



Appendix B

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28th September 2007

Kevin Doyland
Licensing Manager
Rochford District Council
3-19 South Street
Rochford
Essex
SS4 1BW

Dear Mr Doyland,

RE: LICENSING ACT 2003 - REVIEW OF LICENSING POLICY

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 60,000 pubs in the UK. Many of our members own and run pubs in the Rochford area. The Association promotes the responsible sale of alcohol and management of licensed premises. It has a range of good practice information and guidance for member companies, which includes security in design, drugs, drinks promotions, noise control and health and safety.

The BBPA believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. We welcome this opportunity to provide comments as part of this licensing policy review. This response is also supported by BII, the professional body for the licensed retail sector. Our main observations are below, and relate in the main to the promotion of the licensing objectives and the specific issue of capacity limits.

General Comments

Overall, the revised draft statement of licensing policy for Rochford promotes, in our view, a balanced and sensible approach. The BBPA welcomes the generally positive attitude to the licensing of the sale of alcohol and the provision of public entertainment and in particular the Council's recognition of the cultural and social contribution that the trade has to make, and also its importance as a local employer.

The draft policy has also recognised one of the key principles of the Licensing Act 2003, namely that each application must be treated on its own merits.

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Conditions

We welcome the statement in paragraph 1.56 with regard to the attachment of conditions to licences.

1. With regard to paragraph 1.57, we must point out that there is no legal requirement for applicants to consult responsible authorities on their operating schedules. Applicants will know their premises best, and while we appreciate that some applicants may find it useful to contact the responsible authorities for advice, others will not need to do so. Applications cannot, of course, be refused on the basis that such consultation has not taken place. We suggest the following minor amendment (shown in bold italics) in order to ensure that the policy does not suggest that representations might be made as a matter of course in the absence of such liaison:

*In order to minimise problems and the necessity for hearings, ~~it would be sensible for applicants and clubs~~ **may wish to consult Responsible Authorities as appropriate to consult with Responsible Authorities** when operating schedules are being prepared, ~~in order to assist their application allow for proper liaison before representations prove necessary.~~*

Enforcement

We welcome the risk based approach to enforcement advocated by the policy in paragraph 1.88, and would further recommend the recognition of the Hampton principles of inspection and enforcement in this section, which include the following:

- No inspection should take place without a reason
- Regulators should recognise that a key element of their activity will be to allow or even encourage, economic progress and only to intervene when there is a clear case for protection

Licensing Objectives

The Association also favours of the use of risk assessments, but we would take this opportunity to stress that the provision of a risk assessment to support an application is, of course, not a requirement under the Licensing Act 2003. We trust that paragraph 2.6 merely serves to encourage the use of risk assessments as a tool rather than requiring these as part of the application process.

2. In the event that a relevant representation is received and upheld on the grounds of public safety for example, or crime and disorder, then a condition relating to capacity could be attached to the licence if necessary. We suggest that the references to capacity in paragraphs 2.11 – 2.15 could be deleted from this section and simply included as a bullet point in paragraphs 3.6 and 4.4 as an example of a control measure which might be necessary to promote the prevention of crime and disorder or to address public safety.

The Association recognises that the lists of control measures given for each licensing objective are meant as examples and would not be applied in all cases. However, some of the examples given do not easily translate into conditions on licences and would be unenforceable, although the BBPA would support them as good practice. Others are unnecessary - underage sales, for example, are already an offence under the Licensing Act - or duplicate existing legal requirements - such as regular testing of equipment etc, which would be at odds with the intention stated in paragraph 1.26 of the draft policy not to duplicate other regulatory regimes.

3. We request, therefore, that the following (which are common to one or more licensing objective) be deleted from the bulleted lists and highlighted instead as recommended management practice:

- *Effective and responsible management of premises*

In our view, such a subjective condition could not be reasonably enforced.

- *Appropriate instruction, training and supervision of staff*

4. Again, this is a very general requirement which would be inappropriate as a condition on a premises licence. Training needs are best left to the management of the premises to decide. This would also be a subjective condition – who would decide what was “appropriate”?

- *Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice etc.)*

5. Best practice and voluntary guidance are also management tools, which cease to become “voluntary” if they are made conditions of the licence. Again, we do not see how such a condition could be enforced.

Prevention of Crime and Disorder

6. We suggest a minor amendment (shown in bold type, underlined) to the wording of paragraph 3.6 as follows:

*“Applicants may wish to consider the following examples of control measures that might be included in their operating schedule, **where necessary**, having regard to their particular type of premises and/or activities:”*

7. Further to our comments above, conditions should be specific and should not seek to “micro-manage” premises. We request, therefore, that the following be deleted from the bulleted list and highlighted instead as recommended management practice:

- *Acceptance of accredited “proof of age” cards etc.*

Since the sale of alcohol to under 18s is already against the law, we do not believe this would be a necessary condition for any licence. The BBPA is extremely supportive of Challenge 21 and PASS. We would not however wish to see this translated into a condition of licence since by its nature it is itself a ‘due diligence’ approach to securing compliance with the law.

With regard to paragraph 3.7, we would just stress that is no mechanism in the Licensing Act for licensing authorities to insist that the DPS be on the premises at all times or to insist on experience, training or qualifications in addition to the personal licence qualification. The law simply requires a DPS to be nominated for licensed premises where the sale of alcohol is to take place. The DPS must hold a personal licence. We welcome the clarification in the revised Government Guidance to the Licensing Act on this point.

The draft policy makes reference in paragraph 3.8 to the advice contained in the DCMS guidance to good practice for the authorisation of the sale of alcohol. We would take this opportunity to comment that while written authorisation may be appropriate for some premises, it will not be necessary for all, and it is not a legal requirement. Ultimately, it is for the DPS to decide how to manage this issue.

Public Safety

8. Further to our previous comments, we suggest that the following be deleted from the bulleted lists and highlighted instead as recommended management practice:

- *Suitable and sufficient risk assessments*
9. While the Association is also in favour of the use of risk assessments as a management tool, the provision of any form of risk assessment to support an application is not a requirement under the Licensing Act 2003, and would only come into play where relevant representations have been received from responsible authorities. Even then, it would very rarely, if ever, prove necessary to make health and safety risk assessments a condition of a premises licence, since this would duplicate other legislation, such as fire safety for example.
- *Proof of regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety*

Such a condition would duplicate existing regulatory requirements.

Prevention of Public Nuisance

10. We suggest the following clarifying amendment to paragraph 5.3, in order to ensure that there is no element of pre-judgement with regard to licence applications in residential areas:

*“Applicants need to be clear that the Council **will may normally** apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received.”*

11. Again, we suggest a minor amendment (shown in bold type, underlined) to the wording of paragraph 5.7 as follows:

*“Applicants may wish to consider the following examples of control measures that might be included in their operating schedule, **where necessary**, having regard to their particular type of premises and/or activities:”*

12. We also suggest that the following be deleted from the bulleted list:

- Management arrangements for collection and disposal of litter

We suggest that issues relating to litter are covered by the Clean Neighbourhoods Act 2005 and environmental legislation. Conditions should not duplicate these alternative legal provisions.

Protection of Children from Harm

13. Paragraph 6.1 risks giving additional weight to this licensing objective. The S.182 Guidance clearly states that all licensing objectives are of equal importance (Chapter 1, paragraph 1.3). We suggest that paragraph 6.1 be amended slightly to ensure no particular bias, or is deleted altogether.

14. Further to our previous comments, we suggest the same slight amended wording to paragraph 6.7 as given above and request that the following be deleted from the bulleted list and highlighted instead as recommended management practice:

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- *Acceptance of accredited “proof of age” cards and/or “new type” driving licences with photographs*

We refer you to our previous comments under Prevention of Crime and Disorder above.

- *Measures to ensure that children do not purchase, acquire or consume alcohol*
15. The BBPA continues to be very active in promoting its ‘Challenge 21’ campaign and is gratified at the success that this has had in ensuring compliance with the law. However, the sale of alcohol to under 18s is already an offence in law and therefore this would be an unnecessary condition.
- *Measures to ensure children are not exposed to incidences of violence or disorder*
16. Licensed premises will generally take steps to ensure that their premises are safe for **all** customers. Such a specific condition with regard to children would not be necessary except in very exceptional circumstances, in which case relevant representations would be made.

We trust that you will find these comments helpful and look forward to any response you may have. We would also appreciate being listed as a consultee in any further licensing related consultations.

Yours sincerely,



Dr Martin Rawlings