



Planning and Licensing – time to merge regimes?

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Aim

- House of Lords Select Committee Report
- Committee's Recommendations
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- My Views
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H of L Select Committee Report

- Background
- Original questions in call for evidence:
- ‘Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises?’
- ‘How could it be done?’

Committee

- Criticised the current lack of coordination between licensing and planning
- Absurdities caused by the separation of the system – London Borough of Hounslow
- Planning concerns the impact of land uses
- Licensing concerns the regulation of licensable activities

What does the S182 Guidance say?

- “The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.”

What does the S182 Guidance say?

- “Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.”

What does the S182 Guidance say?

- “There are 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. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.”

The Licensing System

- Licensing applications are made to licensing authorities (LAs)
- Licensing Officers deal with the majority of applications
- Where a hearing is needed, this takes place before a licensing sub-committee
- LAs have their own Statements of Licensing Policy, in respect of each 5 yr period
- Licensing Officers have no formal qualification
- For a hearing the licensing officer sets out the facts, but will not make any recommendations

The Licensing System

- It is the applicant that notifies the responsible authorities

The Licensing System Appeals

- Appeals against decisions of LAs lie with Magistrates' Courts and are conducted by way of a hearing.
- Numbers of appeals are small 228 in 2016
- Can be heard by either Magistrates or DJs
- Further challenge to a decision of the Magistrates' lies to the High Court by way of judicial review – none completed in 2016
- Argued it is because decisions were well reasoned and considered
- Alternative view is that appeals are compromised
- Comprise/Consent Orders/Confusion

The Licensing System Appeals

- Contrast to the planning system of 3 routes – written, less formal hearings or full inquiries.

H of L Recommendations

- *Rec 6 - Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees. We recommend that this proposal should be trialled in a few pilot areas.*
- *Rec 7 - We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible.*

H of L Recommendations

- *Rec 8 - Licensing authorities should publicise the reasons which have led them to settle an appeal, and should hesitate to compromise if they are effectively reversing an earlier decision which residents and others intervening may have thought they could rely on.*
- *Rec 9 - We recommend that appeals from licensing authorities should no longer go to magistrates' courts, but should lie to the planning inspectorate, following the same course as appeals from planning committees. This change is not dependent on the outcome of our recommendations on the licensing function, and should be made as soon as possible.*

H of L Recommendations

- *Rec 20 - Coordination between the licensing and planning systems can and should begin immediately in all local authorities. The section 182 Guidance should be amended to make clear that a licensing committee, far from ignoring any relevant decision already taken by a planning committee, should take it into account and where appropriate follow it; and vice versa.*

Government Response

- Was published on 6 November 2017
- It is awaiting debate in the House of Lords

Government Response

- Rec 6 & Rec 7 - Instead of transferring the functions of licensing committees to planning committees, we are focusing on improving training and providing stronger guidance on how licensing hearings should be conducted.
- The basic structures of the planning and licensing system are similar and our focus will be on improving how the two regimes communicate and interact at local level.

Government Response

- Rec 8 - Our view is that any decision by a local authority should be justified with clear reasons and, where a case is settled out of court, this is just as important as publicising the original outcome of the review hearing.
- We will amend the guidance to extend this principle to decisions made after a hearing.

Government Response

- Rec 9 – We do not intend to change the system so that licensing appeals no longer go to magistrates' courts but lie to the planning inspectorate.
- We will explore with partners whether there is good practice within the existing regime and from similar regimes that may offer some ideas for consideration.

Government Response

- Rec 20 - we recognise that coordination between systems is inconsistent and could be improved in many areas.
- We will revisit how this issue is presented in the section 182 guidance with a view to strengthening the call for consistency

Please Note

- Only at the end of the inquiry did they put forward their suggestion that licensing committees should be combined with planning committees.
- Having interviewed 66 in total, they only posed this question to 4 of them

My Views

- Yes – there is inconsistency at Sub Committee Hearings and in Magistrates' Courts – this can be overcome with training
- I agree that the compromising of an appeal should have clear reasons given as to why that decision was reached
- Appeals should sit with DJs only, rather than the lay bench
- I do agree there should be further co-ordination between the two systems
- I do not think the systems should merge

My Views

- We will wait to see what the House of Lords say, but I do not think there will be a merging of the two systems

Questions

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