



## Overview and Scrutiny Board

26 November 2004  
draft

### LICENSING POLICY

Ed Chicken : Head of Community Protection  
Service

#### 1. Summary

The report sets out

- The purpose of a licensing policy
- The constraints of the new licensing regime
- The process including consultation taken to devise the draft policy
- The issues with potential for challenge

#### 2. Evidence / Discussion

##### Timetable

- 2.1 The Licensing Act was passed in 2003, heralding the transfer of responsibility for liquor licensing from magistrates to local authorities in the context of a wholesale review of licensing arrangements. Underpinning this was a desire to reduce restrictions and enable 24 hour opening. Central to this is the belief that crime and disorder would be reduced if premises chose their own hours of opening.
- 2.2 Local Authorities must draw up policies in order to judge licence applications. In August 2003 a report and draft policy was discussed by

the Executive, but detailed consultation could not take place until statutory guidance was issued.

- 2.3 This guidance was published in July 2004. Based on this, a revised draft was subject to widespread consultation.
- 2.4 The local authority must take over responsibility for licensing from 7 February, and a finalised policy must be published one month before. This must be agreed by the whole Council.

### **The Draft Policy**

- 2.4 The policy makes clear to applicants the standards that the Council will expect of them in the context of the 4 licensing objectives:
  - the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance;
  - the protection of children from harm.

The policy cannot deviate from these objectives, and must be evidence based, with any conditions capable of being defended if challenged. It is important to note that the primary vehicle for influencing the development of a night time/town centre economy is not the licensing but the planning regime. Nevertheless, the policy does attempt to incorporate many of the issues that have an adverse influence, such as littering and under age sales.

- 2.5 Comments relating to issues outside of the scope of these objectives have been discounted. Appendix 1 contains a precis of all comments received, and only two significant areas of contention remain:
  - a) Cumulative impact (saturation policy)
  - b) pricing policy.

### **3. Cumulative Impact**

The assumption of the legislation is that applications for licences will be granted unless representations are received that indicate one of the four licensing objectives will be affected adversely. However a partial caveat is permitted which allows a Licensing Authority to consider the cumulative impact of licensed premises in a defined area. In such an area, the applicant is required to show how their premises will *not* add to any problems that exist currently. Nevertheless the authority must still grant a licence unless it receives relevant representations.

Such a Policy cannot include sales of alcohol for consumption off the premises. The Policy cannot be used to revoke or refuse to vary a licence except insofar as the variation would impact on the cumulative effect e.g. increase in capacity.

In the consultation, such an area was suggested, centred on Albert Road and Exchange Square.

The consultation provided no support for this proposal, though the police have suggested extending the zone to encompass the entire town centre.

The extra powers that arise from declaring an area 'saturated' are extremely limited, and such a declaration cannot automatically prevent any new business from establishing. However it does indicate to prospective applicants, and potential objectors, how the council views an area. It may be that an application for a large capacity pub would be unwelcome, whereas a wine bar would be welcomed; and granted on the basis that it would not add significantly to the cumulative effect.

#### **4. Pricing**

At present there is a voluntary agreement, supported by most licensees, not to reduce the price of alcoholic drinks below £1 50. Whilst there have been concerns over the legality of this stance in terms of its obvious anti competitive nature, no challenge has been received to date. Incorporating this in the policy is supported by the police, Luminar Leisure, and the British Entertainment and Discotheque Association.

However no evidence is available that indicates that this reduces binge drinking. It could therefore be difficult to defend if challenged.

### **Option Appraisal/Risk Assessment**

#### **5. Saturation**

##### **5.1 Option A: Expand the Saturation Area to Incorporate the Entire Town Centre**

###### **Comments:**

- This is supported by the police but has been proposed by no other consultee.
- The consultation was based on a smaller area.

##### **5.2 Option B: Restrict the Saturation Area to the Albert Rd/Exchange Square Area**

###### **Comments:**

- A saturation policy can only be introduced based on proper evidence of Crime & Disorder and/or Public Nuisance. The crime statistics provided by the Police are not specific to the original area & this therefore may create difficulties if the Council had to justify its Policy by way of challenge such as judicial review.

### 5.3 Option C: Do Not Include a Saturation Policy

#### **Comments:**

- The Saturation policy could be removed from the Council's Licensing Policy on the basis that there is insufficient evidence to maintain the policy at the present time. A comment could be included in the Policy to advise that the issue of saturation has been considered & will be kept under review.
- The Licensing Policy is a "living" document that must be reviewed & republished at least every 3 years. It can be reviewed more frequently. Every time it is reviewed it must undergo a full consultation process.

- 5.4 Whether or not a Local Authority has a Saturation Policy it must still grant licences in the area of saturation if no relevant representations are received. In the event of receiving relevant representations in relation to an application within an area of saturation, every case must be considered on its merits.

#### **Pricing**

- 5.5 Set no minimum price.  
5.6 Incorporate the current minimum price.

#### **Resources**

6. The transfer of work to the local authority will require resources. This is being addressed currently. It is important that this work is viewed not simply as administration, as the enforcement and advisory role will be crucial to using the licensing regime in support of well managed development of the night time economy. Whilst the major impact is in the town centre, the entire town is affected to some degree by these changes.

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CONSULTEE	POLICY SECTION	COMMENT	ACTION/RESPONSE
<p>Association of Licensed Multiple Retailers (ALMR)</p>	<p><b>Admin/</b> Delegation/ Conditions/ Staggered closing</p>	<p>Requirements to further stress the requirements of legislation, e.g. imposition of conditions only if relevant representations,.</p>	<p>The Policy is not a rewording of the legislation. LA will ensure compliance. No amendment required.</p>
	<p>Public Nuisance</p>	<p>Conditions re littering should not be imposed unilaterally &amp; that 20 metre radius may be inappropriate.</p>	<p>Littering should be addressed by the Licensee. Unilateral conditions will not be placed on licences.</p>
	<p>Location &amp; Impact of activity</p>	<p>Concern re the imposition of terminal hours</p>	<p>The policy says the Licensing Authority will “normally encourage” specific hours. not impose as a matter of course.</p>
	<p>Consideration of impact of Licensed activities</p>	<p>Concern that the factors to be taken into account exceeds the scope of the 4 objectives</p>	<p>The Policy makes it clear that these factors will be taken into account if relevant representations made. All factors relate to potential public nuisance/crime &amp; disorder issues</p>
	<p>Planning</p>	<p>That there is no legal basis for a requirement that Planning consent should be obtained prior to Licensing</p>	<p>If Planning consent had not been obtained e.g. in terms of hours/use it would be perverse of the Licensing Authority to accept &amp; grant an application.</p>

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ALMR (cont)	Prevention of Crime & Disorder	Section on bottle bins/customers leaving with bottles should make it clear that this relates to on licence sales.  The legislation does not require Personal Licence Holder to be present at all times when alcohol is sold.	Agreed. Amendment made.  The Licensing Authority may depart from the guidance if good cause. The policy states “will normally require” & repeatedly specifies “each on its merits”
	Profile of M/Boro	To include reference to number & type of licensed premises	Numbers of premises are likely to constantly change & therefore such detailed information has been avoided.
	Protection of Children	The Policy reference to gambling should make it clear that this does not refer to small numbers of AWP’s	The Policy states “a strong element of gambling” which is adequate.
	Saturation Policy	Cannot be the decision for the Local Authority on its own initiative	Agreed.
	Scope of Policy	Should state exception for incidental music	Agreed & amended
	Stage hypnotism	Not a licensable activity	It is relevant in terms of Protection of Children from harm & thus is included in the Policy
	NB Comments are general & not specific to this Licensing Policy		

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<p style="text-align: center;"><b>BARGAIN BOOZE</b></p>	<p><b>Crime &amp; Disorder</b></p>	<p>Requirement to have a personal licence holder on premises when alcohol is sold but legislation does not require this.</p>	<p>The Licensing Authority may depart from the guidance if good cause. The policy states “will normally require” &amp; repeatedly specifies “each on its merits”</p> <p><b>This requirement will be dependant on specific issues relating to certain premises</b></p>
	<p>Protection of Children</p>	<p>Policy states where convictions for sale of alcohol to minors but guidance states it should relate to current staff.</p>	<p>If premises repeatedly employ staff who sell to minors it would be appropriate to adopt appropriate controls.</p>
<p style="text-align: center;"><b>BEDA</b> (British Entertainment &amp; Discotheque Association)</p>	<p>Public Safety</p>	<p>Supports capacity figures in policy &amp; discourages vertical drinking. Supports risk assessments for dance floors &amp; provision of entertainment</p>	<p>The Policy expects maximum capacity to be agreed with relevant authority &amp; not exceeded. The Licensing Authority would seek to discourage vertical drinking wherever possible. Risk assessments are required</p>
	<p>Public Nuisance</p>	<p>Supports Licensees being required to provide a dispersal policy</p> <p>Need to consider late night Transport</p>	<p>Already included in Policy</p> <p>Partially covered in Policy. Providers part of consultation</p>





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<b>CAMRA</b> (Campaign for Real Ale)	Public Safety	Believes design, character & layout will influence compliance with 4 objectives	Agree in principle & partly covered in section on Public Safety but not fully within remit of the Licensing Authority
	Public Nuisance	Supports staggered closing. Recommends LA should not expect premises to open for all of the hours applied for but should display granted hours externally.	Agree
	Crime & Disorder	Request that Policies discourage rapid turnover of licensees	Not within the remit of the licensing Authority
		Discourages irresponsible drinks promotions	Policy already addresses issues of irresponsible drinks promotions.
	Planning	Supports requirement to obtain Planning consent/building control approval prior to Licence application	Already addressed in Policy
	Promotion of 4 objectives	Supports consideration of nature & type of P Premises/ people/promotions/drug issues,	Already addressed in Policy
	Saturation Policy	Urges adoption of cautious approach	Noted
	Temporary Events Notices (TENS)	Suggest Policy encourages 20 working days notice rather than legislative 10 working days	<b>Noted but Licensing Authority is bound by legislation.</b>
NB Comments are general & not specific to this Licensing Policy			

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<p style="text-align: center;"><b>CIU</b> (Clubs &amp; Institute Union)</p>	<p>General</p>	<p>General enquiries re Policy in relation to registered clubs</p>	<p>Response by individual letter.</p>
<p>CLEVELAND POLICE</p>	<p>Saturation Policy</p>	<p>Propose an extension to the proposed saturation policy area of Corporation Road, Albert Road, Exchange Square/Place &amp; Zetland Road to encompass the entire Town Centre area. A crime pattern analysis for the entire Town Centre has been submitted to support their request</p>	<p>This is subject of a separate report to CMT/Exec</p>
	<p>Personal Licences</p>	<p>Request to replace “Crime” with “Crime &amp; Disorder”</p>	<p>Agreed &amp; amended.</p>
	<p>Impact of licensed Activity</p>	<p>Query re who is accountable, responsible person</p> <p>Suggest that if adverse impact caused not only may licence be granted for a limited period but to add “or not at all”</p>	<p>Personal Licence holder is this person. This is stated in the Policy.</p> <p>Legislation gives a presumption of grant with use of conditions/short term licences where appropriate. No further action.</p>

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<p><u>CLEVELAND POLICE</u> <u>(Cont)</u></p>	<p>Other licensing control</p>	<p>Request to insert that licence holders have a moral obligation in relation to prevention of anti social behaviour</p>	<p>This is beyond the remit of the LA</p>
	<p>Staggered Closing Times</p>	<p>Request to remove the phrase “including the issue of fixed penalty notices” in relation to Police enforcement.</p>	<p>This is taken, verbatim, from the Govt’s guidance &amp; therefore will remain.</p>
	<p>Minimum door charges</p>	<p>Request to include impact on emergency services in relation to premises opening beyond 2am</p>	<p>It is difficult to see how this relates to the 4 licensing objectives.</p>
	<p>Minimum door charges</p>	<p>Request for the LA to identify how it will determine terminal hours if voluntary arrangements are not reached</p>	<p>Every case will be decided on its merits if a relevant representation is made. Without a relevant representation the licence must be granted on the terms applied for.</p>
<p>Minimum door charges</p>	<p>Request for information on LA action if breaches of condition</p>	<p>Through legislative process.</p>	

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<u>CLEVELAND POLICE</u> <u>(Cont)</u>	Door staff	Query whether LA has formula for calculating ratio of doorstaff to patrons	No current formula. Applicants will be expected to risk assess & advise of numbers. If Police not satisfied they can make relevant representation.
	Street Cafes	Request to include match days & special events as a consideration.	Agreed & added
	Crime & Disorder	Request for minimum drinks pricing to be included in Policy	This is subject of a separate report to CMT/Exec
	Protection of Children	Request to reduce hours for children's access to licensed premises from 11pm to 9pm	Modified in part to include Children under 14 years to leave before 9pm
	General	Late night refreshment section to indicate street traders in initial paragraph  More emphasis to be place on the Alcohol Harm Reduction strategy	Agreed & included.  Noted. This is already covered within the 4 licensing objectives

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<b>HIGHFIELD HOTEL</b>	<b>Conditions</b>	Comment that conditions should be venue-specific	Agreed. This is a fundamental principle of the new legislation
<b>INDEPENDENT STREET ARTS NETWORK</b>	<b>General</b>	Request to elaborate on Council's promotion of diverse entertainment  Request to include the Council's intention to licence public spaces  NB Comments are general & not specific to this Licensing Policy	<b>Noted. This is adequately covered in the scope of the Policy.</b>  Agreed & included
<b>LEGAL SERVICES</b>	<b>General</b>	Requirement to add information re Freedom of Information Act	<b>Agreed &amp; added</b>
LINTHORPE COMMUNITY COUNCIL (CC)	Crime & Disorder	Concern at the proviso that the LA will only "normally require" presence of Personal Licence holder  Suggestions that phrases from the guidance are reproduced within the Policy	Policy has already departed from Govt guidance in making this requirement & cannot in any case be seen as a blanket requirement  The Policy reflects how the LA will deal with the legislation & therefore does not repeat it.

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<p>LINTHORPE C C (CONT)</p>		<p>Litter from Late Night Refreshment Houses to be colour coded to identify source.</p> <p>Concern that the Policy uses terms “may” instead of “will” e.g. that an action may result in a request for a review. Also that action will only be taken if relevant representations are made.</p> <p>Suggestion that the policy gives more focus to the enforcement &amp; prosecution for sale of alcohol to drunken persons</p> <p>Other comments are of an enquiring nature &amp; relate to the actual legislation rather than the Policy.</p>	<p>Not within the remit of the LA,</p> <p>As the LA is unable to take action in its own right it is dependant on a responsible authority making a request for review, thus the terminology “may” is used rather than “will”.</p> <p>This is covered by other legislation.</p> <p>A separate letter will be sent to clarify these issues.</p>
<p>LIVE MUSIC FORUM</p>	<p>General</p>	<p>Suggest inclusion of phrase to indicate value of broad range of cultural entertainments</p> <p>Suggest addition of information re Council's own public spaces</p> <p><b>NB Comments are general &amp; not specific to this Licensing Policy</b></p>	<p>Already included in scope of Policy</p> <p>Agreed &amp; added</p>







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MIDDLESBROUGH COUNCIL (cont)  LEGAL SERVICES   REGENERATION	General	Requirement to add information re Freedom of Information Act	Agreed & added
	General	Query on role of Licensing Committee	The Scheme of Delegation is drawn from the Guidance.
		Suggestion to number Policy paragraphs.	Agreed & amended.
	Planning	Amendment required to guidance notes because of change in Planning legislation.	Agreed & amended.
	Saturation Policy	Suggest plan of area is included in document.	This is subject to a separate report to CMT/Exec
	Street Pavement Cafes	Comment on need to develop a better policy for licensing of street cafes.	Agreed but not within the remit of the Licensing Policy.
	Planning	Amendment required to guidance notes Because of change in Planning legislation	Agreed & amended.
	Saturation Policy	Suggest a plan of the proposed area is Included in document	This is subject to a separate report to CMT/Exec
	Street Pavement Cafes	Need to develop a better policy for licensing of street cafes	Agreed but not within remit of the Licensing Policy

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MUSICIANS UNION	General	<p>Policy should include intention to monitor impact of licensing on entertainment to ensure live music is not deterred</p> <p>NB Comments are general &amp; not specific to this Licensing Policy</p>	<p>This is already covered in the Guidance. The Policy will, however, be kept under regular review.</p>
RSPCA	General	<p>Requirement for circuses to be included in Policy &amp; be required to obtain either a Premises Licence or Temporary Event Notice (TEN).</p> <p>NB Comments are general &amp; not specific to this Licensing Policy</p>	<p>Agreed &amp; included</p>
TOWN CENTRE COMPANY (TCC)	General	<p>Key document for future night time economy. Requirement for full debate before final draft &amp; presentation to Board</p> <p>Should have been initial internal consultation &amp; corporate position established before wider consultation</p>	<p>To be discussed with Head of Service. Presentation to be undertaken. Nb consultation period closes 29/10/04.</p> <p>Internal consultation &amp; Exec decision in Summer 2003.</p>

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TCC (cont)	Public Nuisance	Littering request for prevention of flyers/fly posting through operating schedules.	Beyond remit of LA to prevent flyers. Fly posting covered under separate legislation.
		Refuse storage proposals supported	Noted
	Saturation Policy	Concerns re use of saturation policy & possible blanket ban in future.	Subject of separate report to CMT/Exec
	Planning	Support of requirement to have Planning consent before Licence application	Noted
	Street Cafes	Requirement for extra controls	Noted. This is largely dependant on the engineers who licence this activity
	General	General comments about layout of Policy	Noted.
JD WETHERSPOON	General	Request to more clearly indicate that LA must grant licences subject only to conditions consistent with operating schedule if no relevant representations made. Request for more detailed information re conversion applications in relation to conditions.	<i>This is already covered in the section on conditions</i>

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<p>JD WETHERSPOON (cont)</p>	<p>4 Objectives</p>	<p>Request for a general statement relating to requirements of applicants in relation to the 4 objectives to be placed in each section..</p>	<p>Agreed in part. A general statement to encompass all 4 conditions has been inserted.</p>
	<p>Premises Licences</p>	<p>Objection expressed to statement that premises licences without relevant representations will not be granted unless 4 objectives are addressed. Comment that conditions would not be appropriate in relation to “good neighbour” concept.</p>	<p>This comment is not accepted. If the operating schedule does not address the 4 objectives the LA will deem that the application has not been properly made. The Policy does not mention the attachment of conditions in relation to “good neighbour” it simply states that the schedule should show how this will be effected.</p>
	<p>mpact of licensing Activity</p>	<p>Statement that if adverse impact is to be considered so should good record to prevent speculative objections. Comment that LA should not be imposing standard closing hours.</p>	<p>If the premises have been well operated in the past there will not be a concern about this. The Policy states that the LA will “encourage” earlier closing hours in predominantly residential areas.</p>
	<p>Other Licensing controls</p>	<p>Comment that if other controls are of limited effectiveness that this is a problem for the enforcing agencies</p>	<p>This comment appears to miss the point that away from the premises these controls may have limited effect.</p>

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JD WETHERSPOON (cont)	Prevention of Nuisance	Concern that cases will not be dealt with on merit. Reminder that objections should not be “engineered” from Local authority or Police & view that it is up to local residents to decide whether or not to object. Reminder that it is the duty of LA to carry out the wishes of Parliament re longer licensing hours.	All cases <b>MUST</b> be dealt with on their own merit. The LA is fully aware that relevant representations must not be solicited from anyone.
	Saturation Policy	Comment that this should not be subject solely to Police request	Subject of separate report to CMT/Exec
	Staggered hours	View that these are expressly against the wish of Central Government.	The Government wishes to avoid the current situation of large scale concentrations & has indicated in the guidance that the impact of the Act on Crime & Disorder will be monitored.. If necessary further legislation will be introduced. To ensure that we do not simply have a later terminal hour staggered hours will be encouraged.
	Littering	Comment that the Policy appears to suggest a standard condition. Condition would only be reasonable to specific premise if specific problem & only after relevant representation.	There is already a major problem in the Town Centre in relation to this & we would seek, through the operating schedule on Public Nuisance to address this.

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<p>JD WETHERSPOON (cont)</p>	<p>Refuse storage</p>	<p>Comment that this is a Planning issue &amp; not for the Licensing Policy.</p>	<p>The LA deems this to be a relevant consideration in relation to Public Nuisance.</p>
	<p>Capacity</p>	<p>Comment that LA is attempting to impose a blanket condition. Accept that places providing public music &amp; dancing might require capacity but only if volunteered by applicant or following relevant representation.</p>	<p>The issue of capacity is deemed to be relevant to the objective of Public Safety. It will not be imposed unilaterally but will be considered in places which offer sale of alcohol &amp; entertainment.</p>
	<p>Public safety</p>	<p>Comment that requirement for operating schedule to specify how cigarettes &amp; alcohol will be kept from dance floor is over prescriptive &amp; should be covered under H&amp;S legislation.</p>	<p>The LA deems this to be an important Public Safety issue that should be addressed in the operating schedule.</p>
	<p>Crime &amp; Disorder</p>	<p>Concern re requirement for Personal Licence holder to be present which is contrary to guidance.</p>	<p>The LA is permitted to deviate from the Guidance if it has good cause. The LA deems this to be an important requirement in certain premises to ensure there is an identifiable, responsible person with whom the Police &amp; LA can discuss any problems or issues of concern.</p>



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