



HOUSE OF LORDS

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The Select Committee on the Licensing Act 2003

Inquiry on

LICENSING ACT 2003

Evidence Session No. 3

Heard in Public

Questions 31 - 40

TUESDAY 19 JULY 2016

10.30 am

Witness: Steve Quartermain CBE

Members present

Baroness McIntosh of Pickering (Chairman)
 Lord Brooke of Alverthorpe
 Lord Davies of Stamford
 Lord Foster of Bath
 Baroness Greender
 Lord Hayward
 Baroness Henig
 Baroness Watkins of Tavistock

Examination of Witness

Steve Quartermain CBE, Chief Planning Officer, Department for Communities and Local Government

Q31 The Chairman: Good morning. May I bid a very warm welcome to Mr Steve Quartermain? Thank you very much for participating in our Committee proceedings. So colleagues know, I remain a resident of Hambleton and remember you fondly from your days as director of planning. We are delighted that you are here today. For the record, Mr Quartermain, could you give your name and position?

Steve Quartermain: My name is Steve Quartermain. I am a chief planner in DCLG, a post I have held since 2008. I previously worked in North Yorkshire in local government where I was a chief officer for the previous 12 years in Hambleton District Council.

The Chairman: This session is open to the public. It is broadcast live and subsequently will be accessible via the parliamentary website. A verbatim transcript will be taken and put on the parliamentary website. You will have the opportunity to see that in advance for accuracy, so please let us have any corrections through the department as soon as possible. Subsequently, if you wish to clarify in writing any evidence, where you want to make additional or supplementary points to us, that would be very helpful.

Licensing is one part of an overall strategy that local government has to shape its communities. The government memorandum on the Licensing Act states very clearly that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. Do you agree with that statement? Would you like to elaborate on it?

Steve Quartermain: I think it is a fair assessment of how the Government seeks to ensure that there is a co-ordinated approach across departments. We play an important role. DCLG’s role has been to ensure that the processes and framework are there to enable delivery at a local level.

The Chairman: To what extent do you work hand in glove with the other departments?

Steve Quartermain: We co-ordinate our policy thinking and work very effectively. For example, we changed our advice to ensure that we reflected concerns about the need for better joined-up licensing and planning. We have been working with them on the guidance that has been issued. We have reflected some of those issues in our national Planning Practice Guidance in which we reflect the importance of Section 17.

Q32 The Chairman: There have been lots of reforms and amendments to the Licensing Act. The LGA has said it is a “complex maze of often historic legislation owned by a number of different government departments”. Do you believe the regime could be more transparent?

Steve Quartermain: To be honest, I do not think so. You need to recognise that, from where I sit as chief planner, the planning system has its role in ensuring that communities have their economic, social and environmental priorities. They do their planning, make their decisions, and in so doing have regard to public safety, crime, and the like. In the NPPF that is a separate regime from the licensing regime. I think it is appropriate that it is separate.

We have tried to ensure that there is proper co-ordination at the local level. My most significant point is we need to make sure that local communities are empowered to make the right decisions. Our guidance facilitates co-ordination, co-operation and conversations between the various responsible parties. This is the approach Government wants to take. It is not a top-down approach. We co-ordinate our thinking and policy approach to a national level and its application is at a local level.

Q33 The Chairman: I failed to declare my interests. I have a modest shareholding in Diageo, I am the honorary president of Pickering Conservative Club and a member of the All-Party Parliamentary Beer Group and All-Party Parliamentary Wine and Spirit Group. In some of the evidence we have heard there appears to be a clash between planning and licensing laws, particularly where a building is converted to residential purposes alongside premises that are licensed for alcoholic beverages. Does this feature on the radar of the decision-makers?

Steve Quartermain: It is an issue that we are aware of. That is why we made it clear in the NPPF that in approving development in areas local authorities have to have regard to existing users and businesses, particularly where residential developments are being put into areas where there are existing businesses with licences. We are very clear in the NPPF that that is a factor local authorities should have regard to. Through the decision-making process they can put conditions on which might mitigate any adverse effect on existing users. The NPPF makes it clear that that is the approach. We follow that up in guidance. We do not have a lot of traffic on this issue within the department.

The Chairman: We will return to this because it comes up later. Planning appeals have specialist appeals in front of an inspector. Would you consider recommending that licensing appeals should come before an inspector?

Steve Quartermain: The Planning Inspectorate has a critical role in providing an independent and impartial view on planning matters. It deals with other casework relating to Defra work. The Planning Inspectorate does not only deal with a planning function. It would be an option to have an independent appeal process. The issue that is a challenge is whether or not that is the most appropriate way of dealing with appeals and whether or not these can be dealt with locally. We have a clear view that, if you empower local communities and local planning authorities with a responsibility, that is theirs to discharge and they are well-placed to discharge it.

The Chairman: I am going to ask Lord Davies and Lord Foster to keep their comments until we revisit this later.

Q34 Baroness Henig: My interests are as non-executive chairman of SecuriGroup, which provides door supervisors among other things. I am president of the Security Institute, committee member of the All-Party Parliamentary Beer Group and a member of the All-Party Parliamentary Wine and Spirit Group. You have opened up this theme. Your single departmental plan sets out the aim of strengthening communities. You have said that planning is an important part of this. Are licensing policies and decisions a part of that process and seen alongside planning?

Steve Quartermain: They are separate processes. If you need licensing, you need both a licence and planning permission before you can operate. Sometimes you obtain planning

permission before you go for licensing, and the system allows you to apply for both simultaneously, but you cannot operate until you have both planning permission and licensing. Through the separate processes which local authorities are responsible for, the guidance we give them—not only our guidance, the single departmental plan, but also Home Office guidance—says the two groups need to talk to each other and have a single approach to the issues that are being dealt with. From my days in local authority, you would occasionally get the question, “Why has a planning authority put a condition on requiring a closing time at 11 but licensing allows it go to on until 12?” In my experience those were rare occurrences where communication had not worked. The opportunities are there for better co-ordination.

Let us not forget that some of these things are revisited. Planning permission can be temporary, although it tends to run for a longer period, but licences are renewed. If there is an issue there is an opportunity to come back on licensing and say, “Actually, we should have made that 11”. It is not a situation where the opportunities are not there for better co-ordination between the two parties.

Baroness Henig: I will not go into the conflicts issue, because that is a later question.

Q35 Lord Hayward: My interests are that I have a declarable financial interest in both Greene King and Diageo and a financial interest in Marston’s. I was chief executive of the British Beer and Pub Association for 10 years, and therefore retain substantial links with the industry in one form or another.

You said there are occasions when planning and licensing do not work and, as you have identified, you could have one approval for 11 and one for 12, in which case you said you could revisit the licences. Is there a clear reason why? Is it because a local authority has missed this? Should DCLG give better guidance to ensure that these problems do not arise?

Steve Quartermain: That is a very good question. The question one needs to ask oneself, whenever one is faced with a potential change, in particular in a planning system, is whether or not it is Government’s role from a top-down approach to change things nationally or whether it is something we need to look at and sharpen our guidance on because the application of this system is at a local community-based level. On the balance of evidence that I have seen, it is the latter—it is a local issue. Our guidance is quite clear and talks about the need to co-operate. There are opportunities for people to ensure that such matters as my example are dealt with at that time. If there are issues, we think it is the application of the regulations to which our guidance steers. From our postbag and the issues that are raised with us, this is not raised nationally as a significant problem. We know it exists, I will not deny that. On occasion we get stories, but it is not very often raised with us as a planning issue to be addressed.

Q36 Baroness Grender: Given the desire, quite rightly, to devolve to a local level, is there any merit in a question that we are examining, which is whether fees should be devolved to a local level when it comes to licensing?

Steve Quartermain: I am probably not the best person to answer.

Lord Brooke of Alverthorpe: We will take an honest answer.

Steve Quartermain: The issue with fees is what are they for, what they cover, and whether it is a reasonable and just fee to be paying for a service which very often—I go back to my local authority days—is already paid for in council tax and business rates. The council gets paid to provide a service, so the issue is whether you need an extra fee. Having said that, fees have other roles. For example, the fact you charge a fee sometimes discourages people making

applications which are frivolous and makes sure they get it right. As a personal opinion that is probably all I want to say.

Baroness Grender: I am going to push a bit further, if I may. What has been coming from the LGA to us is the shortfall between income and the amount of licence work necessary. I am not talking about the very small scale. I should have declared my interest. I am a proud owner of a temporary event notice for a primary school summer fair two Saturdays ago—still recovering. You will be aware that even a temporary event notice is used for commercial rather than the joyous community events I have just described and the disparity for local authorities, particularly when money is so tight, is becoming an issue. That must be a concern for DCLG. Are you undertaking a review into this area?

Steve Quartermain: I am beginning to think that I should declare an interest, because I drink beer and the occasional bottle of wine. It is a question that is not best directed at DCLG but at the Home Office. From a DCLG point of view there are fees applicable for planning applications. Those planning fees are not devolved; they are set centrally. The Local Government Act allows local authorities to make charges for other services that they provide, so it is open to local authorities to charge for services. From a planning point of view, those fees are set centrally. In the past there has been consideration whether those fees should be devolved. The issue that we have been in discussion with the LGA on in the past is, “If you pay more, do you get a better service and what service do you get for your fee?” That is part of the debate. The licensing issue is a question for the Home Office and not me.

Q37 Lord Brooke of Alverthorpe: I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm, patron of the British Liver Trust, patron of Kenward Trust, an alcohol and drug rehabilitation centre in Kent, and a member of the All-Party Parliamentary Group on Adult and Childhood Obesity. I would like to ask for your personal opinion, because in looking at planning we have to bring a diverse group together, some with more authority and some with less, some with opinions but not able to exercise the authority that would help better planning. You indicated that fees can be used for a purpose other than simply recovering the expenditure involved in granting a licence, such as to change planning, for example. If you have a whole host of betting shops in a high street, off-licences, estate agents, a couple of coffee shops, and that looks like the high street, if you had freedom on fees, could you influence for the good of the community the appearance of the high street? I know it is not your department.

Steve Quartermain: I do not think I did say that you could use fees for different purposes. I said that local authorities could use the Local Government Act to charge fees for different functions. The appearance of the high street is an issue that is raised with us. One of the reasons behind the Government’s drive to have things such as a neighbourhood planning process is for communities to have their own plan led by the community, either a parish or parish forum, to set their own policies and to deal with what their community looks like. It is an important tool in the toolbox from the DCLG’s point of view.

The issue for the planning system is that it can only control what planning requires to be controlled, so it can only control development. If it is development which is set out in legislation, then it can control it. A change of use is set out in legislation as development, so if you want to change the use, you need to apply for planning permission, unless we set out in the permitted development order, “But not these changes of uses”, or in our use class order, which we have to have otherwise we cannot define the changes between the uses, and we group the uses so there is no change of use between functions. That was one of the

things we were looking at. We took steps to ensure that there were opportunities to have greater control over some of the issues where there were concerns. We separated the A3, which is a use class, which used to be food and drink, so we would have restaurants and cafes, drinking establishments and hot food takeaways—three separate uses. Changes of use between those became an issue. We created A4 as an establishment for drinking and A5 for hot food takeaways. Previously they were in one use, so any change of use between them was not development. By making those separate uses, they became development, which local authorities could then control.

Local authorities can control that in two ways. They can control it by making decisions on applications and saying, “No, we don’t want to approve another hot food takeaway”. They can also use it through their plan-making process and, in setting out their plans, they can use Article 4 directions which prevent development taking place and can say, “We will not allow this particular use in this area” and define it in their local plans. There are powers to give the opportunity for the high street appearance to be affected.

The more you put into the permitted development rights, the more flexibility you give for uses to change. There was discussion recently on having a town centre use, and anything goes. If you do that, there is no planning control and if it is within that town centre use you could change to any use, provided it is within that use class order. We have tried to prevent that, because the bigger the use class order and the more that is in it, the less you can control. It is only if there is a change of use and development taking place that you can control it. We have done what we can. By creating additional use classes we have tried to give local authorities and communities more power to influence what their high streets look like and how they control them.

Q38 Lord Davies of Stamford: In the course of your career how often have you come across what you might call perverse or contradictory policies by the same local authority in planning and licensing? We know one or two quite famous cases that have come to the courts. You said you think it is fairly rare. Is it so rare that you can remember the number of occasions when it has arisen? I have in mind a licence that has been granted for a particular object in a particular way which is in contradiction of the planning consent that has been granted, or planning consent that has been granted which is in contradiction of the licence which is essential for the economics of the planned project. How many occasions have you come across that conflict?

Steve Quartermain: That is one of the more difficult questions. As you get older it is harder to recall. It is some years since I was in local authority. An honest answer to that question would be that I can count on the fingers of one hand when I was in local government when I had experience of any potential conflict between licensing and planning. It was some years ago. Also, I was at Hambleton for quite a long time.

Lord Davies of Stamford: Did it happen there?

Steve Quartermain: It is not that I have had lots of different local authority experience.

The Chairman: A model authority.

Q39 Lord Foster of Bath: In passing, I have the same declarations as you of wine and beer, and I would add whisky. I want to take you back to some of the conflicts, and a particular issue that you touched on of an existing licensed premises operating quite happily, perhaps with live music under the Live Music Act, and then residential premises are built round it, which can lead to all sorts of tension. You said that the NPPF and guidance issued give local authorities the ability to handle that issue. In truth, the only area where local authorities have real power—and only since April this year—is in respect of the conversion of office

premises to residential and there is real power for local authorities to use effectively the agent of change principle. Has the department given thought to widening that power for other residential buildings that could be developed around an existing licensed premises? Most people do not believe that the local authorities' powers are strong enough. You said you have not had much traffic over your desk, but I would refer you to the very detailed correspondence you have been receiving, for example, from the landlord of The Fleece in Bristol, who I know has written to you on very many occasions about this issue.

Lord Brooke of Alverthorpe: Are you declaring an interest?

Lord Foster of Bath: No, I have never entered the premises in my entire life.

Steve Quartermain: I did not say that we did not have any correspondence, but we do not get much. I am sure that we will be looking at the correspondence from The Fleece in due course.

There are two issues I would like to highlight. Local authorities have control through their planning applications. If you need planning permission for a particular use, they can look at that planning application in the context of their planning policies and the guidance that we have in the NPPF and make decisions on the planning application and put conditions on as they see fit. Those conditions can control noise and opening hours. You highlight an issue which we were made aware of where permitted development allows uses to change and those controls are not available to local authorities.

One of the areas that we were asked to look at again was the issue about noise and change of use for office to residential in particular where those offices were in close proximity to existing licensed premises. In response, as you say, we changed the way in which that permitted development right works. From April, local authorities have been allowed to take into account noise issues. In taking noise into account, they can say, "No, that's not something you can deal with under permitted development rights, you need to make a planning application", and they can put conditions on if necessary. On the other hand, if the proposal comes in and they have made suitable noise attenuation within their scheme, they might want to say, "We are happy for you as part of the prior approval to continue with that development".

We are not blind to this. We remain open to further changes if either this Committee's conclusions or the evidence you hear points us in that direction. At present, the level of concerns have been addressed by the guidance we have issued and changes we have made to the NPPF, the guidance and the permitted development rights. I accept that it has only been from April, but that shows we listen and take into account what people are telling us and, where appropriate, make changes.

Lord Foster of Bath: The big problem for the landlord of The Fleece is that this happened prior to April this year, so he, the leading campaigner, has been screwed and can do nothing about it. Can I ask one other question, going back to something you said, which was the importance of neighbourhood planning? I think all Members of the Committee will be aware this has been a huge development welcomed by local communities. The Committee would be interested if you could write subsequently with examples of neighbourhood plans that have done interesting, imaginative things in relation to licensed premises. In the ones I have looked at, very few seem to deal with them.

Steve Quartermain: I will talk to the team and see whether we can send examples.

Lord Foster of Bath: That would be helpful. Thank you.

The Chairman: When we put this to the Local Government Association and a couple of local authorities, concern was expressed that it is up to environmental health officers to take the

necessary steps, particularly in city areas. Do you believe they have the right powers and are acting uniformly in such cases? I think it is more of a problem in city areas than in rural ones. Is there anything to give you cause for concern about the role of environmental health officers in this?

Steve Quartermain: No, to be honest. I can draw perhaps on my local government experience, with the caveat that it is now more dated, rather than my chief planner experience. When I was executive director in local authorities, one of the things I was responsible for was environmental health officers and planning and street cleaning—every front-line service the council provided. One of my functions was to make sure we had effective and joined-up enforcement facilities. That included the environmental health officers and planning officers. They were not operating in isolation; the point was they had to be joined up and co-ordinated. If I can do it in Hambleton, then I am sure that local authorities up and down the country can do the same.

The Chairman: As I said, a model authority.

Steve Quartermain: It was indeed.

Q40 The Chairman: Since the 2003 Licensing Act has been in place, we have had the election of police and crime commissioners and the setting up of health and well-being boards. From where you sit in the department, do you believe there is proper regard in the setting of policy to the concerns of police and crime commissioners and health and well-being boards?

Steve Quartermain: From the chief planner's point of view, the role of the PCC is well established and the understanding of the importance of crime safety in planning and the way in which that is taken into account in planning decisions and plan making have been quite well embedded for a number of years. The issue of the health and well-being boards is still work in progress. There are better links to be made between health and planning. I believe that the planning sets out a very strong health agenda. There is a lot in our national planning framework and our guidance which promotes planning as a means by which you can create healthy environments, and the well-being and welfare of communities is taken into account. The Department of Health produces two pieces of guidance. One is a guide to the health service for planners and one is a guide to planning for the health service. The fact that guidance needs to be produced indicates there is more work to be done on joining up those two channels of thinking.

The Chairman: Would it be helpful to have health and well-being as an objective of the Licensing Act, as it is in Scotland?

Steve Quartermain: From a planning point of view, the promotion of health and well-being is at the heart of why the planning system came into being in the first place. It would be in the 1947 Act, but it started in 1909 with public health. Planning and promotion of public health is very important and licensing plays a part in that.

The Chairman: Is it required or should it be happening anyway?

Steve Quartermain: I think it should be happening anyway. That comes back to my earlier point about being aware of requirements, because to some extent you do not necessarily get the outcomes you want by regulating or legislation. It is about empowering people. There is the question, "Why aren't people doing this using the existing powers?" and that is what this Committee is trying to examine.

The Chairman: Mr Quartermain, I always thought Hambleton could spot talent. We wish you well in your work and thank you very much indeed for being with us today. If there is

anything you would like to add, you would be very welcome to do so in writing. Thank you very much indeed.