as licence fees are not designed to cover the cost.

- 4.8 Based upon previous experience of PEL applications, we estimate that almost 200 of advertised applications will attract representations and require hearings by sub-committees. That will require about 70 sub-committee meetings over a six-month period on the basis of recent experience that each hearing will take about 1½ hours. This is an average of three meetings each week, which is likely to rise to five meetings in a week at peak periods. The total number of meetings will increase if hearings are deferred, if meetings are inquorate, or if the sporadic workflow requires allocation of fewer than three hearings to some meetings in order to meet tight deadlines.
- 4.9 Failure to determine applications within specified timescales will lead to decisions by default. Such decisions will often lead to appeals that will incur additional costs even if defended successfully. Successful appeals will lead to higher costs to the Council. These costs will need to be covered by contingency funds.
- 4.10 It is expected that, from November 2005, there will be about 770 premises that potentially need inspection and follow-up action. Because of the greater freedoms introduced by the Licensing Act many will tend to be open for longer hours than at present. However, from that date, the inspections and enforcement regime funded by PEL income will cease, and enforcement will therefore fall to a minimum.

## **5. Future enforcement**

- 5.1 Under the current PEL regime, the Council has been free, within certain limits, to set fee levels so as to cover an adequate level of enforcement. The Government has made clear that this type of work is undertaken under other statutory powers and as such is “already funded through central and local taxation”, so is not allowed for within fees under the new licensing regime.
- 5.2 It has been assumed that Members would wish the Council to retain an adequate level of enforcement especially over the night-time economy. A level of enforcement similar to that applied under the current Public Entertainment Licensing regime has therefore been assumed in the costing.

## **6. Budget Bids and Income**

- 6.1 Budget bids have been worked up mindful of the points set out above under “Council Stance” above and are set out in Appendix 1. In order to maximise use of staff, officers propose that the temporary additional staff that the Council needs should be employed in a “Licensing Authority pool” which will readily allow staff/work transfers between Environmental Health and Democratic Services as peak demand moves from one area to the other. This approach will enable training in both work areas as the workload develops and will provide maximum flexibility for managing peak workloads later in the transitional period.
- 6.2 Since sub-committees will need legal advice in addition to the administrative support addressed above, five options have been considered, as shown in Appendix 2. Costings have been based on

Option 2, which is believed to offer the best compromise between cost and risk. However, it is likely that the 0.5FTE post may have to be covered in practice by sharing a full-time post with another district.

- 6.3 Estimates of income are based on the national fee scale indicated by Government over the past year: Premises and club licence application fees over the range £100-£500, with fee banding based upon the non-domestic rateable value (NDRV) of premises, and personal licence fees of about £30.
- 6.4 Fee scales will be set nationally to suit the national range of NDRVs. However premises in Oxford cover a much smaller range of NDRVs, and many of the licensable premises are small, so an average fee of £200 has been assumed. Officers are not yet able to predict fee income from premises more accurately, but are developing a means of doing this. However, it is already clear that for larger premises in Oxford, fees under the new regime will be only about 20% of the level they currently pay for PELs.
- 6.5 There will be significant start-up costs in the Council that will arise in 2004/5 due to the need to train staff, obtain software and commission systems before the first appointed day. These costs will probably not be covered until the following financial year (2005/06) because the bulk of applications (and fees) are expected in the period April-August 2005.
- 6.6 Without a project budget, which rolls over into 2005/06 a sizeable deficit will occur in the 2004/05 year. This could easily approach £100,000 if the income stream is slow to develop.

## **7. Other considerations**

- 7.1 The present PEL system will continue throughout the whole of the transitional period, however from now on PEL renewal fees will be for a part-year only. This will have only a marginal effect in 2004/5, however PEL income for 2005/06 will be significantly lower than in recent years.
- 7.2 Ongoing PEL renewals, enforcement and inspections will need continuing cover throughout.
- 7.3 It seems likely that as the transitional period ends, the Licensing Authority will need to prepare to take on additional responsibilities under a new Gambling Act. This will be the subject of further reports.

THIS REPORT HAS BEEN SEEN AND APPROVED BY:

Strategic Management Board

Background papers: None

## Appendix 1 : Project budget bids / income – 2004/05-2005/06

### A. Budget bids

<b>Staffing (One-off)</b>		<b>Rate</b>	<b>Bid £</b>
Legal	0.5 FTE PO13 scp38 for 9 months		13,746
Pool	3 FTE ACT4 scp21 for 9 months		49,282
“	3 FTE SO1 scp31 for 9 months		68,076
Allow for overtime	About 5% of pool staff cost (£114,035)		5,868
			<b>136,972</b>
<b>Software (One-off)</b>	To meet e-gov requirements		50,000
			<b>186,972</b>
<b>Recruitment (One-off)</b>	Solicitor	3,000	
	Pool	1,500	4,500
			<b>191,472</b>
<b>Other (One-off)</b>	Councillors allowances		2,000
	Application forms		2,500
7 months = 30 weeks	Weekly newspaper advertisement		18,000
			<b>213,972</b>
<b>Enforcement (Part year, then continuing at £72,220 per year)</b>			
Nov05-Mar06: 2FTE PO11 (5 months)		33,610	28,846
Allow for overtime			2,000
			<b>244,818</b>
	<b>TOTAL</b>		<b>244,818</b>

The above estimates need to be adjusted for 2005/6 inflation and superannuation / NI changes. Costs of the following have been absorbed:

- Accommodation and office moves
- Furniture, office equipment and stationery.
- Computers and printer
- Training
- Promotion materials and postage
- Committee agenda production

### B. Income

<b>Likely fee income in transitional period - Premises</b> (680 “grandfather rights” and 90 “new” applications) Total income depends upon the Fee Regulations. (National fee range of £80-£500 assumed, with average fee in Oxford assumed £200.) The split depends upon when applicants choose to apply.	154,000
<b>Likely fee income in transitional period - Personal</b> The total depends upon: a) the number of applicants living in Oxford (assumed to be 750 to 1500) b) the fee (£35 assumed) c) Government clawback for a potential central register (£5 assumed). The split depends upon when applicants choose to apply.	34,000
<b>Likely fee income after transitional period</b> Depends upon the Fee Regulations.	3,000
<b>Likely fee income from Temporary Event Notices</b> Depends upon the Fee Regulations.	1,000
<b>TOTAL</b>	<b>192,000</b>

### C. Deficit arising

**52,818**

## Appendix 2 Options for legal support

All options include internal provision of day-to-day advice to Environmental Health, and litigation (if any).

Option		Scope	Comment
1	<b>Provide full legal service as at present.</b>	Advice on reports, democratic process and agenda. Preparation for and attendance at all hearings to provide advice to sub-committees. Advice on decision letters and minutes.	Full service as currently provided. However, the volume of work expected will lend itself to standardised procedures, using proforma reports etc. and many aspects of procedure and record-keeping are likely to be set by Regulations
2	<b>Basic legal service.</b>	Preparation for and attendance at all hearings to provide advice to sub-committees.  (Democratic services provide all procedural and constitutional advice)	Lower cost than Option 1, whilst retaining development of in-house expertise and provision of consistent advice.  May need to share a full-time post 50/50 with another district council.
3	<b>Minimal committee service.</b>	No preparation. Sub-committees call for advice when needed.  (Democratic services provide all procedural and constitutional advice)	Lower cost than Option 2 with greater risks. Little opportunity to develop in-house expertise. Advice only provided when called for, risking cost of appeals resulting decisions taken without legal advice.
4	<b>No committee service.</b>	(Democratic services provide all procedural and constitutional advice)	Lowest cost with greatest risks. No development of in-house expertise.
5	<b>External provision.</b>	(Democratic services provide all procedural and constitutional advice)	In-house resources required to brief external advisors. Higher hourly costs. No guarantee of continuity. No development of in-house expertise.