cornerstone barristers

Below the Line

Some of the less attention-grabbing recommendations of the recent Select Committee Report on the Licensing Act 2003

The recent (April 2017) Report of the House of Lords Select Committee on the Licensing Act 2003 sets out a comprehensive suite of observations on the that Act, its changing form since its enactment, and some suggestions – a few genuinely radical - on how it might be improved. The headlines were captured by the big game: licensing committees and sub-committees should be abolished; licensing decisions should be taken by planning committees instead; appeals against those decisions should be given to planning inspectors rather than taken by magistrates; and the fabled 'separation' of the planning and licensing regimes should be done away with, each regime's decisions to be taken into account by its counterpart. No new licensing objectives were recommended for adoption – despite consideration of three potential new ones – and the last rites were read for EMROs and the Late Night Levy. Perhaps most intriguing was the recommendation that the Agent of Change principle – which says that a new use introduced into an area should be held responsible for any effects – and is highly topical, as more and more residential developments spring up alongside long-established entertainment venues (see, for example, the ongoing litigation involving flats proposed to be built alongside the George pub in Stepney (Forster v SSCLG [2016] EWCA Civ 609) - should be incorporated into both the National Planning Policy Framework (NPPF) and the statutory s.182 Guidance for licensing.

Alongside these big beasts, less visible in the undergrowth, were a raft of other suggestions and recommendations that I daresay may attract fewer column inches in

the e-flashes and scholarly articles reflecting on the Report. This short piece attempts to flush a few of them, blinking, out into the light.

Procedural

Skittering along under the hooves of the suggestion that licensing committees should be culled into extinction and their function handed to planning committees (which recommendation may be less of a big beast than its approaching footsteps suggest: as recognised by the Report, many local members already sit on both licensing and planning committees presently) comes the welcome suggestion that a minimum level of training must be undertaken by those who sit on committees making decisions under the Act. This is obviously sensible: there does seem to be a worrying inconsistency in the quality of those who sit presently, from the exemplary and obviously highly well-informed to the considerably – and just as obviously - less so. The Report does not express a view on how much training, or how often, but recommends that no councillor should be permitted to sit on a decision-making body until they have received training 'to the standard set out in the Guidance'. The devil here will be in the detail: my view is that annual training (at least) is essential, and without some way of testing engagement by attendees, defining a minimum 'standard' will be hard.

In terms of the conduct of hearings themselves, there is a much-needed acknowledgment of the potentially ludicrous (and highly unsatisfactory) impact of the practice in some authorities to strictly limit the time in which a party may make her case. Licensing hearings deal with a very broad range of matters – from the relatively innocuous removal of a condition for a small country pub through to a new application for a large nightclub, and all points between. The idea that a uniform 'maximum time' for a party to set out their case might be appropriate – in some authorities as little as three minutes is allowed - is obvious nonsense and can cause real injustice. In that light – albeit recognising that there does need to be some ability

to run hearings efficiently – the recommendation that parties should be allowed 'sufficient time to make their representations' is obviously sensible. Time allowed should be on a bespoke, 'horses for courses' basis, the test being fairness, whilst retaining the entirely proper requirement – again rooted in fairness, rather than efficiency - that each side should have an equal maximum time. This does *not* mean that each side needs to take up that maximum allocation – just that they be entitled to if they need it.

One note of caution: aligning licensing and planning in this respect may point the other way. I have attended meetings of planning committees where a strict three minutes – the expiry of which is denoted by a loud buzzer – is observed; and a ticking countdown attracts attention away from what scant submissions can be managed in that time anyway. Planning committees don't get *everything* right.

Lastly in this category, the Report suggests the deletion of the oft-quoted paragraph 9.12 of the s.182 Guidance, which says (and I paraphrase) that evidence given by the Police should be taken seriously unless it can be shown not to be worthy of being taken seriously. Quite rightly the Report says that such a formulation applies to any evidence given by anybody – and no 'special approach' is or should be required for police evidence. If it's good, cogent and robust, it should be taken seriously and given weight. If it isn't, it shouldn't.

MUP

I have written a number of times (see, for example, the Journal of Licensing issues XV and XVII) about the evolving story of minimum unit pricing of alcohol - the idea (embraced by the Scottish Government) that a minimum price per unit of alcohol might deter those 'problem drinkers' who binge on cheap cider while leaving unaffected those of us who 'drink responsibly'. The Select Committee Report comes out strongly in favour of such a move, subject to the outcome of the impending

Supreme Court case on the matter – due for hearing in late July. If the Scotch Whisky Association are successful before the Supreme Court, says the Report, Brexit may allow the UK government (whether that includes Scotland or not!) to implement MUP anyway.

Disabled Access and Facilities Statement

Hidden amongst the weeds of a failed attempt to include 'securing access for disabled persons' (or words to that effect) as a new licensing objective is the recommendation that every application for a premises licence must include a statement containing information about:

- provision made for access by disabled persons;
- facilities provided for use by disabled persons; and
- any other provision made in connection with disabled persons.

This is borrowed (as much in the Report is) from Scots law, and an as-yet unimplemented provision from the Criminal Justice and Licensing (Scotland) Act 2010. The Report points out that there is little or no risk in requiring such a statement to be included in an application and that it is largely a requirement of existing law (principally the Equality Act 2010). This seems to be a reasonable recommendation – and to some extent chimes with the theme of aligning licensing and planning, which regime boasts Design and Access Statements – and is to be welcomed. It is unlikely to be too heavy an administrative burden on applicants. After all, the law already requires consideration of such matters.

Are you drunk, sir?

Lastly, the Report makes a bold (but, I suggest, inherently futile) bid to encourage greater 'use' of s.141 of the Act – the provision that makes it illegal to serve someone who is drunk. The paragraphs leading up to this recommendation give a good (and persuasive) explanation of why it isn't used more – no definition of 'drunk', time-lag

between drinking and drunkenness, different manifestations of drunkenness, some medication or conditions 'imitating' effects of drunkenness, impracticality of test purchasing – and the Report then leaps, with no suggestion of how any of those are to be overcome, to a recommendation that enforcing s.141 needs to be 'taken more seriously'. That recommendation itself might be taken more seriously if it sought to engage with the issues, rather than simply listing them and then saying more should be done.

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