

COUNCIL

8 APRIL 2008

**MOTION REFERRED FROM COUNCIL TO THE ENVIRONMENT OVERVIEW
GROUP ON USE OF PLASTIC DRINKING VESSELS**

1. PURPOSE OF THE REPORT

- 1.1 To consider the report back from the Environment Overview Group of 13 March 2008 on the above Motion.

2. DECISIONS REQUIRED

- 2.1 Council's view are sought.

3. BACKGROUND/INFORMATION

- 3.1 The Environment Overview Group, at its Meeting on 13 March 2008, considered the following Motion:

" "We are extremely concerned to learn about recent incidents where very serious injuries caused by broken glass have been inflicted on people during an event spent in various drinking establishments in Poole.

In the light of this, we the undersigned:-

- (i) strongly urge the Council, as part of the Review of the Council's Licensing Policy, to adopt a robust Policy of considering the imposition of conditions requiring fully polycarbonate drinking vessels to be used in premises where the Responsible Authorities make relevant representations; and
- (ii) request the Council to agree to write to our local MP's and the Minister with representations regarding the introduction of appropriate measures to reduce the risk of these appalling incidents".

Signed: Councillors Lindsay Wilson, Mike Brooke, Mike Plummer, Peter Maiden, Daniel Martin, Charles Meachin, Tony Trent, Graham Wilson, Brian Clements, Sandra Moore, Daphne Long and David Brown.

- 3.2 The Environment Overview Group debated the Motion in detail and heard from the Head of Environmental and Consumer Protection Services, who gave the following information:-

- Poole Safe Team worked hard to ensure that Poole was a safe place and every Monday morning the Team meet to review what had happened over the previous weekend and an Action Plan was put in place. This Scheme had been in operation for one year and a good relationship now existed with Licensees who took on board any advice from the Poole Safe Team.

Incidents of "glassings" were very rare and between January 2007 and now, there had only been 5 such incidents. Three incidents had been at late night venues, which were a higher risk but these premises all used polycarbonate glasses. Unfortunately, one incident had occurred in one of these premises but this was due to the fact that a special drink had been sold in a glass bottle, which had then been used as a weapon but steps had been taken so that no such bottles were now available after 9pm in these premises. Wherever advice had been given to change to polycarbonate drinking vessels, the landlord complied with the advice .

- In Poole, 2% of premises used polycarbonate glasses and in Bournemouth this figure was 4% .
- With regard to the Licensing Act 2003, Part 3 of the Act dealt with Premises Licences and it was clear that if an application was received, and there were no relevant representations submitted, the Licensing Authority must grant the Licence. There was no discretion in the matter and the License must be granted in accordance with the operating schedule, subject to certain mandatory conditions. The Act was clear that when making any decisions the Licensing Authority must have regard to the guidance issued by the Secretary of State and departure from that guidance could result in a Judicial Review, but it did not mean that the Council could not depart from it as long as the Licensing Authority had reason to do so and they were able to provide reasons.
- Under Guidance issued by the Secretary of State with regard to blanket conditions, referred to an application being granted if it complied with the Legislation and there were no relevant representations. It was stated that each application must be considered on its own merits and that any conditions attached must be tailored to the individual premises. This was to prevent any disproportionate and overly burdensome conditions being placed on premises where there was no need for such conditions. Therefore this meant that if there was no need for a condition, one should not be attached. The Guidance went on to say that standard conditions should be avoided and, indeed, might be unlawful where they could not be shown to be necessary for the promotion of the licensing objectives in any individual case.
- Section 2.10 of the Guidance related specifically to plastic bottles and toughened glass and clearly stated that "a condition must be capable of being met. Licensing Authorities should carefully consider conditions of this kind to ensure that they were not only necessary but both practical and achievable". Conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This ruled out the use of standardised conditions that ignored these individual aspects. Conditions must be proportional and properly recognise significant differences between venues. The only conditions that related to all, or specific types of premises, were the mandatory conditions. Furthermore, an annexe to the Guidance was very specific in that it stated "Under no circumstances should Licensing Authorities regard these conditions as standard conditions to be automatically imposed in all

cases". Every application was dealt with on its own merits and if there was no need for a condition then it was clear from the Act and Guidance that it should not be added and that a blanket condition could not be added for all premises.

(A copy of the draft Minute is attached).

- 3.3 The Environment Overview Group agreed to not support the Motion but that it be kept on file to be considered as part of the next review of the Council's Licensing Policy unless this was brought forward earlier.

Tim Martin, LLB Solicitor
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EOG49.08 MOTION

The Chairman stated that the following Motion had been referred to this Overview Group by Council at its meeting on 30 October 2007:

“We are extremely concerned to learn about recent incidents where very serious injuries caused by broken glass have been inflicted on people during an event spent in various drinking establishments in Poole.

In the light of this, we the undersigned:-

- (i) strongly urge the Council, as part of the Review of the Council's Licensing Policy, to adopt a robust Policy of considering the imposition of conditions requiring fully polycarbonate drinking vessels to be used in premises where the Responsible Authorities make relevant representations; and
- (ii) request the Council to agree to write to our local MP's and the Minister with representations regarding the introduction of appropriate measures to reduce the risk of these appalling incidents”.

Signed: Councillors Lindsay Wilson, Mike Brooke, Mike Plummer, Peter Maiden, Daniel Martin, Charles Meachin, Tony Trent, Graham Wilson, Brian Clements, Sandra Moore, Daphne Long and David Brown.

The main signatory to the Motion referred to the reason behind the Motion and drew attention to one particular weekend when there had been two incidents of “glassings” in two different establishments; one on the Quay and one in a traditional Old Town pub. It was difficult to predict where this was going to happen next and it was not just young people who were involved. A recent press report had stated that the Police felt that there was no problem in Poole but more than one incident surely was a problem.

The Member drew attention to occasions when glasses and bottles were left lying around the Quay as some of the pubs were allowed to have drinking outside their premises and this was causing litter and danger problems with broken glass.

She stated that a meeting of the Licensing Committee some while ago, a presentation was made by the Landlord of ‘The Loft’ who was in favour of the use of plastic glasses and whilst there was a cost implication, this could be recouped quickly as the glasses could be used for a long period. As a Licensing Authority something could be done to solve these problems and at the present, this Council was trailing behind Bournemouth Council who had already imposed strict conditions. It was a shame that Poole Borough Council had not solved these issues when Reviews of Licenses had come forward.

A signatory to the Motion stated that this was a matter of public safety and that these acts of violence were particularly nasty and he hoped that the Council could support the proposed way forward. Decent quality glasses would save on

breakages and the type of glass, which had been shown to the Overview Group could appeal to drinkers.

A signatory to the Motion supported the change because she did not wish to see anymore incidents of this nature in Poole. It was clear that where people were allowed to drink outside there is a problem and therefore a Borough-wide ban on glass drinking vessels should be pursued.

A signatory to the Motion felt that there was a risk to children in the summer, especially on the Quay with young children treading on broken glass etc. He felt the Council should impose a blanket ban.

The Head of Environmental and Consumer Protection Services supplied some background information and reported that Poole Safe Team worked hard to ensure that Poole was a safe place and every Monday morning the Team met to review what had happened over the previous weekend and an Action Plan was put in place. This Scheme had been in operation for one year and a good relationship now existed with Licensees who took on board any advice from the Poole Safe Team. Incidents of "glassings" were very rare and between January 2007 and now, there had only been 5 such incidents. Three incidents had been at late night venues, which were a higher risk but these premises all used polycarbonate glasses. Unfortunately, one incident had occurred in one of these premises but this was due to the fact that a special drink had been sold in a glass bottle, which had then been used as a weapon but steps had been taken so that no such bottles were now available after 9pm in these premises. Wherever advice had been given to change to polycarbonate drinking vessels, the landlord complied with the advice.

In Poole, 2% of premises used polycarbonate glasses and in Bournemouth this figure was 4%.

With regard to the Licensing Act 2003, Part 3 of the Act dealt with Premises Licences and it was clear that if an application was received, and there were no relevant representations submitted, the Licensing Authority must grant the Licence. There was no discretion in the matter and the License must be granted in accordance with the operating schedule, subject to certain mandatory conditions. The Act was clear that when making any decisions the Licensing Authority must have regard to the guidance issued by the Secretary of State and departure from that guidance could result in a Judicial Review, but it did not mean that the Council could not depart from it as long as the Licensing Authority had reason to do so and they were able to provide reasons.

The Meeting was advised that, under Guidance issued by the Secretary of State with regard to blanket conditions, referred to an application being granted if it complied with the Legislation and there were no relevant representations. It was stated that each application must be considered on its own merits and that any conditions attached must be tailored to the individual premises. This was to prevent any disproportionate and overly burdensome conditions being placed on premises where there was no need for such conditions. Therefore this meant that if there was no need for a condition, one should not be attached. The Guidance went on to say that standard conditions should be avoided and, indeed, might be unlawful where

they could not be shown to be necessary for the promotion of the licensing objectives in any individual case.

Section 2.10 of the Guidance related specifically to plastic bottles and toughened glass and clearly stated that “a condition must be capable of being met. Licensing Authorities should carefully consider conditions of this kind to ensure that they were not only necessary but both practical and achievable”. Conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This ruled out the use of standardised conditions that ignored these individual aspects. Conditions must be proportional and properly recognise significant differences between venues. The only conditions that related to all, or specific types of premises, were the mandatory conditions. Furthermore, an annex to the Guidance was very specific in that it stated “Under no circumstances should Licensing Authorities regard these conditions as standard conditions to be automatically imposed in all cases”. Every application was dealt with on its own merits and if there was no need for a condition then it was clear from the Act and Guidance that it should not be added and that a blanket condition could not be added for all premises.

The Chairman of the Licensing Committee stated that the first part of the Motion was something which the Licensing Authority could already do but that no request has been received from the Responsible Authorities for a Review to be undertaken introducing polycarbonate Glasses. The situation in Poole had been achieved through co-operation on a voluntary basis and this had worked well. The Police were very satisfied with the way the matter was dealt with in Poole and did not see a need for further control. He emphasised that the Police already had the ability to make representations to the Licensing Authority for the imposition of a specific condition requiring the use of polycarbonate glasses. Any incidents, which occurred were dealt with by co-operation between licensees and the Police to make Poole a safe place. Any condition had to be proportionate to the situation and if any blanket conditions were imposed, this might be unlawful. He further stated that the Licensing Authority should not be a party to seeing pubs in the Town going out of business through unnecessary conditions and questioned why a small minority should dictate what happened in pubs in Poole. There already existed the Delta Scheme, which meant that pubs had to achieve an accreditation, which gave public confidence when using premises.

He drew attention to the recent review of the Council’s Licensing Policy and stated that this Overview Group had set up a Working Party, which had met on a number of occasions before making recommendations to the Environment Overview Group where the Policy was unanimously supported. It was a shame that the Working Party had been poorly attended by Members of the Opposition Group and there had never been any representations made at the Working Party on the use of polycarbonate glasses in pubs and he was disappointed that this Motion had not come through the consultation process at that time.

The main signatory to the Motion stated that she had taken advice on the wording to make it acceptable but had been unaware of the need to include this in the consultation process.

The following additional points were raised by Members:

- A service area behind shops in High Street was constantly strewn with broken bottles, causing litter and danger but it was felt that polycarbonate glasses could also be broken to become a dangerous implement.
- A request for conditions requiring polycarbonate glasses in pubs already existed if this was needed and that a blanket ban was probably unlawful. It was felt that the Council had to work within the framework of the law and whilst the sentiments in the Motion were commendable, measures were already in place if any incidents occurred.
- There were a low number of incidents in the Town and a voluntary scheme was in place to prevent “glassing” incidents but it was highlighted that things slipped through and it was clear that there was a weak point which had meant that someone had been injured. The voluntary situation did not appear to work. The results of a “glassing” incident were horrific on the people involved, which lasted all their lives. There was a 98% risk of something happening and having a blanket ban on all premises would not affect just a few pubs and as a consequence no individual pub would be singled out as having a particular problem. No evidence had been seen that having polycarbonate glasses affected trade.
- A Member was upset to hear that it had been suggested that the Motion was premeditated whereas it came from the results of a bad experience. It was felt that the advice given during the preparation of the Motion should have drawn attention to the consultation process. He felt that the Council should move towards the use of polycarbonate drinking vessels. He also felt that Paragraph 2 of the Motion could be supported to make the point to MP’s etc that there should be more flexibility for Councils to implement such measures.
- Problems in the Branksome Recreation Ground area were more to do with broken bottles rather than glasses and that young people were being sold alcohol illegally and more staff training was needed.
- The Motion had been brought forward in good faith and the 5 people disfigured in Poole would suffer by being disfigured for life and the Overview Group was urged to introduce conditions requiring polycarbonate glasses in Pubs.
- There was not a problem in Poole, which necessitated such action and it was felt that the Motion was merely “talking the Town down”. It was unsure where this issue could go as the Council did not have any power to impose a blanket ban.
- The Motion had been submitted in all good faith and the wording had been accepted by the Head of Legal and Democratic Services. The spirit of the Motion should be considered and there were other powers such as a Bylaw to apply the Motion.

The main signatory to the Motion summed up by stating that she was disappointed with the response to the Motion and did not want this discussion and debate to turn political and emphasised that the Motion had been submitted in good faith. She had identified a problem and was trying to make things safer for the people of Poole. She also felt that the Licensing Officers should look at the situation around the High Street area, which seemed to be causing a problem. She felt that the concerns expressed in the Motion could be passed on to local MP's so they were aware of the issues.

The Portfolio Holder stated that the Licensing Policy, which was now in place, was transparent and the Review had been considered by this Overview Group in the knowledge of all Members and best advice had been given by Offices. Paragraph (i) of the Motion was already available in the Policy. With regard to Paragraph (ii), attention was drawn to the fact that if one attended hospital there were more incidents of personal violence than the total number of 5 "glassing incidents" in Poole since 2007. Bournemouth still had problems and if this was the case in Poole then representations could be made to the MP's etc, but the Council would be asking MP's to look at an exemplar Local Authority to make a small point against primary Legislation and this should not take up the time of the MP's.

The effect on Tourism of introducing conditions requiring polycarbonate drinking vessels was an issue to be considered and if all pubs in Poole used polycarbonate glasses this would send the wrong message to the Community. The Council had a duty to take proportional action and whilst 5 incidents was regrettable, in proportion to the total number of violent acts taking place, then MP's and Ministers would not take our concerns seriously.

With regard to the issue of glasses on the Quay, the difficulty here was that the use of polycarbonate bottles would be an environmental problem, the majority of which would be washed up on our beaches etc.

Therefore, he stated that he could not support Paragraph (i) of the Motion as this issue was robustly covered by the Council's current policy and Paragraph (ii) could not be supported as he was not persuaded by the arguments that this was a substantive problem in Poole.

RECOMMENDED that the above Motion be not supported.

For: Councillors Chandler, Collier, Mrs Haines, Mrs Lavender, White and Wilkins.

Against: Councillors Eades, Martin, Trent and Miss Wilson.

The Portfolio Holder further proposed that he called on the Overview Group to support a proposal whereby the Motion, as submitted, was kept on file, to be considered as part of the next Review of the Council's Licensing Policy unless this was brought forward earlier.

The proposal was duly seconded and on being put to the vote was CARRIED.

RECOMMENDED that the Overview Group supports a proposal whereby the Motion, as submitted, be kept on file, to be considered as part of the next Review of the Council's Licensing Policy unless this was brought forward earlier.

For: Councillors Chandler, Collier, Mrs Haines, Mrs Lavender, White and Wilkins.

Abstained: Councillors Eades, Martin, Trent and Miss Wilson.