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Licensing the night time economy

The Licensing Act 2003, which came into force in 2005, has recently been subject to scrutiny by the House of Lords. Its [report](#), issued in April 2017, highlights some serious issues with the current system, and proposes some solutions which could bring the licensing regime closer to the planning regime.

WHAT ARE THE MAIN CONCERNS?

The report highlights a number of concerns about the current system, including the way that licensing committees currently operate. These include:

- a lack of training for committee members
- a lack of resources; and
- inconsistencies and lack of transparency in the committees' decision-making.

WHAT REFORMS ARE PROPOSED?

The key proposal is that there should be a degree of merger between the licensing and planning systems. This might streamline matters by both committees considering the same material at the same time, and enhance a proper understanding of the different legal regimes and proper application of the respective laws.

WHAT IS CURRENT OVERLAP BETWEEN THE PLANNING AND THE LICENSING SYSTEMS?

There are certain similarities between the two regimes. However, there are also important differences:

- The grant of a planning consent does not necessarily guarantee the grant of a premises licence.
- A planning consent attaches to the property itself and is not (usually) personal.
- A premises licence is concerned with the operation of the use permitted by planning, not with development.
- The licensing system requires a responsible person to be designated as a premises manager and to have overall responsibility for the sale of alcohol on his premises.
- Licences may be reviewed annually; this is not the case for planning unless the consent is specifically granted as a temporary consent which, on expiry, must be reapplied for.

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- Licences can be revoked for breaches or because of operational irregularities, which is not usually the case with planning consents.
- The magistrates' court deals with licensing enforcement. Local Planning Authorities deal with planning enforcement (though may apply for injunctions from the magistrates' court). There is scope to include licensing appeals in the jurisdiction of the planning court, where suitably qualified judges who are familiar with the issues raised by both licensing and planning procedures could apply this knowledge and experience to licensing cases.

WHEN WILL ANY CHANGES HAPPEN?

The major changes will require primary legislation and this is unlikely to happen in the near future. However, several of the necessary improvements could be made by amending the statutory guidance to:

- make clear the responsibility of the chair of a licensing committee for enforcing standards of conduct of members of sub-committees, including deciding where necessary whether individual councillors should be disqualified from sitting, either in particular cases or at all;
- introduce a requirement that a councillor who is a member of a licensing committee must not take part in any proceedings of the committee or a sub-committee until they have received training to the standard set out in the guidance;
- clarify the structure and procedure of hearings and make clear that parties must be allowed sufficient time to make their representations; and
- 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.

They also recommend that where on a summary review a licence is revoked and the livelihood of the licensee is at stake, magistrates' courts should list appeals for hearing as soon as they are ready.

WHAT NEXT?

Given the current political priorities, it seems unlikely that any legislative changes will emerge in the immediate future. However, there are still mechanisms to manage noise and anti-social behaviour through the existing planning conditions and licencing enforcement channels. Whilst the scope for this is strongest for new venues, responsibility for effective management and potential self-policing and security preparedness across a sector comprising primarily SMEs could also be instigated by local business alliances, such as the Heart of London Business Alliance and the Association of Licenced Multiple Retailers in London.

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