



## TO THE CHAIRMAN AND MEMBERS OF THE **LICENSING SUB-COMMITTEE B**

You are hereby summoned to attend a meeting of the Licensing Sub-Committee B to be held on Monday, 4 December 2023 at 7.00 pm in the Council Chamber, Civic Offices, Gloucester Square, Woking, Surrey GU21 6YL.

The agenda for the meeting is set out below.

JULIE FISHER  
Chief Executive

## **AGENDA**

### **PART I - PRESS AND PUBLIC PRESENT**

1. Election of Chairman  
To elect a Chairman of the Sub-Committee for the remainder of the Municipal Year.
2. Election of Vice-Chairman  
To elect a Vice-Chairman of the Sub-Committee for the remainder of the Municipal Year.
3. Minutes (Pages 3 - 6)  
To approve the minutes of the meeting of the Licensing Sub-Committee B held on 29 September 2022 as published.
4. Declarations of Interest  
To receive declarations of disclosable pecuniary and other interests from Members in respect of any item to be considered at the meeting.
5. Urgent Business  
To consider any business that the Chairman rules may be dealt with under Section 100B(4) of the Local Government Act 1972.

### **Matters for Determination**

6. Application for a Premises Licence - Brazil Tropical, 56 Chertsey Road, Woking (Pages 7 - 154)  
Reporting Person – Matthew Cobb

AGENDA ENDS

Date Published - 23 November 2023

For further information regarding this agenda and arrangements for the meeting, please contact Doug Davern on 01483 743018 or email [doug.davern@woking.gov.uk](mailto:doug.davern@woking.gov.uk)



**Mixed Sources**

Product group from well-managed forests and other controlled sources

[www.fsc.org](http://www.fsc.org) Cert no. SA-COC-001794  
© 1996 Forest Stewardship Council

MINUTES  
OF A MEETING OF THE  
**LICENSING SUB-COMMITTEE B**

held on 29 September 2022

Present:

Cllr L M N Morales (Chairman)

Cllr J P Morley (Vice-Chair)

Cllr C S Kemp

**1. ELECTION OF CHAIRMAN**

Councillor L Morales was elected Chairman of the Sub-Committee for the remainder of the Municipal Year.

**2. APPOINTMENT OF VICE-CHAIRMAN**

Councillor J Morley was appointed Vice-Chairman of the Sub-Committee for the remainder of the Municipal Year.

**3. DECLARATIONS OF INTEREST**

There were no Declarations of Interest.

**4. URGENT BUSINESS**

There were no items of Urgent Business.

**5. APPLICATION FOR A PREMISES LICENCE - OKRA LOUNGE, 30-31 STATION APPROACH, WEST BYFLEET LSB22-006**

The Sub-Committee had before it a report regarding an application for a new Premises Licence for Okra Lounge, 20-31 Station Approach, West Byfleet, for which objections had been received from two members of the public living closeby. Mr Ayhan Surum, partner of Okra Lounge, attended the meeting with Debbie Harlow. None of the objectors were present.

All parties present had a copy of the Licensing Committee's agreed procedure to be followed at Licensing Sub-Committee hearings. The Chairman introduced Members of the Sub-Committee and outlined the order of speaking which would be followed at the hearing.

The Licensing Authority's representative, Mr Cobb, summarised the report that was before the Sub-Committee, stating that the application was for:

- the Sale of Alcohol (both on and off the premises) Monday to Saturday 10.00 to 00.00, Sunday 11.00 to 23.00 with seasonal variations and until 01.00 on New Year's Eve;
- Live Music (indoors only) Monday to Sunday 19.00 to 23.00 with seasonal variations and until 00.30 on New Year's Eve;
- Recorded Music (indoors only) Monday to Saturday 10.00 to 00.00, Sunday 11.00 to 23.00 with seasonal variations and until 01.00 on New Year's Eve; and

- Late Night Refreshment (indoors and outdoors) Monday to Saturday 23.00 to 00.00 with seasonal variations and until 01.00 on New Year's Eve.

The objections received had highlighted concerns primarily around noise nuisance and the end times for licensable activities. Originally there had been a total of four objections submitted by members of the public alongside one from Environmental Health; following discussions between the parties to amend the end times as set out above, two objections from the public and the Environmental Health objection had been withdrawn. The amended terms and conditions sought were set out in Appendix 4 of the report.

The Applicant had no questions for Mr Cobb.

Following questions by Members of the Sub-Committee, it was stated that the Applicant could apply for outside tables under the Pavement Licensing Scheme and the equipment inside the venue such as air conditioning was new, having been installed by the previous occupant.

The Chairman gave the Applicant the opportunity to address the Sub-Committee. Ms Harlow advised that the unit had been operating as a restaurant bar for many years and the requested hours and conditions had been amended to minimise the impact on local residents. It was stated that Okra Lounge would be operating as a restaurant with no intention for it to be a nightclub; it was brave of the applicant to open a new venue in the current economic climate; and that four local residents had offered to write letters of support but they had not been received in time.

Following questions by Mr Cobb and Sub-Committee members, Ms Harlow advised that the intention for live music was to provide a comfortable background music for those people eating a meal, for example a live guitar, and recorded music would be played at low levels. It was clarified that the recorded music should be regarded as ancillary in that context and therefore would not need to be included in the application, and the installation of a noise limiting device may not be proportional to the activity taking place. Ms Harlow stated that the applicant would like to operate the venue before seeing whether further sound proofing was required at the venue, depending on whether complaints were received. It was noted that the windows could be closed from 22.00 hours to limit any noise disturbance as there was adequate air conditioning. The application included seasonal variations although these could be covered by Temporary Event Notices. It was added that there was no fee levied for customers to enter the venue.

No closing statements were made.

The Chairman adjourned the meeting at 6pm. The Sub-Committee deliberated in private, requesting that the Council's Solicitor, Amanda Francis, join them for the provision of legal advice, and re-assembled at 6.15pm.

The Chairman advised those present that the Sub-Committee had taken into account the written representations before it, the oral statements made at the meeting, the Council's Licensing Policy and national guidance.

The application was approved as set out in the amended operating schedule on page 47 of the agenda pack containing revised licensable hours and conditions, subject to:

- Recorded music as shown on further conditions (page 47) be amended to indoors only and be reduced from 00.00 hours to 23.00 hours;
- Late night refreshment (LNR) as shown on further conditions (page 47) outdoor to be deleted (and so it would be indoor only);

- noise limiter to be deleted from further conditions (page 48); and
- All doors and windows would be kept closed, other than for access & egress from 22.00 hours, amended from 23.00 hours.

There was the right of appeal to the Magistrate's Court within 21 days.

RESOLVED

That the application for a Premises Licence be approved as amended above.

The meeting commenced at 5.25 pm  
and ended at 6.20 pm

Chairman: \_\_\_\_\_

Date: \_\_\_\_\_



## LICENSING SUB-COMMITTEE B – 4 DECEMBER 2023

### APPLICATION FOR A PREMISES LICENCE – BRAZIL TROPICAL, 56 CHERTSEY ROAD, WOKING

#### Executive Summary

This report considers an application for a Premises Licence (PL) for the above premises.

#### Recommendations

The Committee is requested to:

**RESOLVE THAT** the report be considered and identify what steps, if any, need to be taken to determine the application having regards to the four licensing objectives.

**The Sub-Committee has the authority to determine the above recommendation.**

#### Background Papers:

Application form  
Operating Schedule  
Representations from Statutory Bodies and Interested Parties  
Sustainability Impact Assessment  
Equalities Impact Assessment

#### Appendices

- 1 - Premises Location (page 21)
- 2 - Operating Schedule (page 23)
- 3 - Premises Plan (page 41)
- 3a - Rear of the premises Photos (page 43)
- 4 - Cumulative Impact Zone Policy Information (page 45)
- 4b - Local Premises Summary (page 57)
- 4c - Planning Department Issues (page 61)
- 5 - Objections Summary (page 63)
- 6 - Public Objections (page 65)
- 7 - Local Authority Objections (page 73)
- 8 - Applicant Negotiation and responses (page 77)
- 8b - Env Health Historic Noise issues (page 79)
- 8c - Env Health Noise Issue letter (page 81)
- 9 - Councillors Handbook (reference) (page 85)
- 10 - Pool of Conditions (reference) (page 135)

#### Reporting Person:

Matthew Cobb, Senior Licensing Officer  
Ext. 3650, E Mail: Matthew.Cobb@woking.gov.uk

#### Contact Person:

Matthew Cobb, Senior Licensing Officer  
Ext. 3650, E Mail: Matthew.Cobb@woking.gov.uk

**Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

**Date Published:**

23 November 2023



# Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking

## 1.0 Summary of Proposal

**Application Type:** New Premises Licence

**Variation:** No

**Site Address:** 56 Chertsey Road, Woking, Surrey, GU21 5BG

**Applicant** Mr Manuel Rocha of 'Rochaconsultancy' Unit 35 Battersea Business Centre, 99-109 Lavender Hill, London, SW11 5QL

*on behalf of*

Brazil Tropical Ltd , 3rd Floor, Office 5, 21 Knightsbridge, London, SW1X 7LY

**Application Ref:** 23/00241/PREMIS

## 2.0 Description of Premises

2.1 The premises is proposed to be a Café and Tapas snack bar.

## 3.0 Details of Proposal and Operating Schedule

3.1 The application seeks to license the premises for the sale of alcohol for consumption on and off the premises.

- Monday to Sunday 11:00 - 23:00

## 4.0 Promotion of Licensing Objectives

4.1 Each application will be given individual consideration on its merit. Nothing in the Licensing policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in the Licensing policy shall override the right of any person to make representations on an application or seek a review of a licence where provision has been made for them to do so in the Act.

4.2 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

4.3 The operating schedule submitted in the application form, which is attached in Appendix 2, shows a list of proposed conditions that the applicant has put forward to describe the steps they intend to take to promote the four licensing objectives.

## 5.0 Relevant Representations

5.1 The following representations have been received in relation to the application:

### Responsible Authorities

Surrey Police:	No objections have been received.
Surrey Fire and Rescue Service:	No objections have been received.
Environmental Health (WBC):	<b>An objection has been received</b>
Planning Authority (WBC):	No objections have been received.
Social Services (SCC):	No objections have been received.
Trading Standards:	No objections have been received.
Public Health:	No objections have been received.
Home Office Immigration Dept:	No objections have been received.

### Interested Parties

Members of Public:	<b>Eight objections have been received.</b>
Woking CCTV	<b>An objection has been received.</b>
Woking Community Safety	<b>An objection has been received</b>
Woking Planning Enforcement	<b>A representation has been received</b>

5.2 The representations received object to the application on the grounds of the prevention of public nuisance, public safety, prevention of crime and disorder and the protection of children from harm.

5.3 The majority of the public representations received are from residents of Enterprise Place, a residential dwelling located close to the premises.

5.4 The Planning Enforcement representation does not deal with a Licensing Objective, but should be included as the proposed application could, if granted, result in a breach of planning conditions.

## 6.0 Policy Considerations

6.1 In making its decision, the Sub-Committee is obliged to have regard to National Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy. The Sub-Committee must also have regard to all of the representations made and the supporting information presented by all parties.

6.2 The Licensing Officer highlights the following relevant sections taken from the '**Licensing Policy for Woking Borough**' should be considered as part of this application.

<b>6.0</b>	<b>Fundamental Principles</b>
6.3	The Council recognises that public houses, nightclubs, restaurants, hotels, theatres, private members clubs, concert halls and cinemas all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. In considering applications, regard will be given to those differences and the differing impact these will have on the local community.
6.4	The Council can only attach conditions to licences where necessary to ensure the licensing objectives are served and may include conditions drawn from the Pool of Conditions relating to the licensing objectives contained in the guidance issued under the Act. When considering conditions, the Council will focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned and those matters which are within the control of the applicant on the premises and in the vicinity of those premises. Whether or not incidents can be regarded as in the vicinity of licensed premises is a question of fact and will depend upon the particular circumstances of the case.
6.6	The Council acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are away from the premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.
<b>7.0</b>	<b>The Licensing Objectives (Prevention of Crime and Disorder)</b>
7.1	The Council will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises as they seek to enter or leave.
7.2	In addition to the requirement for the Council to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and to do all it reasonably can to prevent, crime and disorder in the Borough.
<b>8.0</b>	<b>The Licensing Objectives (Public Safety)</b>
8.1	The Council will carry out its licensing functions with a view to promoting public safety and will seek to ensure that licensees take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.
<b>9.0</b>	<b>The Licensing Objectives (Prevention of Public Nuisance)</b>
9.1	The Council will carry out its licensing functions with a view to promoting the prevention of public nuisance and will seek to ensure that licensees take measures to minimise the impact of licensable activities at their premises on people living, working or sleeping in the vicinity. The prevention of public nuisance can include low-level nuisance affecting a few people living locally, as well as major disturbance affecting the whole community.

6.3 The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

i) Grant the licence subject to:-

(a) the conditions consistent with the operating schedule modified to the extent that the authority considers appropriate for the promotion of the licensing objectives, and

## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

- (b) the mandatory conditions under sections 19, 20 and 21 of the Licensing Act 2003
  - ii) Modify the conditions of the licence, by altering, removing or adding to them.
  - iii) Reject the whole or part of the application.
- 6.4 Should the Committee decide to override national and local policy then it should provide clear and detailed reasons what the 'exceptional circumstance' is that would allow us to depart from the policy.
- 6.5 The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

### **7.0 Premises Location**

- 7.1 The Premises in question is a small premises located at 56 Chertsey Road in Woking Town Centre.
- 7.2 The premises is a two-storey business totalling around 81.26m<sup>2</sup>, of which 49.16m<sup>2</sup> is listed as Ground floor retail zone, and 31.1m<sup>2</sup> is listed as first floor internal storage – though the plan provided as part of the application suggests that this VOA rating is incorrect, as the first floor area is clearly not internal storage – but being used as a retail/restaurant area.
- 7.3 A map showing the location of the premises is attached as Appendix 1.

### **8.0 Site History**

- 8.1 Prior to the refitting of 56 Chertsey Road, the premises in question was a small company called "ibuywargames" who specialised in selling model figures (similar to Warhammer, miniatures for tabletop gaming).
- 8.2 "ibuywargames" also held the occasional tabletop gaming events at the premises and so applied for a premises licence so that they could sell alcohol to their clientele.
- 8.3 The premises was licenced to sell alcohol from 12:00 midday through to 22:00, for consumption on the premises only.
- 8.4 The Licence was held from February 2017 until March 2019, when the shop closed down and the licence surrendered.

### **9.0 Previous "Office Bar" Application**

- 9.1 In June 2022, Manual Rocha applied for a premises licence for "Office Bar" at 56 Chertsey Road, Woking, on behalf of Office Bar Ltd. Mr Rocha is the same agent acting on behalf of the current application for Brazil Tropical Ltd.
- 9.2 The Directors of Office Bar Ltd were Erica Tatiane De Medeiros and Alexandre Eustaquio Da Costa.
- 9.3 The Director of Brazil Tropical Ltd (the company now applying) is Erica Tatiane De Medeiros.

## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

- 9.4 The Office Bar application received objections from Environmental Health, WBC Anti Social Behaviour Team, Woking Council CCTV Unit, as well as nine objections from members of the public and a petition signed by sixty seven residents from Enterprise Place.
- 9.5 It was also noted that the Premises did not have Planning Permission to operate as a pub, café or drinking establishment, and should the licence have been granted – should they operate it would be considered an unauthorised use and breach of planning control and would potentially faced enforcement action under planning legislation
- 9.6 A hearing date was set for the 4 August 2022. However on the 3<sup>rd</sup> of August 2023 the applicant withdrew their application, and the hearing was cancelled.

### **10.0 Licence Application**

- 10.1 On the 10 September 2023 an application was received from Manuel Rocha of 'Rochaconsultancy' on behalf of Brazil Tropical Ltd.
- 10.2 The application is for a "café and tapas snack bar" and requesting the sale of alcohol from 11.00 to 23:00 every day, both for consumption on the premises and consumption off the premises.
- 10.3 A copy of the application is attached as Appendix 2.
- 10.4 It should be noted that under the Live Music Deregulation Act – any premises that is licenced for alcohol for consumption on the premises can legally have live/recorded music up until 23:00 without any need for it to be listed on the licence.
- 10.5 Consequently, should this licence be issued, it would also have the potential to have live/recorded music on site without any need to apply or be granted it.
- 10.6 The proposed floor layout plan of the premises is attached as Appendix 3.
- 10.7 It is worth noting that the patio area on the 1st floor is not shown as being intended to be made use of. Having inspected the premises, the outside patio area on the first floor does not appear to be intending to be in use at this time. However the doors to the upstairs external area have clearly been redone on both sides, and the plan suggests access, giving them the possibility in the future to carry out further work to the area and make use of (under 'off sales') this area as an outdoor patio, thus further exacerbating the noise issues and public nuisance.
- 10.8 Photographs of the rear of the property showing the potential external area are attached as Appendix 3a.

### **11.0 The Cumulative Impact Zone**

- 11.1 The Premises upon which the application is for is located within Woking Borough Council's "Cumulative Impact Zone" (CIZ) – also known as a Saturation Policy.
- 11.2 The area within Woking Town Centre was determined by Woking Council and Surrey Police to contain a concentration of licensed premises within a small area of the town centre, of which was resulting in problems of anti-social behaviour, crime and disorder and that therefore an approach to Cumulative Impact was necessary as part of the licensing policy.
- 11.3 The Woking Town Centre Saturation Policy (Cumulative Impact Zone) forms part of the Council's Licensing Policy – section 7.7.

## Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking

- 11.4 The Policy relating to the Cumulative Impact Zone states that, “Within the zone, there will be a presumption that all applications for new premises licences, new club premises certificates or variations to existing licences of these type (that are likely to add to the cumulative impact zone) will be refused, following a relevant representation. In making applications for new or varied licences, it will be for the applicant to demonstrate in their operating schedule how they will not add to the cumulative impact of the area in one or all of the licensing objectives.”
- 11.5 The relevant section of Woking Borough Council’s Licensing Policy relating to the Cumulative Impact Zone and the plan of the Cumulative Impact Zones in Woking are attached as Appendix 4.
- 11.6 The existence of a Cumulative Impact Zone policy means that there is a presumption of refusal of applications for new licences within the defined area. However, the Policy will only be triggered in the event that someone submits an objection to the application which then drives it to a licensing committee hearing for determination.
- 11.7 The policy shall only be overridden in exceptional circumstances. The presumption of refusal can be rebutted by the Applicant if they can demonstrate in their operating schedule that there would be no negative cumulative impact on one or more of the licensing objectives.
- 11.8 The policy is aimed at the global effect of licences within the area as a whole and not at the quality of the operation or the fitness of the licensee.
- 11.9 The Applicant has made no reference in his operating schedule to the Cumulative Impact Zone and how the premises will be operated and not add to the existing problems within the area.
- 11.10 Whilst the Cumulative Impact Zone (CIZ) and Saturation Policy can be difficult topics to fully understand – we have included excerpts from a document written by a specialist in Licensing law, Gerald Gouriet QC, who wrote an extensive piece on the importance of Cumulative Impact Zones for the Institute of Licensing, which should be born in mind when considering this application. This is also included in Appendix 4.
- 11.11 The policy is clear in that there will be a presumption that all applications will be refused upon receipt of a valid representation, and the Licensing Authority should only depart from this is ‘exceptional circumstances’ where the applicant is able to show that their premises will not add further to any issues in a specific area.
- 11.12 It is important to remember that the CIZ is not specifically about how well a premises is run – or the conditions directly applying to that premises – but whether the business will affect the area as a whole simply by being there.
- 11.13 An example of an ‘exceptional circumstance’ can be given to help clarify this.
- 11.14 If we look at the previous occupier of 56 Chertsey Road, a tabletop gaming shop who held evenings for their customers – they applied for a licence in 2017.
- 11.15 Consideration was given to this application as it was located within the Cumulative Impact Zone – however there were two main factors when considering this application.
- 11.16 Firstly, they were only applying for sale of alcohol for consumption on the premises until 22:00 at night.

## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

- 11.17 Secondly, the use of the premises was tabletop gaming. This was evidently not a nightclub, or a dance venue, or somewhere where people are going to be getting drunken and rowdy. Tabletop gaming is, in its essence, delicate and expensive – and it was thought incredibly unlikely that the participants in the games would be causing any drunken disruption.
- 11.18 With its relatively early closing and the type of premises it was, no objections were received, and the premises licence was issued.
- 11.19 As mentioned above, the Policy will only be triggered in the event the premises is located within the defined area and a representation is received. If no representations are received then the application is granted in the terms applied for.
- 11.20 The Licensing Policy CIZ was put in place to prevent further issues in an area already suffering from Anti-Social Behaviour (ASB) on a regular basis. It is therefore important to bear the Policy in mind when making a decision – and ensure that the ‘exceptional circumstances’ are clear, concise and recorded.
- 11.21 There are currently around fifty-seven licenced premises located within in the CIZ.
- 11.22 Details of these premises in summary can be found in Appendix 4b.

### **12.0 Planning and Planning Enforcement Issues**

- 12.1 During the 2022 Office Bar application, it was identified that Planning Permission would be required in order for the property to operate lawfully.
- 12.2 Under planning laws, sites have an ‘authorised use’ that will fall under a ‘past or current Use Class Order’ meaning where planning laws have changed over time, it will be authorised for use depending on when the planning permissions were given, as opposed to a site being potentially negatively affected by planning changes.
- 12.3 Whether a site is granted permission under an old or very new permission, it will have a designation of how it can be used and how it could be used in the future.
- 12.4 This is true whether business, dwelling, field etc; everything has a lawful usage.
- 12.5 In the case of the unit in question, it was granted (what was at that time i.e.. 1961 permission) Class I (one) shop use and the permission did not envisage the site being used as anything else but a shop and the decision was worded as such.
- 12.6 In 1972, the Use Class Order was updated and Class I shop was further defined that it DID NOT COVER sale of hot food.
- 12.7 The Permitted Development Order allows some permitted (i.e. without application) switching between Use Classes subject to criteria and provided the original permission did not restrict this.
- 12.8 The use class order has been updated several times since (latest major revision was Sept 2020) such that ‘shop’ has moved to Class A then subsequently class E; as has the flexibility to move between uses in the same class.
- 12.9 Having liaised with the Planning Department, and referred the Planning information to Mr Rocha, it is believed that the unit is question is relying on the belief they fall into a particular unrestricted area of what was, Class A (A3 restaurant) , and therefore have the flexibility to become Class E, restaurant.

## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

- 12.10 However, they have not established if their original Class I consent restricted them to shop only and therefore this carries forward each time such that the unit was only ever permitted to be A1 shop and would now only be E(a) shop.(not unrestricted E or E(b) for sale of food and drink for consumption on the premises.
- 12.11 The easiest way for the unit to establish the legality of existing or proposed use, is to apply to the Planning Department for a Certificate of Proposed (or existing) Use.
- 12.12 This will give a definitive answer and should they not agree with the decision, they can Appeal to the Planning Inspectorate (effectively the Secretary of State) for a final decision
- 12.13 It is the licensing authority's preferred position to ensure planning permission is in place before an application for a licence is made.
- 12.14 The Representation from Mr Mike Ferguson, the Senior Planning Enforcement Officer for Woking Borough Council, is included as Appendix 4c.

### **13.0 Objections and representations received: i) Public Objections**

- 13.1 As part of the application process, the Premises Licence Application was advertised both in a local paper (within the first ten days) and on the premises itself (for the full 28 days following the application) in line with legislation.
- 13.2 This gives members of the public time in which to make any relevant representations or objections to the application.
- 13.3 As part of this application, the Licensing Authority has received a total of eight objections from members of the public who either reside within the vicinity of this premises or have a valid reason for raising a concern over the application.
- 13.4 An overview of the Objections are attached as Appendix 5.
- 13.5 The Objections from the public are attached as Appendix 6.

### **14.0 Objections and representations received: ii) Local Authority Objections**

- 14.1 As a statutory consultee, an objection was received from the Environmental Health department.
- 14.2 Whilst not covered by the category of "responsible authorities" – concerns and objections have also been received from other areas within the remit of Woking Borough Council: The Community Safety Officer and the Woking CCTV manager have submitted their concerns in relation to this application.
- 14.3 The Local Authority Department objections are attached as Appendix 7.

### **15.0 Negotiations with the objectors**

- 15.1 Pursuant to legislation, objections to an application for a premises licence are passed to the applicant so that they have the opportunity to contact those objectors and attempt to negotiate an amendment or a proposal of conditions to the application so that they would be happy to withdraw their objections and the licence could be issued without the need for a hearing.
- 15.2 All objections have been forwarded to the Applicant in line with the legislation.



## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

- 15.3 On the 22 October 2023 we received an email from Mr Rocha advising that  
“Regarding the Sale Of Alcohol and Closing Hours, the applicant is happy to amend the application to Sale Of Alcohol for 22:30 and Close at 23:00 Monday to Sunday”
- 15.4 We received one comment back from one of the objectors and responses from the Woking CCTV manager and the Environmental health Department, all of which stated that they felt that this did not change anything, and they felt the application was still of concern.
- 15.5 No other comments were received from any of the objectors and no objections were withdrawn as a result of Mr Rocha’s proposal.
- 15.6 Mr Rocha’s proposal to reduce hours and the relevant responses from the objectors are attached as Appendix 8.
- 15.7 We do not have any other evidence that Mr Rocha or the applicant have made any attempt to negotiate or discuss the raised concerns with the local residents, nor engage with them or with the Licensing Authority in any way in relating to his application.

### **16.0 Noise nuisance in the area**

- 16.1 The area in question has come under some scrutiny over the last few years on account of an increase in noise nuisance, anti social behaviour and disturbances to local residents. This is clearly evident from the objections received from the members of public and the various Council departments who have voiced their concerns (as referenced in Sections 13 and 14 of this report)
- 16.2 Some of the objections received from members of the public make reference to previous issues with the applicants over noise disturbances and disruption caused by them whilst renovating the premises.
- 16.3 A summary of the issues that Environmental Health had with the applicants is attached as Appendix 8b and the issued notice is attached as Appendix 8c.

### **17.0 Assisting Documentation**

- 17.1 To assist the Licensing Committee, the Councillors Handbook is attached as Appendix 9 and the ‘Pool of Conditions’ is attached as Appendix 10.

### **18.0 Summary**

- 18.1 The Licensing Authority is of the view that the granting of this application would add to Cumulative Impact of licenced premises within the area. Whether the premises is perfectly run inside or not, it still adds to the number of licenced premises within the area and the increase in nightlife within the area.
- 18.2 The residents within the area have serious concerns over the natural effects of how another premises will add to the issues highlighted.
- 18.3 When taken into account with the information on the Cumulative Impact Zone (CIZ) and the guidance provided by Gerald Gouriet QC (Appendix 4) it is absolutely vital that we consider this application carefully and, should the decision be to follow the Council Policy, refuse the application.

## Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking

18.4 Should the Licensing Committee be of the opinion that they should deviate from the Policy then the reasons and outcome should be clear and concisely recorded.

### 19.0 Implications

#### Financial

19.1 There are no financial implications. A nationally set application fee is charged to defray the cost of processing applications.

#### Legal

19.2 A right of appeal lies to the Magistrates Court within a period of 21 days from when the written decision is issued.

19.3 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

19.4 The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions

#### Human Resource/Training and Development

19.5 None.

#### Community Safety

19.6 Addressed by considering the application.

#### Risk Management

19.7 The risks to the Council associated with determining an application are:

- Failure to undertake our statutory responsibilities within required timescales;
- Making a decision that may be challenged by the applicant via an appeal to the Magistrates Court with the possible consequence of costs being awarded against the Council; and
- Making a decision that compromises Community Safety.

19.8 These risks have been dealt with in the report under section 4.0 by highlighting that the Sub-Committee is required to determine this application for a premises licence under the Licensing Act 2003 having due regard to the four licensing objectives, national guidance, the local licensing policy, relevant representations and evidence presented at the hearings. Determining applications in this way will reduce the risk of the decisions of the Council being open to challenge via appeal to the Magistrates court and promote Community Safety in the Borough.

## **Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking**

### Sustainability

19.9 The four licensing objectives addressed in the Council's licensing policy, which the Sub-Committee is obliged to have regard to in making its decision, are in line with the Council's sustainability aims.

### **20.0 Conclusions**

20.1 The Sub Committee is requested to consider the report, the evidence it will hear, representations made, responses to question made and give its decision with reasons and determine the application with a view to promoting the licensing objectives.

REPORT ENDS









**Woking**  
**Application for a premises licence**  
**Licensing Act 2003**

For help contact  
[licensing@woking.gov.uk](mailto:licensing@woking.gov.uk)  
 Telephone: 01483 755855

\* required information

### Section 1 of 21

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference  This is the unique reference for this application generated by the system.

Your reference  You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant? Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Yes  No

### Applicant Details

\* First name

\* Family name

\* E-mail

Main telephone number  Include country code.

Other telephone number

Indicate here if the applicant would prefer not to be contacted by telephone

Is the applicant:

- Applying as a business or organisation, including as a sole trader
- Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means the applicant is applying so the applicant can be employed, or for some other personal reason, such as following a hobby.

### Applicant Business

Is the applicant's business registered in the UK with Companies House?  Yes  No

Note: completing the Applicant Business section is optional in this form.

Registration number

Business name  If the applicant's business is registered, use its registered name.

VAT number   Put "none" if the applicant is not registered for VAT.

Legal status

Continued from previous page...

Applicant's position in the business

Home country

The country where the applicant's headquarters are.

**Registered Address**

Address registered with Companies House.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Agent Details**

\* First name

\* Family name

\* E-mail

Main telephone number

Include country code.

Other telephone number

Indicate here if you would prefer not to be contacted by telephone

Are you:

- An agent that is a business or organisation, including a sole trader
- A private individual acting as an agent

A sole trader is a business owned by one person without any special legal structure.

**Agent Business**

Is your business registered in the UK with Companies House?  Yes  No

Note: completing the Applicant Business section is optional in this form.

Is your business registered outside the UK?  Yes  No

Business name

If your business is registered, use its registered name.

VAT number

Put "none" if you are not registered for VAT.

Legal status



*Continued from previous page...*

Your position in the business

Home country

The country where the headquarters of your business is located.

**Agent Business Address**

If you have one, this should be your official address - that is an address required of you by law for receiving communications.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Section 2 of 21**

**PREMISES DETAILS**

I/we, as named in section 1, apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in section 2 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003.

**Premises Address**

Are you able to provide a postal address, OS map reference or description of the premises?

- Address     OS map reference     Description

**Postal Address Of Premises**

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Further Details**

Telephone number

Non-domestic rateable value of premises (£)

**Section 3 of 21**

**APPLICATION DETAILS**

In what capacity are you applying for the premises licence?

- An individual or individuals
- A limited company / limited liability partnership
- A partnership (other than limited liability)
- An unincorporated association
- Other (for example a statutory corporation)
- A recognised club
- A charity
- The proprietor of an educational establishment
- A health service body
- A person who is registered under part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales
- A person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of that Part) in an independent hospital in England
- The chief officer of police of a police force in England and Wales

**Confirm The Following**

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities
- I am making the application pursuant to a statutory function
- I am making the application pursuant to a function discharged by virtue of Her Majesty's prerogative

**Section 4 of 21**

**NON INDIVIDUAL APPLICANTS**

Provide name and registered address of applicant in full. Where appropriate give any registered number. In the case of a partnership or other joint venture (other than a body corporate), give the name and address of each party concerned.

**Non Individual Applicant's Name**

Name

**Details**

Registered number (where applicable)

Description of applicant (for example partnership, company, unincorporated association etc)

Continued from previous page...

Ltd

**Address**

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Contact Details**

E-mail

Telephone number

Other telephone number

\* Date of birth  /  /   
dd mm yyyy

\* Nationality  [Documents that demonstrate entitlement to work in the UK](#)

**Section 5 of 21**

**OPERATING SCHEDULE**

When do you want the premises licence to start?  /  /   
dd mm yyyy

If you wish the licence to be valid only for a limited period, when do you want it to end  /  /   
dd mm yyyy

Provide a general description of the premises

For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off- supplies you must include a description of where the place will be and its proximity to the premises.

Brazil Tropical is Cafe and Tapas Snack Bar. We have tables and chairs and also toilet facilities to our costumers

*Continued from previous page...*

If 5,000 or more people are expected to attend the premises at any one time, state the number expected to attend

### Section 6 of 21

#### PROVISION OF PLAYS

[See guidance on regulated entertainment](#)

Will you be providing plays?

- Yes  No

### Section 7 of 21

#### PROVISION OF FILMS

[See guidance on regulated entertainment](#)

Will you be providing films?

- Yes  No

### Section 8 of 21

#### PROVISION OF INDOOR SPORTING EVENTS

[See guidance on regulated entertainment](#)

Will you be providing indoor sporting events?

- Yes  No

### Section 9 of 21

#### PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

[See guidance on regulated entertainment](#)

Will you be providing boxing or wrestling entertainments?

- Yes  No

### Section 10 of 21

#### PROVISION OF LIVE MUSIC

[See guidance on regulated entertainment](#)

Will you be providing live music?

- Yes  No

### Section 11 of 21

#### PROVISION OF RECORDED MUSIC

[See guidance on regulated entertainment](#)

Will you be providing recorded music?

- Yes  No

### Section 12 of 21

#### PROVISION OF PERFORMANCES OF DANCE

[See guidance on regulated entertainment](#)

Will you be providing performances of dance?

Continued from previous page...

**Section 13 of 21**

**PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE**

[See guidance on regulated entertainment](#)

Will you be providing anything similar to live music, recorded music or performances of dance?

- Yes  No

**Section 14 of 21**

**LATE NIGHT REFRESHMENT**

Will you be providing late night refreshment?

- Yes  No

**Section 15 of 21**

**SUPPLY OF ALCOHOL**

Will you be selling or supplying alcohol?

- Yes  No

**Standard Days And Timings**

MONDAY

Start

End

Start

End

Give timings in 24 hour clock.  
(e.g., 16:00) and only give details for the days  
of the week when you intend the premises  
to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

Continued from previous page...

SUNDAY

Start

End

Start

End

Will the sale of alcohol be for consumption:

- On the premises     Off the premises     Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

State the name and details of the individual whom you wish to specify on the licence as premises supervisor

**Name**

First name

Family name

Date of birth  /  /

Continued from previous page...

**Enter the contact's address**

Building number or name	<input type="text" value="REDACTED"/>
Street	<input type="text" value="REDACTED"/>
District	<input type="text"/>
City or town	<input type="text" value="REDACTED"/>
County or administrative area	<input type="text"/>
Postcode	<input type="text" value="REDACTED"/>
Country	<input type="text" value="United Kingdom"/>
Personal Licence number (if known)	<input type="text" value="22/00047/Person"/>
Issuing licensing authority (if known)	<input type="text" value="Woking Borough Council"/>

**PROPOSED DESIGNATED PREMISES SUPERVISOR CONSENT**

How will the consent form of the proposed designated premises supervisor be supplied to the authority?

- Electronically, by the proposed designated premises supervisor
- As an attachment to this application

Reference number for consent form (if known)

If the consent form is already submitted, ask the proposed designated premises supervisor for its 'system reference' or 'your reference'.

**Section 16 of 21**

**ADULT ENTERTAINMENT**

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children

Give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

**Section 17 of 21**

**HOURS PREMISES ARE OPEN TO THE PUBLIC**

**Standard Days And Timings**

MONDAY

Start

End

Start

End

Give timings in 24 hour clock. (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

Continued from previous page...

TUESDAY

Start	<input type="text" value="07:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

WEDNESDAY

Start	<input type="text" value="07:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

THURSDAY

Start	<input type="text" value="07:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

FRIDAY

Start	<input type="text" value="07:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

SATURDAY

Start	<input type="text" value="07:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

SUNDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:30"/>
Start	<input type="text"/>	End	<input type="text"/>

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

**Section 18 of 21**

**LICENSING OBJECTIVES**

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)



*Continued from previous page...*

List here steps you will take to promote all four licensing objectives together.

A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognized photographic identification cards, such as a driving license, passport or proof of age card with the PASS Hologram.

A CCTV system will be installed at the premises covering the entrance, the external area and all internal areas.

An incident log shall be kept at the premises and made available on request to the Police or an authorized officer of the Local Authority

All staff members engaged, or to be engaged, on the premises shall receive full training pertinent to the Licensing Act 2003

b) The prevention of crime and disorder

A CCTV system will be installed at the premises covering the entrance, the external area and all internal areas. A head and shoulders image to identification standard shall be captured of every person entering the premises. Images shall be kept for 31 days and supplied to the police or local authority on request.

A member of staff trained in the use of the CCTV system must be available at the premises at all times that the premises is open to the public.

The CCTV system will display, on screen and on any recording, the correct time and date that images were captured.

CCTV signage will be displayed, reminding customers that CCTV is in operation.

An incident log shall be kept at the premises and made available on request to the Police or an authorized officer of the Local Authority

The premises shall operate a zero-tolerance policy to the supply and use of drugs.

Anyone who appears to be drunk or intoxicated shall not be allowed entry to the premises and those who have gained entry will be escorted from the business immediately

Substantial food and non-intoxicating beverages, including drinking water, shall be available in the premises where alcohol is sold or supplied for consumption on the premises.

All staff member should be checked to ensure they have the right to work in the UK. These checks should be made available upon requests to all responsible authorities. All associated 'entitlement to work' documents:

a) must be logged and kept on the premises for the duration of the employment; and

b) must be retained for a minimum of 12 months after employment has ceased.

c) Public safety

There shall be no vertical drinking at the premises. Table service only

The premises will have a refusal book or electronic system to record all refusals of sales, this must be made available to the police and local authority officers upon reasonable request.

The Business will have a Health and Safety and Fire Risk Assessment

d) The prevention of public nuisance

Deliveries and waste collection will be done within the times recommended by the Local Council

Clear and legible notices will be prominently displayed at the exit to remind customers to leave quietly and have regard to our neighbors

The Business will have a dispersal policy

Tables outside will be removed by 22:00 everyday

*Continued from previous page...*

e) The protection of children from harm

A challenge 25 policy will be in operation at the premises with operate signage on display throughout the premises. All staff members engaged, or to be engaged, on the premises shall receive full training pertinent to the Licensing Act, specifically regarding age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs. This shall take place every 12 months.

Alcohol shall not be located in the immediate vicinity of the entrances and exit too the premises, but shall be in an area in which it shall be monitored by staff on a frequent and daily basis whilst licensable activities are taking place.

All such training is to be fully documented and signed by not only the employee but the person delivering the training. Training records shall be kept at the premises and made available upon request to either Police Officers or an authorized officer of the Local Authority

**Section 19 of 21**

**NOTES ON DEMONSTRATING ENTITLEMENT TO WORK IN THE UK**

*Continued from previous page...*

### **Entitlement to work/immigration status for individual applicants and applications from partnerships which are not limited liability partnerships:**

A licence may not be held by an individual or an individual in a partnership who is resident in the UK who:

- does not have the right to live and work in the UK; or
- is subject to a condition preventing him or her from doing work relating to the carrying on of a licensable activity.

Any premises licence issued in respect of an application made on or after 6 April 2017 will become invalid if the holder ceases to be entitled to work in the UK.

Applicants must demonstrate that they have an entitlement to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity. They do this in one of two ways: 1) by providing with this application copies or scanned copies of the documents listed below (which do not need to be certified), or 2) by providing their 'share code' to enable the licensing authority to carry out a check using the Home Office online right to work checking service (see below).

### **Documents which demonstrate entitlement to work in the UK**

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK [please see note below about which sections of the passport to copy].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

*Continued from previous page...*

- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relation to the carrying on of a licensable activity.
- A **current** Residence Card issued by the Home Office to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, **less than 6 months old**, issued by the Home Office under regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
  - evidence of the applicant's own identity – such as a passport,
  - evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
  - evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
    - (i) working e.g. employment contract, wage slips, letter from the employer,
    - (ii) self-employed e.g. contracts, invoices, or audited accounts with a bank,
    - (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
    - (iv) self-sufficient e.g. bank statements.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

**Original documents must not be sent to licensing authorities.** If the document copied is a passport, a copy of the following pages should be provided:-

- (i) any page containing the holder's personal details including nationality;
- (ii) any page containing the holder's photograph;
- (iii) any page containing the holder's signature;
- (iv) any page containing the date of expiry; and
- (v) any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

*Continued from previous page...*

If the document is not a passport, a copy of the whole document should be provided.

Your right to work will be checked as part of your licensing application and this could involve us checking your immigration status with the Home Office. We may otherwise share information with the Home Office. Your licence application will not be determined until you have complied with this guidance.

### **Home Office online right to work checking service**

As an alternative to providing a copy of the documents listed above, applicants may demonstrate their right to work by allowing the licensing authority to carry out a check with the Home Office online right to work checking service.

To demonstrate their right to work via the Home Office online right to work checking service, applicants should include in this application their 9-digit share code (provided to them upon accessing the service at <https://www.gov.uk/prove-right-to-work>) which, along with the applicant's date of birth (provided within this application), will allow the licensing authority to carry out the check.

In order to establish the applicant's right to work, the check will need to indicate that the applicant is allowed to work in the United Kingdom and is not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity.

An online check will not be possible in all circumstances because not all applicants will have an immigration status that can be checked online. The Home Office online right to work checking service sets out what information and/or documentation applicants will need in order to access the service. Applicants who are unable to obtain a share code from the service should submit copy documents as set out above.

## **Section 20 of 21**

### **NOTES ON REGULATED ENTERTAINMENT**

*Continued from previous page...*

In terms of specific **regulated entertainments** please note that:

- Plays: no licence is required for performances between 08:00 and 23.00 on any day, provided that the audience does not exceed 500.
- Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
- Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.
- Live music: no licence permission is required for:
  - o a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
  - o a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
  - o a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
  - o a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
  - o a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.
- Recorded Music: no licence permission is required for:
  - o any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
  - o any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
  - o any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.

Continued from previous page...

- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500. However, a performance which amounts to adult entertainment remains licensable.
- Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
  - o any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;
  - o any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
  - o any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
  - o any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.

**Section 21 of 21**

**PAYMENT DETAILS**

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

Fees are based on non domestic rateable value.

\* Fee amount (£)

**DECLARATION**

\* I understand it is an offence, liable on summary conviction to a fine not exceeding level 5 on the standard scale, under section 158 of the Licensing Act 2003, to make a false statement in or in connection with this application.

\* I understand that I must now advertise my application.

\* I understand that if I do not comply with the requirements my application will be rejected.

[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15)

\* The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)

Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

\* Full name

\* Capacity

\* Date  /  /   
dd mm yyyy

*Continued from previous page...*

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...
2. Go back to <https://www.gov.uk/apply-for-a-licence/premises-licence/working/apply-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

**IT IS AN OFFENCE LIABLE TO SUMMARY CONVICTION TO A FINE OF ANY AMOUNT UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

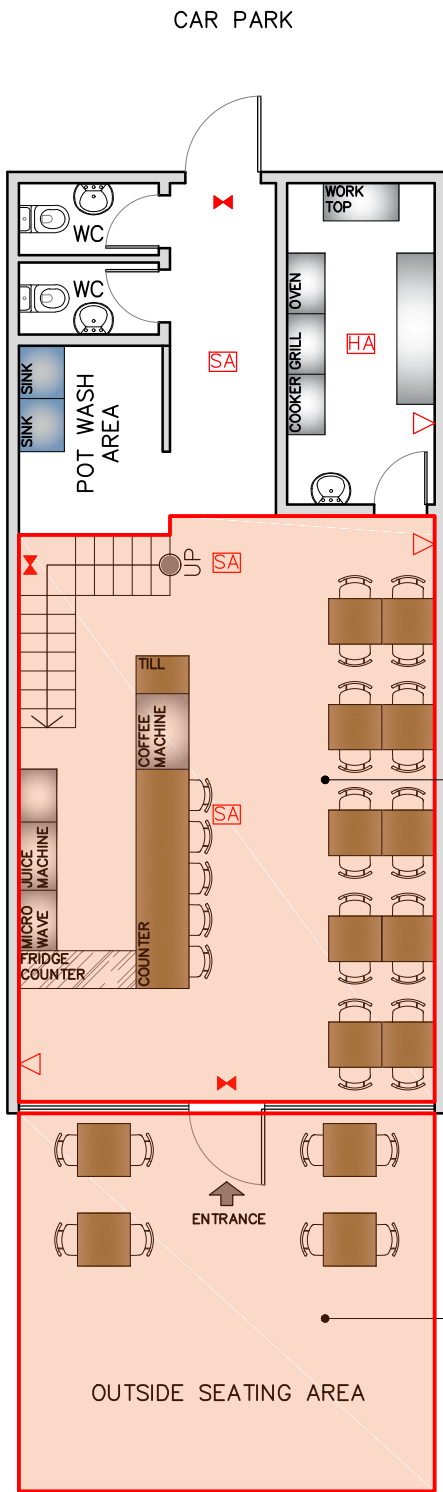
**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED**

**OFFICE USE ONLY**

Applicant reference number	<input type="text" value="Brazil Tropical"/>
Fee paid	<input type="text"/>
Payment provider reference	<input type="text"/>
ELMS Payment Reference	<input type="text"/>
Payment status	<input type="text"/>
Payment authorisation code	<input type="text"/>
Payment authorisation date	<input type="text"/>
Date and time submitted	<input type="text"/>
Approval deadline	<input type="text"/>
Error message	<input type="text"/>
Is Digitally signed	<input type="checkbox"/>

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#) [16](#) [17](#) [18](#) [19](#) [20](#) [21](#) [Next >](#)

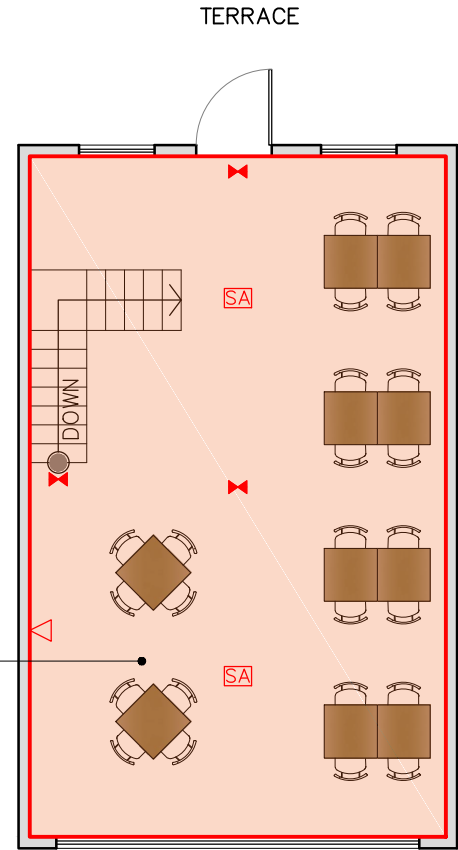




**GROUND FLOOR**

Escale 1/100

WALTON ROAD – WOKING



**FIRST FLOOR**

Escale 1/100

LICENSABLE AREA

SMOKE ALARM

FIRE EXTINGUISHER

HEAT ALARM

EMERGENCY LIGHT

DELICATESSEN/BUTCHER  
**ALCOHOL LICENSE – ON+OFF LICENSE**

JOSE MANUEL ROCHA  
UNIT 35 – BATTERSEA BUSINESS CENTRE 99–109 LAVENDER  
LONDON SW11 5QL

TEL: E-MAIL:

APPLICANT:  
**BRAZIL TROPICAL**

56 CHERTSEY ROAD  
WOKING  
GU21 5BG

SCALE:  
A4\_1/100

DATE:  
01–OCTOBER–2023







## 7.7 Woking Town Centre Saturation Policy (Cumulative Impact Zone)

7.7.1 Woking Town Centre is recognised by the Council as the principal entertainment area for the Borough and in its licensing decisions seeks to support the vibrancy of the area and the night time economy, whilst not unreasonably affecting the town centre users/occupiers and residents living on routes leading out of the town centre.

7.7.2 Within the secondary shopping areas of the town centre, as defined in the Council's Local Plan for Development (i.e. Chertsey Road, High Street, Broadway and the north side of Commercial Way), there is a significant concentration of licensed premises selling/serving alcohol and providing public entertainment and late night refreshment. In the Goldsworth Road and Guildford Road areas immediately to the west of the town centre, there is a further concentration of licensed premises.

7.7.3 The Council recognises that there is a disproportionate level of violent crime associated with the town centre area and evidence from the police is that much of this is alcohol-related. Applicants will be expected to specifically address this issue in their operating schedules in relation to any matters within their control.

7.7.4 In 2007 the Council received evidence from the police that the number of alcohol related crimes had been increasing in the town centre. In addition, although offences committed inside licensed premises had fallen since 2004, the number of public order offences had increased significantly.

7.7.5 Following a police representation and the prescribed consultation, Woking Borough Council adopted a Saturation Policy (also commonly known as a Cumulative Impact Zone). The Saturation Policy encompasses the area and premises bounded by and including the following roads:

- Victoria Arch, Victoria Way to the Victoria Way junction of Lockfield Drive
- Victoria Way junction of Lockfield Drive to Victoria Way junction of Chertsey Road
- Chertsey Road to the junction of Stanley Road
- Stanley Road to the junction of The Broadway
- The Broadway to the junction of the High Street
- High Street to Victoria Arch

7.7.6 Following concerns from local residents and support from Environmental Health (WBC); the need to expand the Cumulative Impact Zone due to risk of saturation in other areas close to the town centre, was put before WBC's Executive. The Licensing Team were granted authority to consult on a proposed expansion which it duly undertook and the proposal moved to full Council where it was adopted on 23 February 2009.

7.7.7 The extended zone is in addition to the first zone put place and encompasses the area and premises bounded by and including the following roads:

- Woking Station inc. Station Approach;
- from the start of residential properties in Oriental Road (No. 13) to the Junction with Victoria Road and Station Approach;
- Victoria Road to junction with Goldsworth Road;
- Goldsworth Road to junction with Vale Farm Road but including supermarket site;
- Church Street West from junction with Goldsworth Road to Victoria Way; and
- Victoria Arch through current market site to Cawsey Way.

7.7.8 Where a street or area is named above (7.7.5 and 7.7.7) or shown on the maps provided as being included, the policy will apply to both sides of the street. Any premises or business encompassed or dissected by a line or shaded area on the maps will be deemed included.

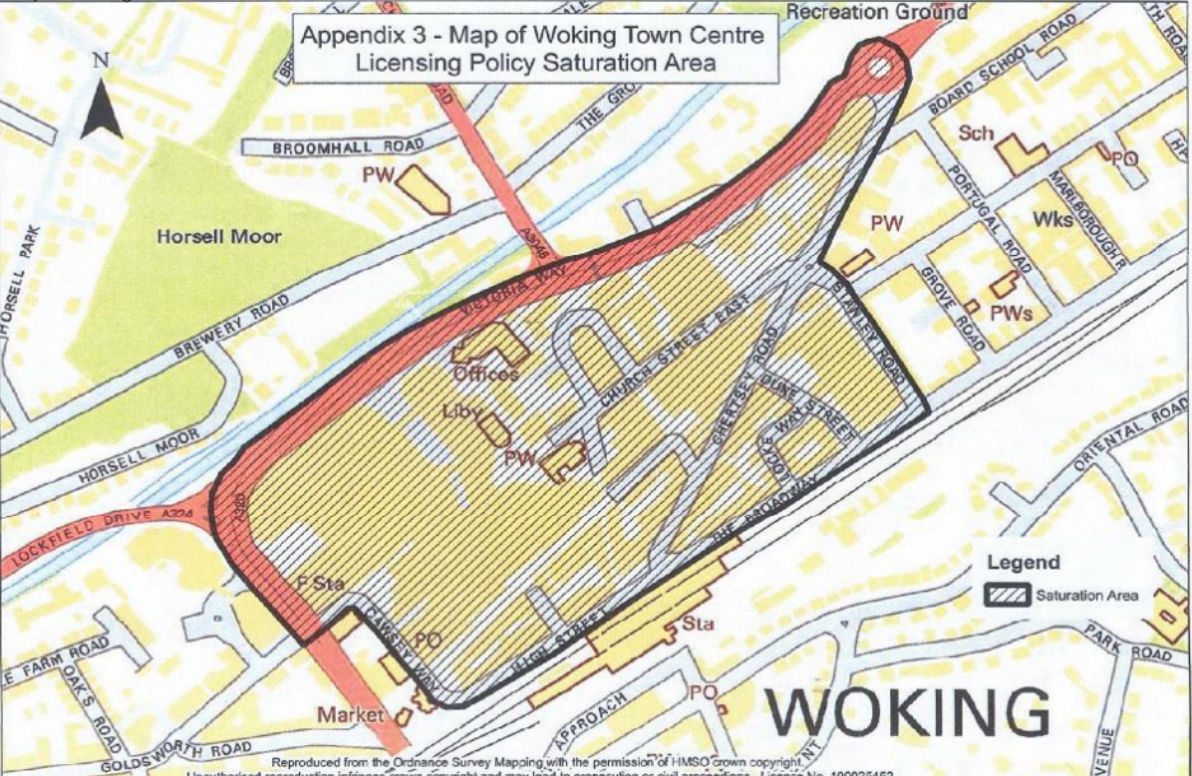
7.7.9 Within the zone, there will be a presumption that all applications for new premises licences, new club premises certificates or variations to existing licences of these type (that are likely to add to the cumulative impact zone) will be refused, following a relevant representation. In making applications for new or varied licences, it will be for the applicant to demonstrate in their operating schedule how they will not add to the cumulative impact of the area in one or all of the licensing objectives. Whilst there is a presumption against the granting of consent, each application will be dealt with individually on its merits and the Council recognises that there may be special circumstances which warrant making an exception. For example, different styles of outlet and manner of operation will impact on the licensing objectives in differing degrees. For the Saturation Policy to apply a relevant representation must be made and if no such objections are received, an application must be granted consistent with the operating schedule submitted.

7.7.10 This Policy will not be used to determine or respond to the 'need' for the facility. This is a matter for the market and planning to determine and not the licensing authority.

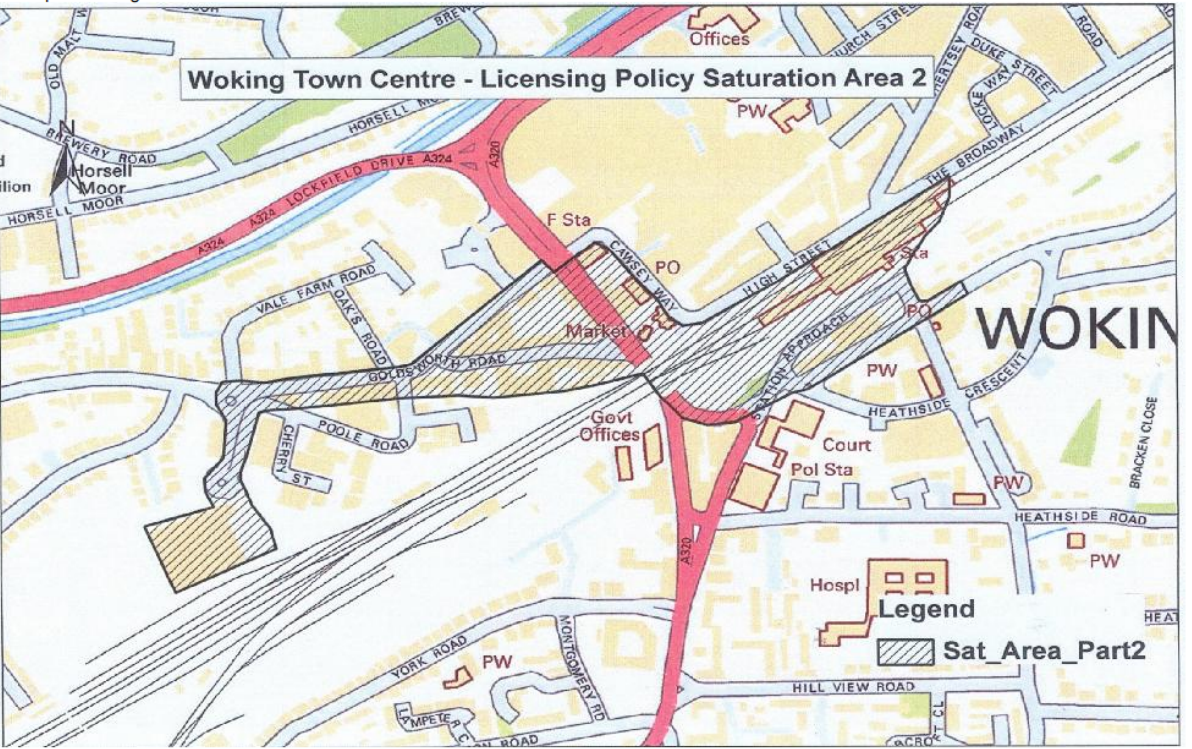
7.7.11 The Saturation Policy and the need to retain it is reviewed at Woking Borough Council's Joint Licensing Meetings (minimum 8 per year) and at the time of the current Licensing Policy review was still deemed valid and necessary.

7.7.12. It is to be noted that the premises licences mentioned in 7.7.9. include licences dealing with Late Night Refreshment and so takeaways and restaurants within the Cumulative Impact Zone should also be aware of the Council Licensing Policy

Map of Woking Saturation Zone Area 1



Map of Woking Saturation Zone Area 2



## Cumulative Impact Zone (CIZ) or “Saturation Policy” further information

A Cumulative Impact Area is a designated zone where evidence has indicated that the number, type or density of licensed premises is impacting adversely on the licensing objectives, namely, crime and disorder, public safety, public nuisance and the protection of children from harm. They are also known as stress or special policy areas.

### Excerpt from “*Cumulative Impact Policies*”

*a talk given by Gerald Gouriet QC, Licensing Lawyer  
for the Institute of Licensing, November 2017*

#### **Nature and purpose of cumulative impact policies**

My starting point is to remind myself of the problems that cumulative impact policies are intended to solve. The policies began life in Westminster back in 2001/2. The problems were described –

*“We also recognise the cumulative effect that licences can have on an area. In some mixed residential and commercial areas, a few **well managed [licensed] premises** or night cafes may be able to operate without harming local residents. In these areas, however, the cumulative effect of more and **more such premises** may be such that an adverse effect on local residents is impossible or virtually impossible to avoid. It is argued that in some areas the number of **such premises** has reached saturation point. Consequently, in these areas it would be undesirable to licence any more entertainment premises or night cafes.”*

High Court approval of cumulative impact policies came in the Chorion litigation<sup>1</sup>

The language of the Crown Court judge (as summarised by the High Court) is instructive:

*“The first question was whether, notwithstanding the applicant was a fit and proper person and the premises would be well managed, a ... licence could be refused on the sole ground that the area was already saturated with licensed premises... and that the cumulative effect of the existing premises was impacting adversely on the area to an unacceptable degree. The answer to this [is] ‘yes’.”*

In the High Court, the need for a CIP in Westminster was succinctly put by Scott Baker J:

*“The nature of the problem is such that it is cumulative rather than attributable to any specific individual or licensed premises.”*

The judge continued –

---

<sup>1</sup> The Queen on the application of Westminster City Council v Middlesex Crown Court [2002] EWHC 1104 (Admin) (“Chorion”)



*“It is both understandable and appropriate for the Claimant to have a policy in the light of the problems it has identified in the West End. The policy needs to make it clear that it is not directed at the quality of the operation or the fitness of the licensee but on the global effect of these licences on the area as a whole.”*

### **Why the problems experienced need to be addressed by a CIP**

The evidence in the Chorion case was that the alcohol-fuelled issues on the street (crime, disorder, nuisance) could not with any certainty be traced back to any particular licensed premises; and that even well-run premises, with a decent client base against whom there could be no justifiable criticisms, were making their own contribution, however small, to the cumulative impact experienced away from the premises themselves. The ‘global effect’ Scott Baker J spoke of was the sum-total of all these small contributions – i.e. the cumulative impact. The Court sympathised with the proposition that it was next to impossible to take effective action other than by stemming the growth of additional licensed outlets.

### **Exceptions to policy**

Scott Baker J concluded his judgment with guidance that finds an expression in most of the cumulative impact policies I see today –

*“If the policy is not to be consistently overridden in individual cases it must be made clear within it that it will only be overridden in exceptional circumstances and that the impeccable credentials of the applicant will not ordinarily be regarded as exceptional circumstances. It should be highlighted that the kind of circumstances that might be regarded as exceptional would be where the underlying policy of restricting any further growth would not be impaired. An example might be where premises in one place would replace those in another.”*

One might have thought the Chorion case had settled the issue once and for all: but in recent years I have seen great bundles of testimonials in support of applications, which only say that like premises elsewhere are well managed and cause no (on-site) problems. And these bundles have been accepted by licensing sub-committees as persuasive, if not determinative.

If there is one principle above all others that stands out in the above citations, it is that even well-run, incident-free premises play a role in contributing to the adverse cumulative impact experienced in our towns and cities; and it is no answer to a cumulative impact objection to say “my premises are well managed and there are no on-site issues.”

Badly-run premises can be reviewed, and the licence revoked, suspended or heavily conditioned in order to address concerns. Well-run premises cannot. It is legitimate, therefore, to conclude: **“Cumulative impact policies exist to solve the problems caused by well-run premises.”**

### **What is going wrong?**

To be clear: first of all, many licensing authorities do decide applications in accordance with their cumulative impact policies – each case, of course, being decided on its merits. Nothing is going wrong there.

Secondly, I am not saying that every grant of a new premises licence in a cumulative impact zone means that something is “going wrong”. A grant, such as the recent grant of a licence for Koko (Camden Palace) seems – I do not know the details – to be a good illustration of things “going right”.

Thirdly, even if a new licence will add to the cumulative impact in an area, it may still properly be granted if the licensing sub-committee thinks that the ‘Hope & Glory balance’<sup>2</sup> tilts in its favour.

So: when I say “something is going wrong” I am referring to grants of new licences in cumulative impact zones, in respect of premises whose customers (away from the premises) will certainly add to the familiar list of anti-social problems; which premises have nothing *material to the question of cumulative impact* to distinguish them from the existing bars and clubs in the area.

I am truly perplexed by some of these grants, and in preparing this talk I have tried to figure out why the sub-committee has so decided. Here are six possible answers:

**1. Sub-committees too readily buy the sales-pitch** (*no matter how far-fetched it is*)

I sometimes think there is a crib-sheet doing the rounds of “things to say” (whether they are true or not) when you want a licence in a cumulative impact zone. I mention that because I have begun to see, from application to application, precisely the same words and phrases cropping up in different witness statements, in support of different applications, by different operators, represented by different lawyers – as though these words and phrases have been ‘cut-and-paste’ from some master document.

My imagined crib-sheet might read –

**“Say:**

**We have a mature customer base:** it is immaterial that your customers are mostly in their twenties – go ahead and say they’re in their late thirties and forties. It’s notoriously difficult to assess a person’s age, so you won’t be found out.

**We don’t encourage students:** get your private investigator to visit your existing premises during the holidays.

**We are food-led:** you can give whatever figures of the ‘alcohol/food split’ you like – no one will be able to contradict you.

---

<sup>2</sup> The Queen (on the application of Hope & Glory Public House) v City of Westminster Public House [2009] EWHC 1996 (Admin)

**We are hiring in a well-known chef:** he/she needn't be employed – a consultancy will do (but don't volunteer this). They needn't even be well-known! Get them to talk about their "passion" for whatever gimmick food offering you have in mind. "Passion" is the big thing right now.

**We will have 75% of the floor area given to seating:** people drink while they're sitting down, so don't worry: just make sure you don't agree to restaurant conditions. Say you want "flexibility" – no-one will press you as to what exactly that means.

**We are not a music venue:** say that your disk-jockeys only play background music.

**We are not a dance venue:** so long as you don't have a dedicated dance-floor, people can do the conga round the whole place every night of the week if you like.

**There have never been any problems at our existing premises:** although this is wholly irrelevant to cumulative impact, get as many witnesses as you can to say that your existing premises don't cause any problems. Fill your application bundles with them. There cannot be too many pages. Neighbours (like the bank next door) who shut up shop at 5:00 are sure to be able to help.

**We will raise the bar locally (i.e. improve the standards of existing bars):** an absurd assertion, but it usually goes unchallenged.

**Find some gimmick:** exotic cocktails and craft beer are almost played to death – but there is still life in them. Have you thought about a "cocktail sommelier"? How about "Local beers, wines and ciders, carefully matched to [whatever specialist food will be on the menus]"? Find something to hang your application on. Anything that deflects attention from the cumulative impact of your drinkers when they have left the premises. Exaggerated claims that the proposed operation wants to focus on the 'education' of its (drinking) customers have, astonishingly, been making the odd appearance in the last year or two.

If that parody seems unfair, let me assure the reader that I have heard every one of those claims made, and a licence granted on the back of them; but when the premises have opened, it has been a very different picture. Which brings me to my second suggestion as to why things are "going wrong":

## **2. There is insufficient follow-up by sub-committees (or by anyone else)**

I often wonder if there is any follow-up. The country is littered with licensed premises in which the reality falls far short of (or may be wholly different from) what was promised on application. If councillors sitting on licensing sub-committees would only see for themselves (as I have done, frequently) the utterly disappointing finished product – how it operates, who in fact are its customers, how loud the music is – they may be more inclined to look critically at the exaggerations and bland promises offered to them at hearings.

## **3. Sub-committees accept evidence at face-value**

Perhaps it is a function of licensing sub-committees not being at ease with the concept that some witnesses (putting it mildly) tend to exaggerate, and others (putting it bluntly) lie their heads off? The licensing justices, who also sat as magistrates in criminal cases, heard more lies from the witness box, I dare say, than they heard truth. They had no compunction in dismissing evidence as poppycock. By contrast, I find that many local authority sub-committees shrink from any hint that a witness may be untruthful: there is a 'Bateman cartoon' of horrified faces if any such suggestion is made.

Applicants for licences are just as capable of being untruthful as anyone else. An applicant may say of his existing premises (forgive my repeating the list) –

*“We have similar premises elsewhere – there is only background music; our customers are mature (not the 18-25s); there is no dancing; we serve food throughout opening hours; we are more a restaurant than a bar.”*

– when the reality (for anyone that has the opportunity and inclination to look for themselves) is that a DJ plays loud dance music every night, as in a recent case of mine; or that there is an availability of food, rather than the service of it; or that similar operations are not restaurants at all but bars serving alcohol. In one case in which I was involved, investigation found that student discounts were offered – where assurances had solemnly been given that the style of operation “did not attract students”.

Regrettably, the unwillingness of sub-committees to believe it even possible that witnesses might lie to them has had the unfortunate consequence of developing a culture – or something close to it – in which just about anything can be said at a licensing hearing without fear of contradiction. There is no real scrutiny or testing of evidence. Cross-examination is rarely allowed; and if it is, most sub-committees loathe it, especially if done effectively. The truth does not always come out on its own, and the usual means of teasing it out are not liked by sub-committees, and discouraged at hearings. As a result, some witnesses, as the saying goes, “get away with blue murder”.

Of course licensing sub-committees expect to be told the truth – that is how things should be: but it is not always how they are. It is a matter of genuine sadness to me, over and above mere regret, that I find increasing numbers of witnesses – and even a few lawyers – who seem to have no qualms about misleading a committee or court. When two ‘independent’ experts give diametrically opposed evidence, and there is no reconciling their versions of events, and it is impossible to smooth things over by saying one of them is simply mistaken or perhaps exaggerating a little, then, unhappily, *one of those experts is probably not telling the truth*. And as for lawyers – all I will say here is that we are required by our codes of conduct never to mislead a court or tribunal: about the law, about the evidence, or even about our availability.

Children and puppies will push the boundaries of what they can get away with. If they are not checked, their conduct goes from bad to worse – sometimes, until they are completely out of control. So it is with all of us who attend licensing hearings

#### **4. Lack of transparency: pre-hearing meetings**

I raised concerns about pre-hearing meetings when I gave evidence last year to the House of Lords Select Committee on the Licensing Act. This is what I said:

*I am concerned at the growing extent to which decisions are influenced (if not effectively taken) by the result of discussions taking place behind closed doors, at which not all interested persons are present.*

*It is usually local communities, residents' associations or individual local people who are kept out of the loop. The position is best illustrated by an example, which may be taken as descriptive of a number of cases in which I have recently been involved:*

- *An application is made in a cumulative impact zone.*
- *There is residential objection, as well as initial objection from the police and other licensing authorities.*
- *Pre-hearing meetings take place between the responsible authorities and the applicant and his legal team. As a result of those meetings the responsible authorities withdraw their representations (or do not make any).*
- *What is said at those meetings is not made public. The meetings are "behind closed doors". All that a licensing committee (or magistrates' court on appeal) hears is **that "the police do not object", or "the responsible authorities have no concerns"**. The police and responsible authorities frequently do not attend the licensing hearing. The basis upon which they have decided not to object is seldom known, and therefore never examined critically.*
- *The objecting resident or association is left high and dry, often being asked "have all the responsible authorities got it wrong?" – when in fact no one knows if they have got it wrong or right: all we know is that they have made no representation, we do not know upon what basis.*
- *The application is granted, undue weight being given to the fact (but not the reasons behind) absence of police objection, and little scrutiny being given to the application itself.*

Sometimes (rarely) one gets to hear what has been said at these meetings between the authorities and an applicant. At other times it may reasonably be inferred that the authorities have been told a similar story to the one told to the residents in trying to persuade them not to object. And that story, as we have seen already, may be a rather 'tall' one.

I am strongly of the opinion that there should be much greater transparency regarding these behind closed doors pre-hearing meetings. In particular, it is essential that reasons are given (by the relevant responsible authorities) for not making representations.

But even with the benefits of transparency, pre-hearing meetings can sail too close to the equivalent of a hearing. If attended heavy-handed (as in my recent experience) there is a vulnerability to 'discussion' being steamrolled to 'decision' when not all interested persons are present, or if they are present, not having come to the meeting prepared to argue their position to a conclusion.

### **5. Lack of objection is not the same as support**

A fifth culprit for “things going wrong”, touched on above, is the undue importance sometimes given by sub-committees to the absence of any representation on behalf of the police or any other responsible authority. Frequently, the lack of any representation means nothing more than that an applicant has given various assurances to the police or licensing officers – at those ‘behind closed doors meetings’ already discussed – and the authorities are satisfied that, *if those assurances can be relied on*, they would have no objections. The all-important question – can the assurances be relied on? – never gets asked.

I have been told by police officers that they have neither the resources nor the time to investigate the truthfulness or otherwise of the various promises and assertions made at pre-hearing meetings. Their lack of objection, on analysis, is no better than: “If what we have been told is true, then there is no ground for objection” – but it is held out by applicants (and sometimes accepted by committees) as being support.

Current Home office guidance is that *“The police should be the licensing authority’s main source of advice on matters relating to the prevention of crime and disorder licensing objective... The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.”* That guidance is wrongly interpreted by licensing authorities: absence of police (and other) objection is too frequently equated to a representation in favour, and taken as determinative of a decision to grant the application. *Although it is anticipated that this guidance will change, I think it will continue to resonate with licensing sub-committees.*

Even when an applicant’s assurances to residents (i.e. as to how their premises in other towns and cities operate) are found to be demonstrably false – as has too often been my experience – the absence of police objection, or objection from other responsible authorities, can present an impenetrable barrier to the application of local cumulative impact policies.

### **6. The sub-committee is overly concerned as to costs on an appeal**

A vulnerability to costs, should there be a successful appeal of a refusal to grant – particularly when the police have not objected – has been cited to me, informally after the hearing, as the principal reason for the sub-committee having granted a licence, when otherwise they would have unhesitatingly refused.

There is a body of case-law to the effect that honest decision-making by an administrative authority which has conducted itself reasonably and with propriety should not be penalised in costs simply because a court on appeal says that the decision was wrong. That any licensing committee should give a decision that it *thinks is wrong*, solely to avoid the risk of costs on appeal, betrays either an ignorance of, or a fundamental misunderstanding of, the principles spelled out in these cases.

### **Conclusions**

I have no doubt that some of the eyebrow-raising grants I have seen would have been decided no differently, even if the sub-committee were alive to the various issues I have raised in this talk. It may be, for example, that the creation of new jobs or the bringing to life

of a derelict building weighed more favourably in the balance. The problem then would be that the real reasons for the decision might not have been given. Other grants, however, have to my mind been inexplicable: contrary to policy, with no genuinely exceptional circumstances advanced by the applicant.

In summary, I think that cumulative impact policies are likely to be 'more honour'd in the breach...' unless licensing sub-committees scrutinise applications far more critically, adapting their procedures as necessary to allow evidence to be effectively tested; and committees should be on the alert for the wool to be pulled over their eyes – by the bale.

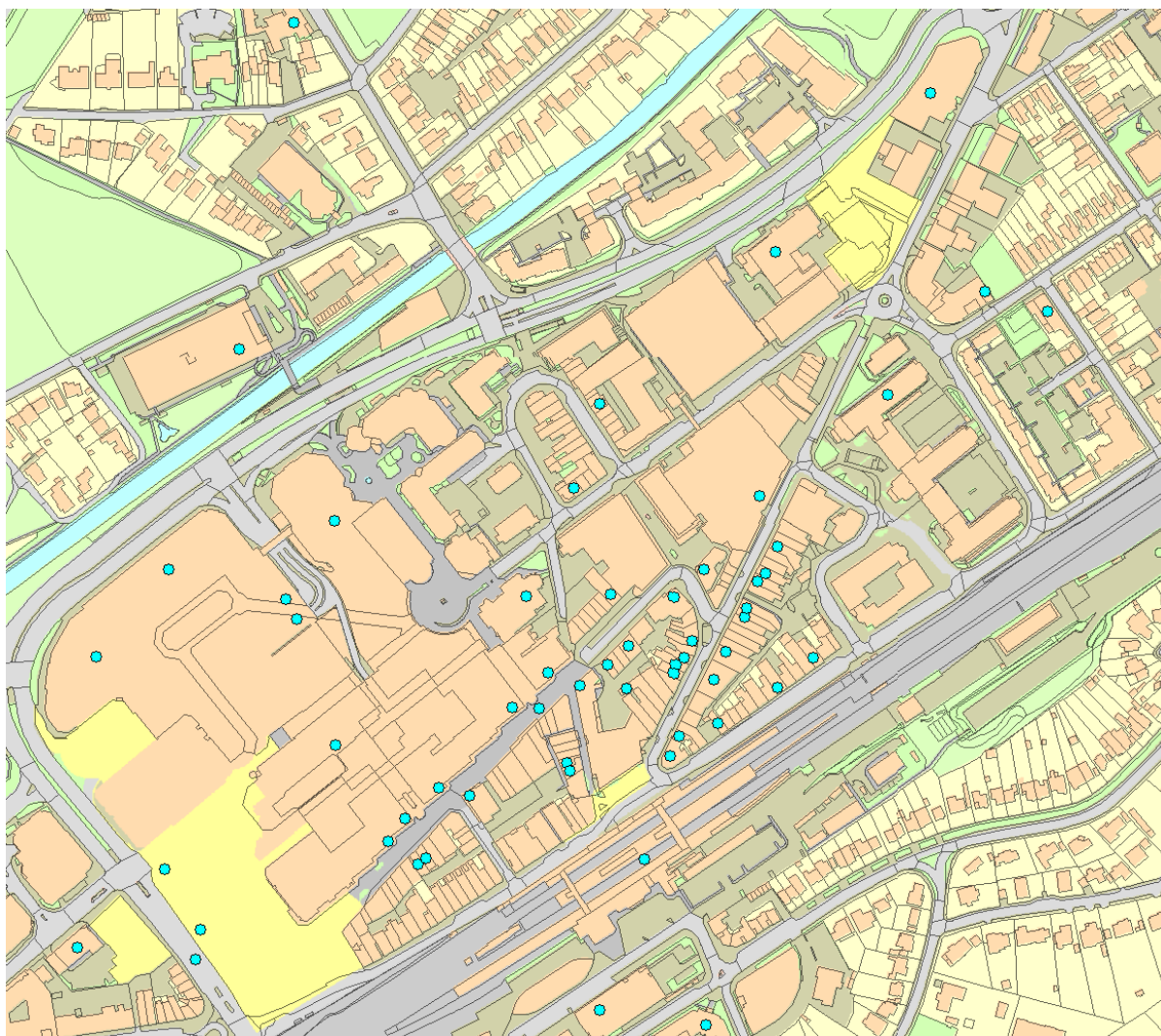
**Gerald Gouriet QC**

*Full Article can be found online at  
[https://licensing-lawyer.co.uk/cumulative-impact-iol/#\\_ftnref](https://licensing-lawyer.co.uk/cumulative-impact-iol/#_ftnref)*





## The Current situation of Woking and the Saturation of Licenced Premises



There are currently approximately **fifty-seven** premises within the Cumulative Impact Zone, ranging from local shops to large bars to nightclub style venues.

The list of premises in the CIZ and in close proximity to 56 Chertsey Road is as follows

Premises Name	Licence	Address	Alcohol	until	LNR until
A & S Market Limited	19/00018/PREMIS	44B Commercial Way	Off	20:00	-
Araceli's	20/00076/PREMIS	16 Commercial Way	On&Off	23:00	-
Atelie Da Linguica	22/00089/PREMIS	31 Walton Road	On&Off	22:30	-
Bacaro	20/00091/PREMIS	44 Commercial Way	On&Off	01:00	01:00
Big Apple Complex	18/00315/PREMIS	Chertsey Road	On&Off	03:00	03:00
Black And Irons Bar And Grill	20/00172/PREMIS	27 Commercial Way	On&Off	01:00	01:00

Premises Name	Licence	Address	Alcohol	until	LNR until
Brasileiro	21/00007/PREMIS	Chobham Road	Off	21:00	-
Budgens	21/00086/PREMIS	1 Chertsey Road	Off	23:00	-
Bulgogi Korean Restaurant	15/00335/PREMIS	54 Chertsey Road	On&Off	23:00	-
Cafe Class T/a Beit Beirut	19/00006/PREMIS	14 The Broadway	On	01:00	01:00
Cellar Magneval	21/00018/PREMIS	3 Church Path	On&Off	00:00	-
Chick'n Woking	19/00388/PREMIS	37 Chertsey Road	-	-	03:00
Chilli Grill	06/00317/PREMIS	58 Chertsey Road	-	-	03:00
Christ Church	16/00133/PREMIS	Church Street East	On	00:00	-
Costcutter	20/00175/PREMIS	16 Chertsey Road	Off	23:00	-
Cote	22/00006/PREMIS	26 Commercial Way	On&Off	00:00	00:00
Diamond Kebab House	22/00033/PREMIS	5 The Broadway	-	-	03:00
Domino's Pizza	06/00086/PREMIS	15 Broadway	-	-	23:30
Dukes Bar & Deli	21/00075/PREMIS	Dukes Court	On&Off	21:30	-
Elia Restaurant	18/00217/PREMIS	14 Commercial Way	On	23:00	-
Forbidden City	07/00381/PREMIS	17 - 19 Broadway	On&Off	01:00	01:00
GDK (German Doner Kebab)	18/00240/PREMIS	18 Chertsey Road	-	-	02:00
Gordon Ramsay Street Burger	22/00147/PREMIS	59 - 61 Commercial Way	On&Off	01:00	00:30
Gorkha Grocery	15/00257/PREMIS	50 - 52 Chertsey Road	Off	21:00	-
Harry's	18/00405/PREMIS	2 Walton Road	Off	22:00	-
Herbies Pizza	22/00059/PREMIS	18 The Broadway	-	-	01:00
Hotel Chocolat	19/00411/PREMIS	Unit 51A Peacocks	On&Off	22:00	-
Island House	21/00054/PREMIS	Jubilee Square	On&Off	00:00	00:30
Italian Kitchen	22/00094/PREMIS	Peacocks Leisure Complex	Off&On	00:00	-
Itsu	22/00005/PREMIS	1 Mercia Walk	On&Off	22:00	-
Jaipur	05/00256/PREMIS	49 Chertsey Road	On	00:00	-
KFC	20/00065/PREMIS	29 - 31 Chertsey Road	-	-	03:00
KOMO	22/00023/PREMIS	21 - 25 Commercial Way	On&Off	02:00	02:00
L'Aroma Restaurant	05/00276/PREMIS	16 High Street	On	00:00	00:00
Latino	19/00449/PREMIS	44 Commercial Way	On&Off	00:00	00:00
Luciano's Restaurant	21/00250/PREMIS	53 - 55 Commercial Way	On&Off	00:00	00:00
Marciano Lounge	22/00093/PREMIS	1 Albion House	On	00:00	00:30
McDonald's Restaurant	21/00154/PREMIS	11 - 17 Chertsey Road	-	-	24hr
Mobile And Vape Station	22/00058/PREMIS	5 Church Path	Off	23:45	-
Nando's	21/00164/PREMIS	24 Chertsey Road	On&Off	23:30	00:00
O'Neills	19/00013/PREMIS	Chobham Road	On&Off	02:00	02:00
Panda Restaurant	21/00215/PREMIS	33 Chertsey Road	On&Off	22:30	-
Pizza Go Go	11/00349/PREMIS	8 The Broadway	Off	03:00	03:00
Sainsburys	19/00091/PREMIS	15 Wolsey Walk	Off	23:00	-
Taco Bell	20/00071/PREMIS	19 - 21 Chertsey Road	On	22:00	-

Premises Name	Licence	Address	Alcohol	until	LNR until
Terrys Newsagents	21/00013/PREMIS	Unit 1 Cleary Court	Off	22:00	-
Tesco Commercial Way	21/00186/PREMIS	31 - 33 Commercial Way	Off	00:00	00:00
Thai Table	16/00414/PREMIS	20 Chertsey Road	On	00:00	00:00
The Junction Tap	21/00044/PREMIS	43 - 47 Chertsey Road	On&Off	03:00	03:00
The Ol' West Grill And Diner	22/00026/PREMIS	42 Peacocks Centre	On	23:30	00:00
The Red Fort	17/00477/PREMIS	39 Chertsey Road	On	00:00	00:00
The Slug And Lettuce	22/00154/PREMIS	5 - 7 Chobham Road	On&Off	03:00	03:00
The Tea Terrace	22/00027/PREMIS	40-41Peacocks Centre	On	23:30	00:00
Turkish Kitchen	19/00290/PREMIS	75 Commercial Way	On&Off	23:30	00:00
Wetherspoons	05/00195/PREMIS	51 - 57 Chertsey Road	On&Off	01:00	01:00
Woking Kebab / Mr Cod	19/00161/PREMIS	3 Chertsey Road	-	-	03:30
Woking Superbowl	20/00127/PREMIS	Victoria Square	On	23:40	00:00



**From:** Mike Ferguson <Mike.Ferguson@woking.gov.uk>

**Sent:** 09 November 2023 15:53

**Subject:** FW: New Premises Licence - DRAFT Brazil Tropical Ltd 56 Chertsey Road, Woking GU21 5BG

My current take on the situation from a Planning perspective is this (much of which is set out in the attached email trail with Mr Rocha on 03/10/22).

- If the premises were to be used as a bar then this would be a Sui Generis use requiring planning permission.
- If the premises were (genuinely) to be used as only a café then this would fall into Use Class E (as per the existing Use Class) and so no planning application would be required.
- However, given that my understanding is that the Licence application refers to selling alcohol until 2300 hrs, I cannot see how this can be considered to be a café rather than a bar.
- The name change from 'Office Bar' to 'Brazil Tropical' would seem largely an attempt to circumvent the perception of being a bar.
- As there are no planning conditions restricting the hours of opening as a café such restrictions would have to be imposed by Licensing.
- Regarding the use of the land to the front of the building (annotated as an 'outside seating area'), my provisional opinion is that planning permission would be required for the use of this land (such that I suggest it should be excluded from the Licence application as otherwise a positive response in this regard could be taken as tantamount to encouraging a breach of planning control). It has to be acknowledged that this is often a 'vague' area and one doesn't have to look far to find premises that may be doing a similar thing that may technically require permission – whilst outdoor noise could be an issue it is often a matter of whether there is a highways issue also.
- I previously made clear to Mr Rocha that the 1<sup>st</sup> floor terrace area should not be used but I note this is excluded from the Licence application.
- Mr Rocha acknowledged in August 2022 that he was aware that an application was required to the Planning Department for external signage and still nothing has been forthcoming.

If it walks like a duck and quacks like a duck then it's a duck – i.e. I think what is being proposed is a bar and NOT a café.

In short, I remain of the opinion that planning permission is required for the intended use as was communicated to Mr Rocha long ago (summer 2022).

As I understand the use has not commenced then there is no present breach of planning control.

I will though be very interested in the outcome of this Licence application.

P.S. Please note Matthew that the Premises Plan, provided by the applicant and attached to your email on 30/10/23, erroneously refers to Walton Road.

Kind regards,  
Mike

**Mike Ferguson | Senior Planning Enforcement Officer | Planning Services**

Woking Borough Council, Civic Office, Gloucester Square, Woking, Surrey GU21 6YL  
**Phone:** 01483 743472 | **Web:** [www.woking.gov.uk](http://www.woking.gov.uk)



**Overview of Objections**

Objector	Type	<b>Grounds for Objection</b>				C.I.Z.
		Crime & Disorder	Public Safety	Public Nuisance	Protection of Children	
<b>Objection # 1</b>	Public	<b>X</b>		<b>X</b>		<b>X</b>
<b>Objection # 2</b>	Public	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>
<b>Objection # 3</b>	Public	<b>X</b>		<b>X</b>		<b>X</b>
<b>Objection # 4</b>	Public	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Objection # 5</b>	Public	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>
<b>Objection # 6</b>	Public	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Objection # 7</b>	Public	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
<b>Objection # 8</b>	Public	<b>X</b>		<b>X</b>		<b>X</b>

<b>Liz Liesicke, Environmental health</b>	WBC			<b>X</b>		
<b>Camilla Edmiston, Community Safety</b>	WBC			<b>X</b>		
<b>John Fowler, Woking Council CCTV</b>	WBC		<b>X</b>			





## Objection # 1

---

“My name is [Redacted] of [a flat in] 175 Church Street East, GU21 6AD Woking. I would like to express concerns about the renewed efforts by the premises at 56 Chertsey Road, GU215BG Woking in obtaining a license for the sale of alcohol (on and off premises).

The sale of alcohol on and off license would increase to drinks being consumed outside of the premises and 'on-the-go', which will contribute to **public nuisance** in the area. Drinks on-the-go have previously also caused aggressive behaviour in that area, as well as public urination. This is documented and can be evidenced using a police case reference that I can provide. I don't doubt that adding another outlet for selling alcohol in this area will encourage this type of behaviour in this area. For completeness, I remember this particular establishment had refurbished the outside upstairs area which means that residents will be exposed to nuisance from the people on the using the upstairs or outside of the Brazil Tropical, which is directly in the face of the residential block of flats on Church Street East.

On the point of public nuisance, it is worth noting that currently the venue leaves both rear and front window wide open. That would allow the noise of loud crowds to travel. This is particularly bad in this area, as the tall buildings around (Enterprise Place, Dukes Court, etc) normally cause the noise to travel very far.

Chertsey Road also sees a lot of anti-social driving, with people accelerating aggressively past the give-way after Whetherspoon's. Were alcohol being consumed on this stretch and people commonly not checking the roads when crossing in that area, it would only be a matter of time for an accident to happen on that stretch.

Finally, I would also like to point out that this address falls within Woking Councils Cumulative Impact Zone (as per its Saturation Policy) and should prevent further alcohol licenses being issued when objections are being raised. The same premises (under the "office bar" name) applied for this license and a lot of objections were being raised by residents and the Environmental Health team.”

## Objection # 2

---

“My name is [Redacted] of [a flat in] 175 Church Street East, GU21 6AD Woking. I would like to share my concerns about the renewed efforts by the premises at 56 Chertsey Road, GU215BG Woking in obtaining a license for the sale of alcohol (on and off premises). As you would know, there is enough (if not too many already) similar establishments in the vicinity, serving alcohol that already contributes to anti-social behaviour which has very negative impact on the quality of our lives. This address falls within Woking Councils Cumulative Impact Zone (as per its Saturation Policy) and should prevent further alcohol licenses being issued when objections are being raised. The same premises (under the "office bar" name) applied for this license and a lot of objections were being raised by residents and the Environmental Health team.

The sale of alcohol on and off license would further increase to drinks being consumed outside of the premises and 'on-the-go', which will contribute to public nuisance in the area.

Drinks on-the-go have previously also caused aggressive behaviour in that area, as well as public urination. You can liaise with the police to obtain the exact details of that. I don't doubt that adding another outlet for selling alcohol in this area will encourage this type of behaviour in this area.

For completeness, I remember this particular establishment had refurbished the outside upstairs area which means that residents will be exposed to nuisance from the people on the using the upstairs or outside of the Brazil Tropical, which is directly in the face of the residential block of flats on Church Street East. It is worth adding that when they carried out the refurbishment, they have done a lot of the work outside of the permissible times (including very late into the night) which leads to only one conclusion - they already are not very interested in respecting us and our neighbourhood.

On the point of public nuisance, it is worth noting that currently the venue leaves both rear and front window wide open. That would allow the noise of loud crowds to travel. This is particularly bad in this area, as the tall buildings around (Enterprise Place, Dukes Court, etc) normally cause the noise to travel very far.

Chertsey Road also sees a lot of anti-social driving, with people accelerating aggressively past the give-way after Whetherspoon's. Were alcohol being consumed on this stretch and people commonly not checking the roads when crossing in that area, it would only be a matter of time for an accident to happen on that stretch.

Finally, I would also like to express concerns on my and few other neighbours behalf that recently became parents. My little son is shy of 6 months old and all the noise that we experience now is already negatively impacting on his and our life. I really would like my baby to grow up in a safe and caring neighbourhood as opposed to constantly being worried because of drunk and aggressive people. There are also people consuming illegal drugs, smoking marijuana and cigarets. This is detrimental to his health and development. Allowing for another drinking establishment to be opened will add further to this negative impact explained above. This premise is literally outside of our windows."

### **Objection # 3**

---

"My name is [Redacted], my address is [a flat in], 175 Church Street East, GU21 6AD Woking. I would like to express concerns about the renewed efforts by the premises at 56 Chertsey Road, GU215BG Woking in obtaining a license for the sale of alcohol (on and off premises).

My concerns are mostly around public nuisance as sale of alcohol on and off license would increase the risk of that whilst drinks are consumed on premises, outside of premises and on-the-go. Drinks on-the-go have previously also caused issues including aggressive behaviour, as well as public urination in front of our windows.

I don't doubt that adding another outlet for selling alcohol in this area will encourage this type of behaviour. Considering that Brazil Tropical is set up to host guests outside at the front of Chertsey East as well as upstairs on the terrace facing Church Street East (facing the

block of flats where I live) this may have negative impact on residents of other blocks as well.

This is a highly populated area, Enterprise Place alone is a home to 129 families and there are many drinking establishments in the area already.

Whilst it is appreciated that town centre is busy and living here will include noise it has recently escalated to the levels that are not acceptable nor healthy for us long term. On regular basis we experience party goers coming back from pubs late at night and interrupting our sleep, below under Enterprise Place there is a party venue that regularly organises weddings and events with loud music and alcohol. Recently antisocial driving has been an issue as well, this is along Church Street East, Cherstey Road, Walton Road. Unfortunately there seems to be limited resources to deal with any of them and therefore it leaves us residents with nothing but frustration. I hope it shows wider picture and whilst I am in of support small businesses in our local community, I am afraid this may add yet another issue to our lives.

I understand that this address falls under WBC cumulative impact zone and I therefore hope that it will be taken into account whilst considering this application."

## **Objection # 4**

---

"I am writing to express my strong objection to the alcohol licensing application submitted by Brazil Tropical LTD for 56 Chertsey Road. The venue is located within the Woking Town Centre Saturation Policy, also known as the Cumulative Impact Zone Area, which reads "Within the zone, there will be a presumption that all applications for new premises licences, new club premises certificates or variations to existing licences of these type (that are likely to add to the cumulative impact zone) will be refused, following a relevant representation".

I believe that granting this license would have detrimental effects on our community and the following concerns must be taken into account:

1. Concerns about Crime and Disorder: The introduction of another alcohol-serving establishment in an area that is already experiencing a saturation of licensed premises raises concerns about increased crime and disorder. It is imperative to consider the potential impact on the safety of residents and visitors in the vicinity.
2. Concerns about Public Safety: Granting this license could potentially compromise public safety. The congregation of patrons and the consumption of alcohol in a congested area, particularly in the evenings, may lead to incidents that pose risks to individuals' safety and well-being.
3. Concerns about Public Nuisance: The additional alcohol-serving venue could exacerbate public nuisance issues in the area, including noise disturbances, vandalism, and antisocial

behavior. This could lead to a decreased quality of life for residents and the local community.

4. Concerns about the Protection of Children from Harm: There are concerns about the proximity of the Venue to residential buildings with more than 300 residents where children are present. An increase in alcohol-related incidents and antisocial behavior could potentially expose children to harm, both physically and psychologically.

5. Challenges Faced by Local Authorities: It is essential to acknowledge that the local council and law enforcement agencies are already struggling to address current problems related to crime and disorder, public safety, and public nuisance. Given the limited resources available, the introduction of another alcohol-serving establishment is likely to overburden these agencies and impede their ability to respond effectively.

6. Financial Strain on Local Authorities: Additionally, with the local council facing financial challenges and the police being understaffed, there are concerns that granting this license would place further strain on already limited resources. This, in turn, may hinder the efficient management of the issues related to the excessive availability of alcohol in the area.

In light of these concerns and the potential adverse impact on the community, I strongly urge the Licensing Authority to reject the application for an alcohol license for Brazil Tropical LTD. The current situation in the Woking Town Centre Saturation Policy area requires a cautious and measured approach to licensing to protect the well-being and safety of residents and visitors.

I trust that you will consider these objections carefully in your decision-making process. Your responsibility to ensure the welfare and safety of our community is of utmost importance, and I have full confidence that you will make a decision that reflects the best interests of our neighborhood.”

## **Objection # 5**

---

“My name is [Redacted] of [a flat in] 175 Church Street East, GU21 6AD Woking. I would like to share my concerns about the renewed efforts by the premises at 56 Chertsey Road, GU215BG Woking in obtaining a license for the sale of alcohol (on and off premises). As you would know, there is enough (if not too many already) similar establishments in the vicinity, serving alcohol that already contributes to anti-social behaviour which has very negative impact on the quality of our lives. This address falls within Woking Councils Cumulative Impact Zone (as per its Saturation Policy) and should prevent further alcohol licenses being issued when objections are being raised. The same premises (under the "office bar" name) applied for this license and a lot of objections were being raised by residents and the Environmental Health team.

The sale of alcohol on and off license would further increase to drinks being consumed outside of the premises and 'on-the-go', which will contribute to **public nuisance** in the area. Drinks on-the-go have previously also caused aggressive behaviour in that area, as well as public urination. You can liaise with the police to obtain the exact details of that. I don't doubt that adding another outlet for selling alcohol in this area will encourage this type of behaviour in this area. For completeness, I remember this particular establishment had refurbished the outside upstairs area which means that residents will be exposed to nuisance from the people on the using the upstairs or outside of the Brazil Tropical, which is directly in the face of the residential block of flats on Church Street East. It is worth adding that when they carried out the refurbishment, they have done a lot of the work outside of the permissible times (including very late into the night) which leads to only one conclusion - they already are not very interested in respecting us and our neighbourhood.

On the point of public nuisance, it is worth noting that currently the venue leaves both rear and front window wide open. That would allow the noise of loud crowds to travel. This is particularly bad in this area, as the tall buildings around (Enterprise Place, Dukes Court, etc) normally cause the noise to travel very far.

Chertsey Road also sees a lot of anti-social driving, with people accelerating aggressively past the give-way after Whetherspoon's. Were alcohol being consumed on this stretch and people commonly not checking the roads when crossing in that area, it would only be a matter of time for an accident to happen on that stretch.

Finally, I would also like to express concerns on my and few other neighbours behalf that recently became parents. My little son is shy of 6 months old and all the noise that we experience now is already negatively impacting on his and our life. I really would like my baby to grow up in a safe and caring neighbourhood as opposed to constantly being worried because of drunk and aggressive people. There are also people consuming illegal drugs, smoking marijuana and cigarets. This is detrimental to his health and development. Allowing for another drinking establishment to be opened will add further to this negative impact explained above. This premise is literally outside of our windows.”

## **Objection # 6**

---

“I am writing to express my deep concerns regarding the application submitted by Brazil Tropical LTD for an alcohol license for the establishment located on 56 Chertsey Road. This establishment is situated within the Woking Town Centre Saturation Policy, which is officially designated as a Cumulative Impact Zone.

The heart of my objection revolves around the potential consequences of granting this license within an area that is already grappling with a saturation of licensed premises. One of the primary concerns is the likelihood of an increase in crime and disorder. As our community is well aware, the concentration of alcohol-serving venues tends to contribute to disruptive behaviour and public safety issues.

These concerns are not merely theoretical; they are grounded in the lived experiences of

residents in the area. Noise disturbances, antisocial behaviour, and instances of vandalism have become all too common. In the evenings, when patrons gather, these issues often escalate. This reality raises questions about the impact on public safety and the quality of life for our community members.

Of particular concern is the proximity of the venue to areas where young people frequently congregate. The potential for alcohol-related incidents, coupled with antisocial behaviour, raises significant worries about the well-being of our young residents. Their exposure to harm, both physical and psychological, is a genuine concern.

Furthermore, our local council and law enforcement agencies are already grappling with the existing problems of crime and disorder, public safety, and public nuisance. Given their limited resources and staffing challenges, the approval of yet another alcohol license would undoubtedly stretch these agencies even thinner. The result may be a less effective response to the ongoing issues and a greater burden on our already overstretched services.

Compounding these concerns is the precarious financial situation of the local council, which is teetering on the brink of bankruptcy, and an understaffed police force. The grant of this license could have the unintended consequence of exacerbating these financial strains and hindering the ability of local authorities to manage the challenges effectively.

In light of these substantial concerns and the potential adverse impact on our community, I implore the Licensing Authority to deny the application for an alcohol license for Brazil Tropical LTD. The fragile situation within the Woking Town Centre Saturation Policy area necessitates a cautious approach to licensing, one that prioritizes the safety and well-being of our residents and visitors.”

## **Objection # 7**

---

“I am a resident of Enterprise Place, 175 Church Street East, and I am writing in to object the alcohol licensing application for the above Business

As a town centre resident the last few years have been an absolute nightmare with increased levels of vandalism, noisy vehicles (cars and bikes) and anti-social behaviour right outside our door step.

Another business with an alcohol license just outside Enterprise Place will only add fuel to fire. With the diminished capacity within WBC, the situation in my view will not be very well regulated which means things have the potential to go pear shaped very quickly.

We have plenty of young families in Enterprise place and around the neighbourhood and alcohol related nuisance is the last thing the kids should have to watch growing up

My concerns with another business with licensing application revolve around :

- Crime and disorder
- Public Safety
- Public Nuisance and
- most importantly protection of children from harm”

## Objection # 8

---

“I am writing in opposition to the application by 'Office Bar Ltd' for a license relating to the Sale of Alcohol.

I must admit I am very surprised this application has been resubmitted. This being the case, my wife and I are opposing this on the following grounds: -

- **Noise** - As a resident of Enterprise Place, we have already had to deal with major noise issues particularly between Thursday and Saturday arising from people leaving the bars on Chertsey Road. I note the council recently granted a 'Late License' to the Junction Tap - which allows it to remain open until 3am. As a consequence, there are serious noise issues on Chertsey Road during the end of the week and weekend. The granting of a license to Office Bar to serve alcohol during the week and on the weekend will already exacerbate what is a significant problem. The council need no reminding that there are a number of young families living in Enterprise Place and the potential granting of the license - extending across the entire week - will only make things worse.

- **Benches** - Around twelve months ago, and with the council's involvement, the benches by the roundabout where Chertsey Road, Stanley Road and Church Street East meet were removed. This was primarily because they were a magnets for excessive drinkers, drug takers and thugs to gather. The noise issues brought about by gatherings at the benches have reduced . I am deeply concerned that the granting of an alcohol license to a bar near there will bring with it gatherings when the bar closes, and a return to the issues brought about by the benches. I am certain the council and Police don't want to have to deal with anti-social behaviour due to 'Office Bar'. (See Police reference numbers P20204262/P20209114/ etc etc)

- **Opportunity for Misbehaviour** - There is a real issue with individuals fighting and generally behaving in an unruly manner after the end of closing time in local bars in Woking on Chertsey Road. The obtaining of an alcohol license for 'Office Bar' would undoubtedly exacerbate this issue - extending it further out towards what is a residential area.

Last but not least - we have a multitude of bars in the Town Centre, which are to a large extent fairly centralised. Do we really need another one in a less centralised location?”





## Objection – Environmental Health

---

“Further to your consultation regarding the above application, the following representation is submitted on behalf of Environmental Health in relation to the licensing objective, prevention of public nuisance.

Brazil Tropical premises is a 2 storey mid terrace building in a block which comprises restaurant and retail uses on the ground floor with a mix of residential and non-residential use on the first floor.

Described as a Cafe and Tapas Snack Bar, the premises application includes the sale of alcohol up to 23.00 hours, 7 days a week, and closing at 23.30hrs. Whilst not immediately obvious from the licensable activities applied for, if the sale of alcohol is permitted, the legislation would allow the premises to have live and recorded amplified music during that time, adding significantly to the potential for public nuisance.

Whilst in the town centre, it is considered that a public nuisance could arise affecting residential accommodation within the block, nearby residential flats in Enterprise Place and above nearby businesses at 50 and 52 Chertsey Road and to adjacent businesses which operate during the evening.

### Outside Areas

- The rear terrace runs across the width of the block with no separation or clear demarcation between the different premises. The terrace is within 18 meters of the flats on the opposite side of the road at Enterprise Place and is accessed from the premises via double doors. Access from the street is via an external metal staircase located at the end of the terrace which serves the whole block and is unrestricted. Customers of Brazil Tropical would have to walk past the doors/windows to the other premises to reach the rear first floor doors and terrace of Brazil Tropical. The terrace is not highlighted as part of the proposed licensable area. It could however be used for non licensable purposes during the proposed opening times when customer noise could result in a potential public noise nuisance to nearby residents.
- The front outside space facing Chertsey Road is included in the proposed licensable area with tables and chairs for eating and drinking. It is a much larger area than previously proposed extending from the front of the building to the edge of the pavement providing space for an increased number of customers.
- The external areas provide the opportunity for people to congregate and loiter after opening hours with the attendant noise. The application for off sales of alcohol could increase the likelihood of people gathering close to and away from the premises. Any noise on the street would be outside the control of the premises owner.

### Access to the Premises

- There are several points of access into the premises at the front from Chertsey Road and at the rear from Church Street West via a ground floor rear door and first floor rear double doors onto the terrace.

The frequency of movement in and out of the building is likely to be high taking into account the outdoor drinking and eating areas. It would not be feasible for doors to be kept closed sufficient to control noise breakout, for example from music, amplified/unamplified voice of singers and customers with the potential for late night noise disturbance. The likelihood of this is increased by the legal requirement for people to go outside to smoke.

### Adjacent Businesses

The premises is mid terrace with a restaurant sharing one of the party walls. There is potential for noise transmission from unregulated amplified music and voice to adjacent premises affecting existing business.

The area of terrace permitted to be used by Brazil Tropical is not clear although appears to be defined by the building's painted black walls. This and the lack of separation could lead to Brazil Tropical customers encroaching onto areas belonging to neighbouring premises. There are also single glazed casement windows from premises unconnected to this application opening onto this area.

It is considered that the steps proposed by the applicant will not adequately address the prevention of public nuisance licensing objective and that the premises will likely draw complaint from residents if the licence is granted."

### Objection – Woking CCTV Unit

---

My comments as before, if granted there would have to be an install of a new camera, at a cost, to cover the location.

- Although there is very good public space CCTV coverage in the town centre this location would not be able to be monitored due to existing building lines and trees.
- If granted this would be outside the area proactively patrolled by CCTV operators and could increase ASB problems in Dukes court in Duke Street.

## **Objection – Community Safety Team**

---

“Thank you for forwarding a copy of the license application that has been made regarding Brazil Tropical at 56 Chertsey Road. I note the venue is described as a Café and Tapas snack bar, however, given the requested opening hours, both on and off license sales and the possibility of live amplified music linked to the alcohol license at the venue, it is my concern that in the evenings and especially at weekends the premises will be primarily alcohol sales and potentially a live music venue.

I would like to make a representation on behalf of Community Safety regarding this license based on the information that has been provided under the licensing objective that relates to public nuisance.

### **Location – Unsuitable for live music**

Although the application is not specifically asking to have live and recorded amplified music, if the sale of alcohol is permitted, the legislation would allow the premises to have this. The venue is located close to a residential block of flats containing over 120 addresses. We are aware of complaints already from a number of these addresses where amplified music emanating from the night time economy is a contributing factor to a wider concern. The current amplified music is coming from a venue significantly further away than this venue and therefore we strongly suspect that any live amplified music played much closer will cause a substantial nuisance to all residents within Enterprise Place.

### **Congregation**

The location of this venue causes us concern regarding the likelihood of the area being a place for people to congregate throughout the evening and after the venue has closed. Its close proximity to a fast food establishment combined with possible live music and the fact that the area has a sizeable paved area will encourage people to loiter in the area throughout the evening and after the venue has shut. Concerns have already been made regarding the noise and behaviour made by individuals and groups when leaving the town with abusive language, shouting and violence already being mentioned as an identified problem in this area. It is our view that this would be exasperated with a venue providing off premises sales and potentially providing live music which is likely to be heard from outside of the venue.

### **Off license**

In the application it states that the intention is for both an on and off license. Alcohol related disorder that relates to street drinking is a known identified issue in Woking. Last year a Public Space Protection Order was made to specifically tackle alcohol related anti-social behaviour in the town. It is our belief that an additional premises that allows the sale of alcohol to be taken off the premises is likely to cause further alcohol related anti-social behaviour – especially when the intention is to allow the sale of alcohol until 23.00 over the weekend. It also concerns us that allowing off premises sale of alcohol could significantly

increase the likelihood of larger numbers congregating in the immediate vicinity given that there is potential for alcohol to be consumed away from the venue. It is entirely possible this will be out of sight of the venue who may be completely unaware that they would be contributing to the issue.

We note in the application itself there is very little detail regarding the intended use of the premises, or how they are going to mitigate the concerns we raise above, beyond the use of CCTV and consideration and willingness to instal sound limiter equipment. It is therefore our opinion that if this license is granted as it is there is a high likelihood that this premises will cause a nuisance to the public in the immediate vicinity and will likely draw a number of complaints from residents that are already unhappy with the current issues linked to the night time economy, without this additional venue. The close proximity of this venue to residential properties only heightens this concern.”

**From:** Jose Manuel Rocha <[REDACTED]>  
**Sent:** 22 October 2023 17:37  
**To:** Matthew Cobb <Matthew.Cobb@woking.gov.uk>  
**Subject:** Brazil Tropical - Premises License Application - Newspaper Copies

Dear Mr Cobb

My apologies for the delay in replying to your email

Please find enclosed a copy of the Newspaper Notice

Regarding the Sale Of Alcohol and Closing Hours, the applicant is happy to amend the application to Sale Of Alcohol for **22:30 and Close at 23:00 Monday to Sunday**

[REDACTED]

I will send a copy of the Policies during shortly and Im preparing an email for the neighbours

Kind Regards  
Manuel Rocha

- |                              |   |
|------------------------------|---|
| <b>Objector # 2 :</b>        | “this makes no real difference and does not address my concerns at all.”  |
| <b>Environmental Health:</b> | “I confirm that the proposed changes do not adequately resolve concerns regarding the prevention of public nuisance”  |
| <b>Woking CCTV unit:</b>     | “Revision of hours makes little difference. This area does not have an Operational Requirement (OR) for CCTV to monitor the location and would require additional cameras.” |



**From:** Tara Hellaby <tara.hellaby@woking.gov.uk>  
**Sent:** 07 November 2023 16:04  
**To:** Liz Liesicke <Liz.Liesicke@woking.gov.uk>  
**Cc:** Matthew Cobb <Matthew.Cobb@woking.gov.uk>  
**Subject:** RE: New Premises Licence - DRAFT Brazil Tropical Ltd 56 Chertsey Road, Woking GU21 5BG

Hi Liz / Matt,

When the noise complaints starting coming in, I initially spoke to Erika Medeiros, who disputed the fact that the noise complaints related to works at Office Bar. She informed me the works had finished two weeks prior to my call. However, this was not the case when I visited. Her and her partner, Mr Neeto, claimed they were not responsible for the workmen and provided me with the number for the landlord.

The landlord, Mr Ahmed Zahir, who is the Director of the company that owns the block (Vaince Properties Ltd) also made it difficult for me and was not forthcoming with information, to the point we were looking at serving them with a formal information request notice. He claimed he had not employed the builders and that the builders were the responsibility of the leaseholders at 56 Chertsey road, Office Bar, Mrs Erika Medeiros and her husband, Netto. There was a lot of toing and froing and land registry searches to be done before we could serve the notice. All the while, the noise complaints were continuing.

Despite the landlord claiming to have spoken to the builders on 3 separate occasions, the noise complaints kept coming in and we were starting to receive complaints about H&S and unsafe working practices. Incidents were witnessed and recorded.

Between us three, they were uncooperative, unhelpful and would skirt around questions and not provide the information we needed to take action, leading me to believe something else was going on.

We also saw someone living in the derelict space above the bar, so we had to report this onto the Police.

In the end we were able to serve a Notice with the help of Legal, but otherwise, no one took responsibility. We didn't hear anything from the Landlord after the Notice was served on him and the noise complaints stopped, but I think this was because the licence was revoked<sup>1</sup>, so the works stopped, not because they were complying the Notice?

Hope this helps.

Thanks,  
**Tara Hellaby | Environment Officer | Environmental Health**

---

<sup>1</sup> It should be noted that the licence was not revoked – the 2022 licence application was withdrawn by the applicant at the 11<sup>th</sup> hour before a Licensing committee hearing.







Woking Borough Council  
Civic Offices  
Gloucester Square  
Woking  
Surrey  
GU21 6YL

<b>Notice</b>	Control of Pollution Act 1974, section 60
<h2>Control of Noise on Construction Sites: Notice Imposing Requirements</h2>	
<b>Recipient</b>	<p>Name Office Bar Ltd.</p> <p>Address 56 Chertsey Road Woking Surrey GU21 5BG</p>
<b>Relating to</b>	Premises known as 56 Chertsey Road, Woking, Surrey, GU21 5BG
<b>Construction Works</b>	<p>It appears to Woking Borough Council 'the Council', that works to which section 60 of the Control of Pollution Act 1974 applies, namely the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, or roads and/or the breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works and/or work of engineering construction (whether or not specified in the foregoing) are being, or are intended to be carried out</p>
<b>Requirements</b>	<p><b>Notice is hereby given</b> that the following requirements must be complied with in connection with the carrying out of such works:</p> <p>Hours of Work</p> <ol style="list-style-type: none"> <li>1. All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Council, shall be carried out only between the hours of 8am and 6pm Monday to Friday and between the hours of 8am and 1pm on Saturdays and at no time on Sundays, Public Holidays and Bank Holidays.</li> <li>2. <u>Project Management and Noise Mitigation.</u> The best practicable means to reduce noise to a minimum, as defined in section 72 of the Control of Pollution Act 1974, shall be employed at all times</li> <li>3. All plant and machinery in use shall be properly silenced and maintained in accordance with the manufacturers' instructions.</li> </ol> <p>Contacts</p> <ol style="list-style-type: none"> <li>4. Any deviation from these conditions shall be notified to the Environmental Health team on 01483 743840 or email <a href="mailto:Environmental.Health@woking.gov.uk">Environmental.Health@woking.gov.uk</a> without delay.</li> </ol>
<p>This notice applies to all contractors and sub-contractors.</p>	
<b>Effect of an Appeal</b>	<p>[In the event of an appeal, this notice shall not be suspended until the appeal has been abandoned or decided by the Court as, in the opinion of the Council, [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before</p>

any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance]. The noise to which this notice relates is to be of a limited duration such that suspension would render the notice of no practical effect.

---

**Appeal**

You may appeal against this Notice to a Magistrates' Court within 21 days from the date of service of this Notice.

---

**Officer**

Signature:



Name:

Emma Bourne

Title:

Environmental Health Manager

Date:

05 August 2022

Contact address:

Woking Borough Council  
Civic Offices  
Gloucester Square  
Woking  
Surrey  
GU21 6YL

Email:

Environmental.Health@woking.gov.uk

Telephone:

01483 743840

---

**Warning**

If you contravene, without reasonable excuse, any requirement of this Notice you will be guilty of an offence against Part III of the Control of Pollution Act 1974 and on summary conviction will be liable (a) in the case of a first offence to a fine not exceeding level 5 on the standard scale, and (b) in the case of a second or subsequent offence to a fine not exceeding Level 5 on the standard scale together, in any case, with a further fine not exceeding £50 for each day on which the offence continues after conviction.

---

**Advice**

If you do not understand the contents of this notice or would like to know more about it, please contact the Council. If you would like to receive independent advice about the contents of this notice, your rights and obligations then please contact Citizens Advice, Housing Aid Centre, Law Centre or solicitor.

---

**Notes****The Control of Noise (Appeal) Regulations 1975****Appeals under section 60(7)**

5.-(1) The provisions of this regulation shall apply to an appeal brought by any person under subsection (7) of section 60 (control of noise on construction sites) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:

- (a) That the notice is not justified by the terms of section 60;
- (b) That there has been some informality, defect or error in, or in connection with, the notice;

- (c) That the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) That the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) That the notice should have been served on some person instead of the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works;
- (f) That the notice might lawfully have been served on some person in addition to the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works, and that it would have been equitable for it to have been so served;
- (g) That the authority have not had regard to some or all of the provisions of section 60(4).

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(e) or (f) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of an appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

(5) On the hearing of the appeal the court may:

- (a) Quash the notice to which the appeal relates, or
- (b) Vary the notice in favour of the appellant in such manner as it thinks fit, or
- (c) Dismiss the appeal

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

#### **Suspension of notices**

10.-(1) Subject to paragraph (2) of this regulation, where an appeal is brought against a notice served under sections 58, 60, or 66 and

- (a) The noise to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant; or
- (b) Compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal

the notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) A notice to which this regulation applies shall not be suspended if in the opinion of the local authority

- (a) The noise to which the notice relates:
  - (i) Is injurious to health, or
  - (ii) Is likely to be of a limited duration such that suspension of the notice would render the notice of no practical effect, or
- (b) The expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

and the notice includes a statement that it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court.

(3) Save as provided in this regulation a notice under Part III of the Act shall not be suspended by reason only of the bringing of an appeal to a magistrates' court or the Secretary of State.



# Licensing Act 2003

Councillor's handbook  
(England and Wales)

# Contents

<b>Foreword</b>	<b>4</b>
<b>The Licensing Act: An overview</b>	<b>5</b>
Context	5
The Licensing Act 2003	6
Strengths and weaknesses of the current system	8
<b>Overview of the role of councils in licensing</b>	<b>10</b>
Introduction to the role of the council	10
Developing a statement of licensing policy	11
Key issues for consideration in the statement of licensing policy	13
What other tools are available?	16
Role of councillors	20
<b>Role of responsible authorities</b>	<b>22</b>
Overview	22
<b>Summary of key permissions under the Act</b>	<b>26</b>
Premises licences	26
Temporary event notices	28
Club premises certificates	29
Personal licences	30
Role of Designated Premises Supervisor	30

<b>Representations</b>	<b>31</b>
What is a 'relevant' representation?	31
<b>Licence conditions</b>	<b>32</b>
Overview	32
Mandatory conditions	33
Volunteered conditions	34
<b>Hearings and appeals: What to expect</b>	<b>36</b>
Conducting a hearing	36
Member conduct	37
Roles	42
What happens if the committee's decision is challenged?	43
<b>Responding to issues at licensed premises</b>	<b>46</b>
Reviews	46
Prosecution	47
<b>Glossary</b>	<b>48</b>

# Foreword

Licensing makes a fundamental contribution to how our communities develop, live, work and relax. With the right tools, councils can use licensing to significantly improve the chances of businesses and residents moving to an area, whether in the heart of London or in a more rural district.

In 2018<sup>1</sup> there were 212,800 premises licences in England and Wales. There is a broad spectrum of licenced premises, including off-licences, supermarkets and cafes as well as the pubs, bars and clubs that typically make up the night time economy. Research estimates that the alcohol industry contributes £46 billion a year to national income and is responsible for around 2.5 per cent of all UK employment.<sup>2</sup> At a local level, a vibrant and mixed night time economy can encourage tourism, boost the local economy and contribute to shaping places where people want to live.

But, at the same time licenced premises in the night time economy, in particular, can create challenges as well as bringing benefits and the Local Government Association (LGA) has argued that councils need the right tools to manage these challenges locally. The pressures placed on police and health services as a result of intoxication and harmful alcohol consumption are well-known. Whilst reported instances of alcohol-related crime and disorder have been decreasing in recent years, alcohol remains a factor in 40 per cent<sup>3</sup> of violent incidents.

The total cost to society of alcohol-related crime is estimated at £11 billion.

In 2016 the Government published the Modern Crime Prevention Strategy which, amongst other things, set out a vision for how the Government planned to address alcohol-related crime and disorder in the night time economy and, in particular, promotes the role that partnership working can play in addressing issues.

We are pleased that since the strategy was published we have seen some further steps towards encouraging more localised approaches in licensing, for example new powers under the Policing and Crime Act 2017 mark a positive step in terms of giving licensing authorities the power to make assessments at a local level about what interventions could be helpful.

However, there is still more that can be done locally to strengthen approaches to licensing and we hope this handbook will act as a helpful tool for licensing authorities in carrying out their functions under the Licensing Act.



**Councillor Simon Blackburn**

Chair of Safer Stronger Communities Board

1 [www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018](http://www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018)

2 Institute of Alcohol Studies (2017) 'Splitting the Bill: Alcohol's Impact on the Economy'

3 Office for National Statistics (2017) 'Focus on Violent Crime and Sexual Offences, 2015/16'



# The Licensing Act: An overview

## Context

The Licensing Act 2003 (the Act) replaced earlier controls of alcohol and introduced a more permissive, flexible regime. The Act consolidated a diverse system of licences that had been separately issued for late-night refreshment and regulated entertainment. Before the Act, alcohol licences had been issued in Magistrates' courts through what was largely an administrative procedure, and licensees had to formally attend to get their licences renewed every three years.

The intention of the Act was to liberalise a previously rigid licensing system. The Act gave licensing authorities (district, unitary and metropolitan borough councils) new powers over licensed premises, as well as giving local people more of a say in licensing decisions. A fundamental, and at the time controversial, part of the new Act was the potential to extend licensing hours beyond the previous 'permitted hours', in the hope that this would bring about more of a 'cafe culture' in line with other European countries.

The Act was widely welcomed by local authorities, licensees and the police and in many respects, the Licensing Act remains a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by the licence to make comments on it.

## Recent trends

Since the Act came into force there has been some notable trends in terms of the way people consume alcohol, with consumption patterns showing a steady decline. In 2007, around 17 per cent of adults in England reported drinking alcohol on five or more days in the last week, which had fallen to 10 per cent by 2017.<sup>4</sup> This has been driven by a fall in consumption among those aged under 45.

Alcohol-related crime has also decreased over this period, with the number of violent incidents involving alcohol falling by over half from approximately 999,000 in 2006/07 to 464,000 in 2016/17. While there has been a fall in the number of 'alcohol-related' violent crimes, latest statistics from 2016 show that in over half (53 per cent) of all violent incidents, the victim believed the perpetrator to be under the influence of alcohol.

Health harms related to alcohol remain high. The number of alcohol-related hospital admissions has increased from around 287,000 in 2006/07 to 337,000 in 2016/17<sup>5</sup> as have the incidences of certain alcohol-related health conditions. While alcohol consumption has fallen in recent years, clearly the harms associated with alcohol misuse remain high.

As well as changes in the level of consumption, there has also been a shift in where alcohol is being consumed with more than two thirds of all alcohol now sold through the off-trade for example in supermarkets or off-licences rather than through the on-trade in places like pubs or bars.

<sup>4</sup> Office for National Statistics (ONS) (2017) Adult drinking habits in England

<sup>5</sup> Office for National Statistics (ONS) (2017) Adult drinking habits in Great Britain

# The Licensing Act 2003

## Objectives of the Act

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol, or provide certain types of regulated entertainment and late night refreshment.

The Act is administered by licensing authorities which are district, unitary and metropolitan borough councils. Under the Act, the licensing authority's responsibilities are delegated to the authority's licensing (or regulatory) committee. The licensing committee is responsible for considering and proposing the authority's statement of licensing policy, and for taking decisions on specific licence applications or issues.

There are four licensing objectives which underpin the Act and which need to be taken into account and promoted throughout the licensing process. Each of these objectives is of equal weight.

### The licensing objectives are:

- the prevention of crime and disorder<sup>6</sup>
- public safety
- the prevention of public nuisance and
- the protection of children from harm.

Licensing authorities must issue a licence, providing it is consistent with the licensing objectives and there have been no comments on the application or objections to it, which are known as representations. As noted earlier, the Act enables scrutiny of applications both by experts, local residents and businesses who all have the opportunity to comment on an application.

There are some organisations, known as responsible authorities (RAs), which need to be notified of every application for a new premises licence, or variation of an existing licence. RAs can make representations to the council about applications where they feel there will be a negative impact on the promotion of the licensing objectives if the application were to be approved. RAs include the police, fire authority, trading standards, health and safety and environmental health.

Anyone who may be affected by an application for a new licence or variation to an existing licence can make a representation. However, in order for a representation to be deemed 'relevant' it needs to relate to the likely effect of the application on the promotion of the licensing objectives.

## What activities are licensed?

There are a number of different activities that were brought together under the Act which are referred to in legislation as 'licensable activities'.

### Licensable activities are:

- the sale of alcohol by retail
- the supply of alcohol in qualifying members' clubs
- the provision of regulated entertainment
- the provision of hot food and hot drink ('late night refreshment') to the public between 11.00 pm and 5.00 am.

The distinction between the sale and supply of alcohol is made in recognition of the fact that at a member's club there is technically no sale taking place as members of the club already own the assets of the club, including the alcohol.

<sup>6</sup> It is worth noting that the first objective can be read as two separate duties, ie a duty to prevent crime or a duty to prevent disorder (R. (on the application of Blackpool Council) v Howitt [2008] EWHC 3300 (Admin); (2009) 173 J.P. 101)

Regulated entertainment is arguably a less well known part of councils' licensing responsibilities. To count as regulated entertainment, the activity must be provided in front of an audience for the purpose of entertaining them and must fit into one of the following categories:

- it is provided for members of the public (anybody can buy a ticket or come to the event)
- it is exclusively for members of a (private) qualifying club and their guests
- it is arranged by someone who is trying to make a profit.

There are certain forms of entertainment that are always regulated, for example entertainment provided to over 500 people (or over 1000 people for indoors sporting events), entertainment provided between 11.00 pm and 5.00 am and boxing and wrestling.

### Regulated entertainment is defined as (subject to exemptions):

- live amplified and unamplified music
- recorded music
- exhibition of film
- performances of plays
- indoor sports
- boxing and wrestling.

There are however a number of activities that are exempt under the Act from needing a licence, such as the sale of alcohol in an aircraft. Reforms since the Act originally came into force in 2005 mean that a number of activities no longer need to be licensed in particular circumstances, for example the performance of live music to a limited audience. A list of exemptions can be found in the Section 182 Guidance.<sup>7</sup>

### Types of licence and permission

Carrying out licensable activities requires a licence or other type of permission. The four types of 'authorisation' under the Act are summarised below, and are explored in more detail later on.

<b>Premises licence</b>	A premises licence allows licensable activities to be provided 'at any place' either indefinitely or for a fixed duration.
<b>Personal licence</b>	Each sale must be authorised by a personal licence holder. A personal licence is needed by an individual to act as a Designated Premises Supervisor where there is a premises licence to sell or authorise the sale of alcohol.
<b>Temporary event notice</b>	Allows licensable activities to be provided by any person at any place for up to seven days at a time on no more than 21 days a year, for no more than 499 people at a time.
<b>Club premises certificate</b>	Qualifying members' clubs (eg the Royal British Legion, working men's clubs and sports clubs) planning to sell or supply alcohol may need to apply for a club premises certificate.

<sup>7</sup> Home Office (2018) 'Revised guidance issued under Section 182 of Licensing Act 2003' [www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003b](http://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003b)

## Strengths and weaknesses of the current system

In many respects, the Licensing Act is a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by a licence to make comments on it.

Used creatively, licensing can be a tool to shape the places that communities live, work and socialise in and can help manage our concerns.

However, the LGA has raised concerns about some weaknesses in the Act. Firstly, that the implementation of the Act has been consistently undermined by a lack of resourcing due to the centrally-set fee system. Secondly that the Act's objectives have not been updated to reflect the return of public health responsibilities to local government.

Licensing fees, which are set nationally have remained unchanged since 2005. The LGA has consistently argued that these fees underestimate the costs councils incur in overseeing the Act, and should be set locally. There have been various reviews and consultations around the localisation of fees over the last 10 years, and in 2015, the Government asked the LGA to work with it to develop an evidence base on the costs to councils of overseeing the Act.

The LGA's view is that locally set fees would re-dress the imbalance in fee incomes and whilst locally set fees might increase fees in some places, in others there may be decreases. Local fees could also benefit businesses, for example if there was a reduced annual fee.

Government has indicated that fees may be re-considered at some point in the future.<sup>8</sup>

### LGA/CIPFA survey into licensing fees

- The LGA worked with CIPFA to undertake the 2015 survey. The survey indicated that some councils are in surplus from the Act, but others are losing a lot and overall local government is in deficit by around £10-12 million per year.
- A small majority (52 per cent) of councils reported running a deficit, however analysis shows that the sum of net deficit is greater than that of the net surplus making the overall picture that of a deficit. For those that responded to the survey, there is an average surplus/deficit of -£29,520 for each local authority.
- There was extensive variation across councils. The largest deficit of -£1.358 million was in a London borough, whilst the largest surplus of £265,000 was in an English unitary authority. Different council types also has an impact on whether an authority is in deficit/surplus with London boroughs, metropolitan districts and district councils operating a deficit whilst unitary authorities (English and Welsh) are running a surplus.
- There was also extensive variation in results for different fee categories. While councils experienced losses in some categories, conversely in others they operate at a surplus with annual fees for premises licences generating the largest surplus of £5.9 million. Temporary event notices (TENs) showed the biggest shortfall at -£3.2 million. This reflects feedback from councils that the process is extremely resource intensive, and not being used for what it was intended. Councils report that they are managing the shortfall by cutting back on enforcement activity.

<sup>8</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/657231/CCS207\\_CCS1017254842-1\\_Cm\\_9471\\_Govt\\_Response\\_Licensing\\_Act\\_PRINT\\_3\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/657231/CCS207_CCS1017254842-1_Cm_9471_Govt_Response_Licensing_Act_PRINT_3_.pdf)

Lobbying for a health objective in the Licensing Act is long standing LGA policy. Whilst public health can contribute against any of the four existing licensing objectives, in practice it can be difficult for them to be heard; a specific 'health' objective could resolve that and allow a much more straightforward contribution. There is also strong support for a health objective among public health directors, Public Health England (PHE) and among some in Parliament.

There has been a lot of work to build the evidence base for how this could work and PHE have piloted a health objective with eight advanced areas including Cornwall, Leeds and Wigan, which all developed practical ways to make using health data in licensing work.

Building on this work PHE have developed an online resource<sup>9</sup> which brings together nationally available data and materials with local information to support councils to access a range of databases and tools. Local teams can input their own data to create interactive maps and reports to help them in their role as a responsible authority.

Whilst there is no indication that the Government is going to take this forward, at least in the near future they continue to highlight the important role that public health plays in the licensing system as a responsible authority under the Act. This includes promoting the use of PHE's analytical support package, providing public health teams with new tools to help effectively present relevant health data and supporting the Information Sharing to Tackle Violence programme to encourage A&E departments to share their data with community safety partnerships.

---

9 [www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams](http://www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams)

# Overview of the role of councils in licensing

## Introduction to the role of the council

The Act moved the responsibility for administering alcohol licensing from Magistrates and licensing justices to local authorities, bringing democratic accountability to decision making.

District councils and unitary councils are designated as licensing authorities. Each licensing authority is responsible for developing a local policy, processing applications and convening hearings to consider any representations concerning applications or existing licences. To deliver their responsibilities licensing authorities' core functions can be summarised as:

- setting the local framework through a statement of licensing policy
- considering applications with a view to promoting the licensing objectives
- undertaking inspection and enforcement activities to ensure conditions of licences are being met
- maintaining a register of licensed premises, activities and individuals
- providing bi-annual statistics to government as part of the National Statistics collection.

Licensing authorities are responsible for administering the Act and this function is delegated to the council's licensing committee. The licensing committee is responsible for considering and proposing the authority's licensing policy through developing a statement of licensing policy prior to its approval by the licensing authority (full council), and for taking decisions on

specific licence applications or issues.

Statutory guidance for licensing authorities is issued by the Secretary of State under Section 182 of the Act, often referred to as 'Section 182 guidance'. Licensing authorities have a duty to have regard to this guidance and it should be followed unless there is good reason to depart from it. The Section 182 guidance is a comprehensive and useful tool for councils around the discharge of functions under the Act, including processes for hearings. It is updated from time to time, the latest version can be found on the gov.uk website.

### Fee setting

Fees under the Licensing Act have been fixed in regulations since 2005. Premises and club premises licence fees are based on the rateable value of the premises. Premises with higher rateable values that are primarily being used for alcohol sales pay additional premiums as do premises with particularly large capacities (in excess of 5000 people). Fees are also set for a range of other administrative processes under the Act, such as:

- varying a licence
- transferring a licence from one individual to another
- varying the Designated Premises Supervisor (the person named on the premises licence as the individual designated to supervise the premises)
- issuing a temporary event notice (TEN).

As discussed earlier, whilst fees were intended to provide full cost-recovery, in practice many licensing authorities will incur a deficit. The LGA has consistently argued that the Government has underestimated the costs councils incur in administering the Licensing Act, and should be set locally. At the very least, the Government should commit to a flat-rate increase to the 2005 fee levels.

## Developing a statement of licensing policy

### What is a licensing policy

Under the Act, licensing authorities are required to prepare a statement of licensing policy (SLP) which sets out how licensable activities will be regulated and how licensing functions will be exercised in their areas, as well as expectations of licence holders and operators. They can be used to identify areas where the risk of harm may be greater due to the characteristics of a particular area, and how these risks can be mitigated.

The SLP is an opportunity to take a strategic look across all of the licensable activities within your area and set out a vision for them. The decisions made can enhance an area's economy, public health, safety and cultural appeal to tourists and visitors from surrounding areas.

Getting the statement of licensing policy right is important as this will guide the local authority's decision making. Authorities must have regard to their SLP when carrying out their licensing functions and the policy acts as a starting point for a decision. Whilst licensing authorities can depart from their policy when considering applications, there will need to be good reasons for doing so.

The SLP should set out how licensees can contribute to creating the evening and night time economy that the council envisages, for example encouraging certain types of applications in certain areas, for example food led businesses. It is also an opportunity to set out the context in terms of specific local issues that licensees should consider

for example areas of saturation in a town centre, and how they can contribute towards positively addressing them.

An active place-shaping approach in your licensing policy and practice can also help design out problems before they occur and promote safe and sustainable communities. Diversifying the evening and night time offer for example can encourage a wider range of people to engage in it and increase the perception of safety. Thought should be given to how the licensing policy can help to attract entertainment that is not alcohol led, for example restaurants, venues or cinemas which will bring more people into the night time economy and can help to manage levels of alcohol related crime and disorder. On a smaller scale staggering closing times can also be helpful.

In shaping a policy, the licensing authority will need to have regard to the Section 182 guidance as well as giving appropriate weight to the views of the local community. Whilst there is a certain amount of flexibility around setting an approach to making licensing decisions this cannot be inconsistent with the provisions in the Act. The statement cannot create new requirements for applicants outside of the Act, or override the right of anyone to make an application under the Act, make representations or seek a review of a licence.

The SLP takes on additional significance in the event that an applicant challenges or appeals the sub-committee's decision. At this point the Magistrates court will adopt the licensing authority's policy as if it were its' own.

### Process

The SLP must be formally adopted by the licensing authority (full council) normally after a recommendation from the licensing committee. Councils with cabinet governance arrangements may also seek the cabinet's views too. A SLP runs for a maximum period of five years. There is nothing to prevent an authority from updating its statement more frequently if it wishes to, but the five yearly review cycle must still be followed.

There is no need for a SLP to re-state the requirements of the Act or the statutory guidance, although the guidance does suggest topics that ought to be acknowledged in the SLP – for example, an obligation for licensing authorities to help promote cultural activities within their areas by not imposing excessively burdensome conditions, or an acknowledgment that licence-holders cannot be held responsible for their customers' actions once they leave the vicinity of their premises.

### Possible headings within an SLP could include:

- context
- council aspirations and vision for the place
- partnership working
- the licensing objectives
- other legislative responsibilities (such as those under the Human Rights Act 1998, Crime and Disorder Act 1998, Equalities Act 2010 and the statutory Regulators' Code)
- reference to any cumulative impact assessments
- policies for specific circumstances
- approach to setting conditions including whether there is a pool of model conditions
- dealing with representations (including petitions and 'round-robin' letters)
- delegation of functions
- a statement of where the SLP departs from the statutory guidance (if relevant)
- enforcement protocol (usually agreed with the other responsible authorities)
- the use of other legislation alongside the Licensing Act.

Development of the SLP must involve engagement with the community. Consultation is a key part of making sure licensing work is transparent; there should be opportunity for open discussion so that communities have an input into what they want their area to look like.

There are a number of statutory consultees who will need to be involved, including representatives of local businesses, residents and licence-holders as well as the responsible authorities.<sup>10</sup> Both Lambeth and Watford case studies are useful examples of how authorities can engage with stakeholders through consultation events.

In Cheshire and Merseyside, public health, licensing, environmental health, trading standards and the police have worked together to develop a toolkit to support anyone who would like to have a say on how alcohol impacts their community. The toolkit explains how the licensing process works and provides some practical tips to help people who want to get involved:  
[www.alcohollicensing.org.uk](http://www.alcohollicensing.org.uk)

### Case study Watford

Watford Council wanted to regenerate its town centre through a cultural arts programme to remove its reliance on a mono-alcohol economy of late-night clubs and bars. A pop-up shop was opened in the town centre for two weeks to explain proposals and to get views on proposed changes to the public realm and to planning policy, as well as significant changes to the SLP which encouraged the growth of food-led and entertainment businesses through the offer of later hours at the expense of more restrictive hours for alcohol-led premises

### Case study Lambeth

Following the adoption of Lambeth Council's new Licensing Policy in January 2014, six area-based Licensing Transformation co-production workshops were held across the borough. These aimed to bring together a select and focused group of businesses, local residents, ward councillors and statutory partners to help shape local guidance and also offered an opportunity to discuss licensing in practice.

<sup>10</sup> Licensing authorities should consider adopting the Cabinet Office's Consultation Principles when consulting on revisions to their SLP.



Organised jointly with business improvement districts (BIDs), the council's Neighbourhood Regeneration team and the Cross River Partnership, local police, Neighbourhood Watch co-ordinators and Safer Neighbourhood Panel chairs, as well as residents' representatives were invited to attend the workshops. Council staff from Legal Services and Community Safeguarding were also in attendance.<sup>11</sup>

## Key issues for consideration in the statement of licensing policy

### Area specific expectations

At the most local level, licensing authorities' decisions will shape individual neighbourhoods, establishing some as vibrant, active areas late into the night, while other areas may become a centre for restaurants. Similarly, a pub in a smaller community may not attract large numbers from outside the area, but can nonetheless act as a hub for the community.

There may be some neighbourhoods that have particular challenges and require a more detailed and targeted approach.

The SLP can guide applicants towards particular concerns the authority has relating to a locality. In addition to tackling specific problems, it can be used to help shape the local economy, such as by setting out preferred opening hours, which can encourage applications from particular types of premises.

### Planning

The relationship between licensing and planning systems came under intense scrutiny in the House of Lords Select Committee post-legislative review of the Licensing Act in 2017. The committee's key recommendation was that the two systems should be merged and licensing committees

should be scrapped with responsibility shifted to planning committees. The Government rejected this recommendation but accepted that improvements could be made by focusing on improving how the two regimes communicate and interact at local level.

The licensing and planning systems operate independently with the planning and licensing regimes involving consideration of different, albeit related, matters. Planning is the regime that is directed at development of land and the use of premises upon it. Licensing is the regime that is directed at licensable activities and responsible management of said premises upon that land. Licensing committees are not bound by decisions made by a planning committee, and vice versa. For example, a premises licence or club premises certificate cannot be refused on the grounds that they do not have planning permission. Licensing authorities are also able to specify different opening hours on the licence from those specified under planning permission. This is somewhat incongruous, but the two schemes take different matters into account when determining hours, and the more restrictive set of hours always applies.

Nevertheless, where applicants have indicated that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning service prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs. It is also important to note that any decision of the licensing authority on an application for a premises licence does not relieve the premises user of any requirements under planning law for appropriate planning permission where it is required. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

Planning is an important consideration when thinking about what you want your licensing policy to achieve. Your licensing policy should reflect your Local Plan policies core planning documents, and likewise the Local Plan policies planning documents should reflect

<sup>11</sup> A full outline of Lambeth's workshops, including template invitations, can be found at <https://khub.net/documents/5833795/10633403/Lambeth%27s+Licensing+Transformation+Work/587fdf00-ac15-4a28-b249-4be16b2e077f> (Free registration is required)

what you want to achieve with your licensed premises. Whilst there is a clear distinction and separation between licensing and planning in terms of their remit, councillors have a key role in ensuring that these two different services are fully joined-up and aligned.

Where this doesn't happen councils can struggle to shape their areas as they would like them to be. It can be helpful to include your expectation that any premises for which a licence is required should normally have the appropriate authorised use under town planning legislation, in the SLP.

The development of new housing, often under permitted development rights, can have the potential to cause tension within communities where there are already established licensed premises, particularly those that promote live music. These venues can provide an important cultural contribution to an area, as well as promoting the next generation of musicians. In 2018 the Government updated the National Planning Policy Framework to include detailed reference to the 'Agent of Change' principle. Agent of change means those bringing about a change take responsibility for its impact. This means that developers will be responsible for identifying and solving any sound problems, if granted permission to build housing, to help avoid music venues, community and sports clubs and even churches running into expensive issues as a result of complaints from new neighbours.

### **Safeguarding**

Protecting children from being harmed in licensed premises is one of the four licensing objectives and includes harms from consumption of alcohol as well as wider harms including sexual exploitation.

Safeguarding can be addressed in part through licence conditions. The Act includes a mandatory condition requiring alcohol-licensed premises to have an age-verification policy, but other conditions relating to the protection of children from harm can include restrictions on the times which children may be present and the requirement that children must be accompanied by an adult.

Whilst the local children's safeguarding board, or multi-agency safeguarding arrangements as they are now known, are a responsible authority, in practice it is unusual for them to make representations. Public health also have an important role to play in safeguarding and PHE have developed a guidance note<sup>12</sup> which explores how public health can support prevention and intervention. Some authorities have used their powers under the Licensing Act to address child sexual exploitation (CSE) both proactively and reactively when considering licences.

The SLP is an opportunity to set out the councils approach to safeguarding, for example recommending that applicants should address access of children in the operating schedule.

### **Case study Kirklees council**

Kirklees Safeguarding Children Board (KSCB) has been working proactively with partners to engage with the licensed trade and promote risk management in relation to CSE. The board provides advice to assist licensees to identify risk and report concerns at different types of licensed premises and they have developed a webpage providing local information about child safety, child sexual exploitation, policies and procedures including risk factors and signs and symptoms.

Kirklees' licensing policy outlines the council's recommendation that applicants address the access of children in the operating schedule. They also expect that employers will make careful checks where premises or entertainment is specifically targeted towards children to ensure all persons employed or involved with the supervision or management are deemed appropriate persons to be engaged in the activity, for example that employers would use a Criminal Records Bureau check.

<sup>12</sup> Public Health England and Association of Directors of Public Health (2019) 'Child sexual exploitation: How public health can support prevention and intervention'

## Case study Harrow Council

Harrow Council states within its SLP that it expects staff in premises that will be particularly attractive to children to be familiar with the Metropolitan Police's Operation Makesafe to identify and report possible signs of abuse.

It is also important to look at the wider context of vulnerability. Safeguarding is not limited to children and young people, and vulnerability is an inherent part of the night time economy, for the most part due to the presence of alcohol and drugs. There are various resources and training packages that could be signposted to in the SLP, including the Welfare and Vulnerability Engagement (WAVE) initiative<sup>13</sup> which is a free tool, developed by the Metropolitan Police, looking at vulnerability in the night time economy and the proactive steps operators can and should take to address this.

Again there are various initiatives that can be utilised by operators to help identify and manage vulnerability in the night time economy, for example Drinkaware schemes and Ask for Angela. Reference to these initiatives could be made in the SLP.

## Ask for Angela

Ask for Angela was an initiative first launched by Lincolnshire County Council as part of a campaign to raise awareness of sexual violence and abuse and has since been rolled out across a number of cities.

The intention is to help prevent and reduce sexual violence and vulnerability in the night time economy. Customers are advised via posters in venue toilets that, if they 'ask for Angela' at the bar, staff will be alerted to the fact that they feel unsafe or threatened. Bar staff will know that the individual needs some help getting out of their situation and will call a taxi or help them out discreetly and providing a vital life-line to someone who finds themselves in a difficult situation and can't get out of it.

13 <https://nbcc.police.uk/article/?id=b2cd2a7d17d92c915996003a0473a4b8>

## Drinkaware

Drinkaware is an independent charity, funded by the alcohol industry, which works to reduce alcohol misuse and harm in the UK. Drinkaware's focus is on education and they offer information, advice and practical resources to support people to make better choices around their alcohol consumption.

Drinkaware also run a number of different initiatives including 'Drinkaware crews' who work in clubs and venues to help support provide support the welfare and wellbeing of young people on a night out. More recently they have partnered with PHE on a 'Drink Free Days' campaign which aims to help people cut down on the amount of alcohol they are regularly drinking.

[www.drinkaware.co.uk](http://www.drinkaware.co.uk)

## Working in partnership

Creating a safe, vibrant and diverse night time economy is in everyone's interests and the police, councils, emergency services, local businesses and the community all play a central role to achieving this.

Working together will almost always achieve the best results; at a minimum, it will establish a clear understanding of positions and identify where there is room for agreement and collaboration.

There is plenty of evidence of the success that partnership approaches to managing the night time economy has had in our towns and cities. The Government's Modern Crime Prevention Strategy placed considerable weight on the benefits of voluntary partnerships, a theme which is likely to remain on Government's agenda for the foreseeable future.

The role of councils is to facilitate dialogue between different groups including local businesses and residents, in particular making sure that there are forums for these conversations to happen.

Whilst challenges will be different in different places, there is a range of best practice from schemes across the country as well as tools available to support joint working. The LGA will shortly be publishing some case studies which will be available on the website. The Government's Local Alcohol Action Area (LAAA) programme, has recently completed its second phase, has been one way that authorities have been supported to tackle issues like diversifying the night time economy and data sharing.

The industry has worked hard to raise standards, and there are a large number of initiatives which can be used as tools by business to manage and improve the night time economy, for example the Purple Flag accreditation scheme: [www.atcm.org/purple-flag](http://www.atcm.org/purple-flag)

The best premises will be active participants in one or more of the many industry best practice schemes that exist. If these schemes are not in operation locally, then they can be an effective way to significantly boost performance for comparably little investment. The Portman Group have useful guides around the various industry led Local Alcohol Partnerships.<sup>14</sup>

There is always scope to set up a local initiative to tackle a specific issue; but the following is a short outline of some of the more prominent schemes that already exist. The scheme coordinators will always be happy to meet with councils to discuss how their scheme could work in the local area.

### Partnership schemes involving the industry

Pubwatch is an effective network of licensees working together to combat crime, disorder, and anti-social behaviour in towns, cities and local communities. There are about 1000 pubwatches in the UK. [www.nationalpubwatch.org.uk](http://www.nationalpubwatch.org.uk)

Best Bar None is a national award scheme, supported by the Home Office that aims

to improve standards in local night time economies by sharing and promoting best practice. [www.bbnuk.com](http://www.bbnuk.com)

Purple Flag is the accreditation programme that recognises excellence in the management of town and city centres in the early evening and night time economy. It provides an endorsement of the vibrancy of the local night time economy. [www.purpleflag.org.uk](http://www.purpleflag.org.uk)

Community Alcohol Partnerships is a retailer-led partnership to tackle issues of underage drinking and promote greater awareness and understanding of alcohol among young people. [www.communityalcoholpartnerships.co.uk](http://www.communityalcoholpartnerships.co.uk)

Street Pastors are volunteers from the local church community who give up their time to help people out for the evening. [www.streetpastors.org](http://www.streetpastors.org)

## What other tools are available?

There are a variety of statutory and non-statutory tools that can be used to help manage the night time economy where issues are identified.

### Cumulative impact assessments

If authorities have evidence that the high number or density of licensed premises in a particular area is having a detrimental effect on one or more of the licensing objectives, the licensing authority may consult on a cumulative impact assessment (CIA).

A CIA is essentially an evidence-based tool for licensing authorities to limit the growth of licensed premises in a problem area. Whilst the concept of cumulative impact was not initially included in the Act, it was included in the Section 182 guidance and therefore a number of authorities introduced cumulative impact policies (CIPs).

<sup>14</sup> [www.portmangroup.org.uk/responsibility-programmes/landing\\_page/local-partnerships](http://www.portmangroup.org.uk/responsibility-programmes/landing_page/local-partnerships)

Recent changes under the Policing and Crime Act 2017 have now put cumulative impact on a statutory footing and the Section 182 guidance has been updated to include CIAs. Existing CIPs will need to be reviewed to ensure they comply with the principles in new legislation, primarily the need for evidence, rules around consultation and the need to review CIAs at least every three years. A CIA sits apart from the SLP but the statement should include a summary of the CIA.

The effect of having a cumulative impact assessment is that it creates a presumption that applications for new (or sometimes variations to) licences that receive relevant representations will be refused unless the applicant can show that granting the application will not add to the cumulative impact of existing premises. This does not automatically mean applications will be reviewed. Additionally a licensing sub-committee, in considering an application, may be justified in finding an exception to its CIA depending on the merits of a particular application.

Even in an area where cumulative impact has been identified, licence applications must be granted if no relevant representations are made in relation to that particular application. However CIPs shift the balance of the Act and have been popular, with many authorities having more than one in place for example to cover different parts of the town or city.

### **Late-night levy**

The late night levy is payable by licensed premises and holders of club premises certificates within the designated area, which sell or supply alcohol between midnight and 6.00 am. The levy is intended to recoup some of the costs of policing, and generally maintaining, an area with a high number of licensed premises operating late into the night. It is effectively a tax on licensed premises in the area that must be approved by the full council following an extended consultation period and a recommendation by the licensing committee.

There has been a limited uptake of the levy by local authorities, which is due in part to the requirement to apply a levy across the entirety of a local authority area, and limitations on how the levy can be spent.

Legislation requires that up to 30 per cent of net levy revenue can be allocated to local councils, with at least 70 per cent allocated to the local police and crime commissioner (PCC). However, in practice PCCs have the ability to agree a different split locally, an approach taken in Hounslow and Cheltenham.

Whilst originally a levy had to apply across the whole of the local area, changes under the Policing and Crime Act 2017 (yet to be commenced) will allow licensing authorities to target the levy at specific geographic areas rather than having to implement it in the entirety of their area. They will also give PCCs the right to formally request that a council consults on the levy and make it a requirement that local authorities publish information about what the levy revenue has been spent on, to increase transparency. Changes will also allow local authorities to charge the levy to late night refreshment outlets, in addition to premises selling alcohol in the night time economy. These measures will be commenced once the Home Office has consulted on the levy charge to be applicable to late night refreshment providers.

Whilst there has been some criticism of how the levy is spent, legislation is prescriptive in terms of the types of services that councils can fund with revenue from the levy, to help ensure it is spent on tackling alcohol-related crime and disorder.<sup>15</sup> PCCs have no restrictions on how their portion can be spent. As highlighted above, new regulations under the Policing and Crime Act mean that licensing authorities will need to be more transparent, requiring them to publish details about how the levy is spent.

<sup>15</sup> (1.42) [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/183490/Late-night\\_levy\\_guidance\\_amended\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183490/Late-night_levy_guidance_amended_.pdf)

The levy has also been criticised by sections of the trade as having a disproportionate effect on smaller businesses. Whilst fees are set centrally in line with the rateable value of the premises, consideration should be given to whether exemptions could be applied. Councils have the option to apply exemptions and reductions from a list set out by regulations for example to theatres and cinemas, and country village pubs.

Councils can also exempt, or reduce the level of levy for businesses contributing to a business improvement district (BID). Islington and City of London offer a 30 per cent reduction and Nottingham City Council allow a complete exemption to licensed businesses that are part of a BID.

Any plans to introduce a late-night levy will need to be consulted on. In 2017 Tower Hamlets Council's introduction of the levy had to be delayed following a successful challenge following a Judicial Review launched by the Association of Licensed Multiple Retailers (ALMR). The challenge focused on the consultation process which failed to include an implementation date for the levy.

There is dedicated statutory guidance available on the late-night levy, which can be found on the gov.uk website.<sup>16</sup>

### **Business improvement districts**

Often councils prefer to use alternative approaches to the levy and BIDs are one such alternative. BIDs are not specific to licensed premises and have been operating across the UK for over a decade and there are over 250 established around the country. BIDs are a popular approach which enable a targeted and business led approach to managing the allocation of funds collected through the BID levy. BIDs have the benefit of being locally led, and can be tailored and developed to meet the needs of the locality in which they operate.

A BID can be set up by a council, business rate payer or a person or company whose purpose is to develop the BID area. The 'proposer' of the BID is required to develop a proposal and submit this to the local authority, along with a business plan setting out the size and scope of the BID, and what businesses will be required to contribute. Following this, businesses which will be affected by the proposed levy vote in a ballot to determine whether the scheme goes ahead.

The amount that businesses pay (the BID levy) is calculated by the business rates of the premises within the targeted area in a similar way to the late night levy (LNL) and the money is ring-fenced to use within the BID area. Unlike the LNL, all types of business contribute rather than just those open between 12.00 pm-6.00 am, meaning that BIDs can often raise more revenue than LNL.

Whilst councils will often play a role in BIDs, they are primarily business led with businesses deciding and directing what they want money to be spent on. This could include extra safety, cleaning or environmental measures. Councils do have the power to propose the introduction of a BID, however they still need to go through the ballot process and ultimately any scheme would need the support of business to be successful meaning in some cases BIDs are not always a viable option.

### **Case study Cheltenham**

A LNL was introduced in Cheltenham in 2014 and between its introduction and 2017 raised over £250,000 which was allocated to various projects to improve the late night economy. Projects and work funded by the levy include the purchase of body worn CCTV cameras for taxi marshals and licensed door staff, funding a 'club hosts' trial in partnership with DrinkAware and obtaining Purple Flag accreditation for the town.

In August 2016, Cheltenham adopted its first BID which is set to generate around £440,000 annually through its levy. Although the BID focused on a smaller area of the city,

<sup>16</sup> Home Office (2015) 'Amended guidance on the late night levy'

the significant majority of licensed premises paying the LNL were also subject to the BID levy and therefore were disproportionately affected. In 2017 the council made a decision to remove the LNL given the BID's potential to generate significantly more income and its commitment to continue to fund the existing projects funded by the LNL, where they operated within the BID area.

### Case study Leeds Business Improvement District

Leeds Business Improvement District (LeedsBID), established in 2015 was developed by the city's business community and has been a catalyst for change, leading on inspiring plans, projects and events to deliver its vision to make Leeds city centre an attractive place to live, work, visit and do business.

Representing close to 1,000 businesses and organisations in the city centre (those within the BID area with a rateable value of £60,000 or above), LeedsBID is focused on transforming Leeds city centre working in collaboration to improve experiences and standards for all city users.

Initiatives led by LeedsBID include the introduction of new street teams to improve the welcome and experience for people, the creative use of art, lighting and experiential activities in public spaces and a new programme of events.

LeedsBID has been a lead partner in helping strengthen, improve and highlight the city's growing evening economy, working collaboratively with a range of organisations to secure Purple Flag status. The LeedsBID Street Rangers provide an early morning reactive service to tackle litter from the night before, while the introduction of the Leeds Evening Ambassadors (primarily funded by LeedsBID with Leeds City Council and BACIL (Businesses Against Crime in Leeds)), welcome people in to the city centre on Fridays and Saturdays from early evening through to the early morning. In addition new events and activities have helped to

encourage people into the city for a night out.

More information about LeedsBID can be found on their website: [www.leedsbid.co.uk](http://www.leedsbid.co.uk)

### Early morning restriction orders (EMROs)

An Early Morning Restriction Order may be applied where an area experiences a significant amount of late-night alcohol-related crime and disorder. The order, which can apply to a specific geographical area within the council's district, can restrict all alcohol sales (but not other licensable activities) between midnight and 6.00 am where this is appropriate for the promotion of the licensing objectives. A strict consultation process must be followed before an EMRO can be adopted. Although it was introduced in the Police Reform and Social Responsibility Act 2011, no licensing authority has yet introduced one.

Blackpool Council looked at the introduction of an EMRO to restrict premises in the town centre from selling alcohol between 3.00 am and 6.00 am. After consideration, the Licensing Committee decided that an EMRO would be disproportionate and instead opted to establish a multi-agency Night Time Economy Working Group which could present recommendations to the committee on alternative approaches to addressing violent crime in the town centre.

## Role of councillors

### Licensing committees/sub-committees

Membership of the licensing committee is prescribed within the Act, and should consist of at least 10, but no more 15 councillors. The licensing committee may delegate some of its responsibilities to a licensing sub-committee, however this must consist of three members of the main committee in order for decisions to be made with proper authority. This has been highlighted in recent case law<sup>17</sup> where the decision of a licensing sub-committee in a review hearing was challenged successfully on the basis that the sub-committee was not lawfully constituted as members were not part of the licensing committee. The sub-committee does not need political balance and can also be appointed outside of full council.

The sub-committee's primary role is to consider whether a licence application is likely to undermine one or more of the licensing objectives in the light of any relevant representations that may have been made about it. These considerations will be made at a hearing.

Licensing hearings, which are convened when a sub-committee is required to consider a contested application, must be held within strict timescales which are set out in regulations.

Day-to-day administration is carried out by licensing officers with some authorities opting for shared service arrangements. Licensing teams are commonly located within environmental health, regulatory services or legal services departments.

The Licensing Act 2003 (the Act) is a permissive regime. This means that licences must be granted if they have been made in accordance with statutory requirements and in the absence of any relevant representations or (depending on the type of application), objections.

Councillors may wish to check if arrangements are in place for the grant of non-contested licences to be reported to members on a regular basis, for example by an annual report to the Licensing Committee.

The House of Lords select committee which undertook post-legislative scrutiny of the Act between 2016 and 2017 was critical of licensing committees/sub-committees. The committee felt they had seen and heard about poor examples of practice by licensing committees. They made a number of recommendations in relation to this, the most far reaching being that the functions of licensing committees and sub-committees should be transferred to planning committees. Whilst government did not accept this recommendation they did support recommendations around the training of licensing committee members.

### Training of councillors

No councillor should be permitted to sit on a committee or sub-committee without first having been formally trained.

It is important that training does not simply relate to procedures, but also covers the making of difficult and potentially controversial decisions, as well as the legal parameters within which the committee as a decision-making body may operate. The use of case study material can be helpful to illustrate this.

All training should be formally recorded by the council and require a signature by the councillor. Training should be refreshed at regular intervals for example following changes in legislation.

In addition to in-house training, there are a number of independent training providers, including licensing bodies – the National Association of Licensing Enforcing Officers (NALEO) and the Institute of Licensing (IoL). The IoL is in the process of developing a course outline for a councillor training package.

<sup>17</sup> MuMu Enterprises (Weston) Limited v North Somerset District Council (2014)



## Suggested content of a training course

- background to the Licensing Act
- makeup of local licensed premises
- current industry trends
- licensable activities
- the Licensing Authority
- responsible authorities
- statement of licensing policy
- statutory guidance
- premises licences
- personal licences
- temporary event notices
- club premises certificates
- industry initiatives such as Challenge 21, ID entry schemes, Best Bar None
- enforcement
  - licence reviews
  - other procedures
- making representations
- holding a hearing
  - committee procedure, rules of nature justice, proportionality, Wednesbury principles, and other legislative duties, eg Human Rights Act
  - member's conduct during a licence consultation
- member's conduct at a hearing
- assessing and testing representations
- developing licence conditions
- giving reasons
- appeals
- partnership working with the licensed trade and others

# Role of responsible authorities

## Overview

Responsible authorities (RAs) are statutory bodies which are able to comment on applications made under the Act. They can make representations about the grant, full variation, transfer and review of premises licences as well as those for regulated entertainment which are not exempt, and can also apply for licence reviews in their own right.

### The responsible authorities are:

- the licensing authority itself
- the chief officer of police
- the fire and rescue authority
- the body responsible for enforcing health and safety at work (this may be the Health and Safety Executive for council-run premises)
- the local planning authority
- environmental health
- the body designated by the local authority for the prevention of children from harm (eg the multi-agency safeguarding arrangements – previously local children’s safeguarding board)
- trading standards
- the council’s director of public health (England) or local health boards (Wales)
- with regard to a vessel – the Environment Agency, the Maritime and Coastguard Agency
- Home Office Immigration Enforcement.

## Police

The police are one of the primary partners in managing the licensed economy and will gather considerable information about the operation of premises through their policing of the area. Consequently, the police are generally the most proactive of the responsible authorities in liaising with applicants and licence-holders, making representations about licences and seeking reviews of licences. Some police forces will have a dedicated licensing team and within that a police licensing officer who manages applications for premise licences, monitors compliance and coordinates enforcement activity.

In April 2017, a mandatory requirement was introduced for police forces in England and Wales to begin systematically recording alcohol-related crime. They are required to apply a ‘flag’ to their recorded crime data, for crimes where alcohol is perceived as an aggravating factor. This data is expected to inform future licensing and policy decisions at a local and national level, provided it is of sufficient quality. The police have a key role in managing the night time economy and should usually be the main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the Act may make representations with regards to any of the licensing objectives if they have evidence to support such representations.

A licensing committee must actually consider all relevant representations carefully, including crime numbers and other evidence presented by the police, as this may well include examples that do not relate to the licensable activity: several licensing decisions have been overturned on appeal as a consequence of this.

The partnership with the police extends outside of the licensing process and related enforcement. The police are often key players in partnership schemes such as Pub Watch and Best Bar None, and can also have an interest in exploring the possibility of a late night levy. The statutory guidance to licensing authorities states that PCCs are expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas. It is important to ensure that a licensing authority's engagement is not limited to the local police licensing officer and includes some discussion with the PCC about the licensed economy and how it is managed.

Many authorities have regular briefings from their local police, at ward level or through community safety partnership arrangements.

#### **Police officers have specific powers in the Act in relation to:**

- serving a closure notice on problem premises (either within an area or specific premises) where there is crime, disorder or nuisance
- calling for a review or summary review of a licence
- objecting to the transfer of a premises licence
- objecting to a change of Designated Premises Supervisor (DPS)
- objecting to a personal licence application if the applicant has relevant current convictions or after a licensing authority has decided not to revoke a personal licence
- objecting to a temporary event notice
- exercising powers of entry to licensed premises if they suspect offences under the Act are being committed.

#### **Public health**

One of the primary reasons for including the director of public health (DPH) as a responsible authority is that public health may have access to information that is unavailable to other responsible authorities.

The role of the DPH is to help promote the health and wellbeing of the local populations they serve. This is an expansive remit that influences a wide range of circumstances, including local licensing arrangements. Similarly the licensing regime is concerned with the promotion of the licensing objectives, which collectively seek to protect the quality of life for those who live and work in the vicinity of licensed premises and those who socialise in licensed premises. This focus on the wellbeing of the wider community via licensing is an important addition to public health teams' existing work to promote the wellbeing in their localities.

Public health representations must be assessed in the same way as evidence from any other responsible authority. It can be more challenging for them to make representations as there is no specific health objective, but is entirely possible and a number of public health teams have made successful representations – either in their own right or in support of other responsible authorities.

Public health teams have a particularly important role in shaping SLPs, and in building the evidence base for CIAs or other special policies being considered.

PHE have supported a number of councils to develop practical ways to use health data in licensing work. These have informed PHE's web based resource<sup>18</sup> which brings together nationally available data and materials with local information to support councils to access a range of databases and tools. PHE's resource allows local teams to input their own data to create interactive maps and reports to help them in their role as a responsible authority.

<sup>18</sup> [www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams](http://www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams)

For more information on the role public health can play, PHE and the LGA have published joint guidance which includes useful case studies on how public health teams have usefully contributed to licensing decisions.<sup>19</sup> PHE's website also includes tools to support public health teams to make effective representations.

### **Environmental health**

Environmental health plays a significant role in addressing potential nuisance and safety issues associated with licensed premises, such as music noise, dispersal noise from patrons, intrusive odours and general safety. Environmental health officers (EHOs) will frequently discuss conditions with applicants such as proposed sound control or mitigation measures. EHOs can consider 'public nuisance' in relation to licensed premises, which is a broader and more flexible term than the specific 'statutory nuisance' in relation to unlicensed premises.

Statutory guidance warns against using the Licensing Act when other more specific legislative powers are available. The Health and Safety at Work Act 1974 and food hygiene regulations therefore would be used by EHOs to secure workplace and food safety rather than licensing conditions.

Along with the police, environmental health can object to temporary event notices which other RAs are unable to do.

### **Trading standards**

Weights and measures authorities (trading standards) have a specific duty under the Act to enforce the under-age alcohol sales provisions. They have a specific power to conduct test purchase operations and will often organise age-related product sales training and awareness for businesses.

Trading standards may issue fixed penalty notices following an under-age sale, and issue a notice preventing alcohol sales from taking place for up to seven days following two or more failed test purchases within three months.

Trading standards might also apply for reviews where there is evidence of offences on licensed premises such as copyright infringement, the sale of counterfeit cigarettes or other goods.

### **Fire service**

Although in practise the fire service very seldom make representations, their representations on public safety grounds means licensing sub-committees have to effectively either reject the application or reject the representation.

The Regulatory Reform (Fire Safety) Order 2005 does not allow fire-safety related conditions to be applied to a licence. It can be useful to remind applicants of their duties under the Fire Safety Order, ie that they need to carry out a fire risk assessment and implement findings. This can be included in any guidance the council offers to support the application process as well as setting this out as an expectation in the SLP. Applicants can be signposted to the government's guidance on completing fire risk assessments.<sup>20</sup>

### **Home Office Immigration Enforcement**

Home Office Immigration Enforcement (HOIE) are the most recent addition to the list of responsible authorities following changes brought in by the Immigration Act 2016 which requires all licence holders to have the right to live and work in the UK. HOIE can make representations about the grant, full variation, transfer and review of premises licences for the sale of alcohol and/or late right refreshment, and can apply for licence reviews in their own right. They can also make representations for personal licence applications.

HOIE have a central contact point for anything relating to their role as responsible authority for personal and premises licence applications ([alcohol@homeoffice.gsi.gov.uk](mailto:alcohol@homeoffice.gsi.gov.uk)).

<sup>19</sup> [www.gov.uk/government/publications/public-health-and-the-licensing-act](http://www.gov.uk/government/publications/public-health-and-the-licensing-act)

<sup>20</sup> [www.gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments](http://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments)

### **Licensing authority**

The licensing authority administers and enforces the Act, but they can also make representations about applications or call for reviews. Crucially it must act as a coordination point between the different interests associated with licensable activities and premises.

The statutory 'Section 182' guidance suggests that there should be a separation between the licensing authority officers processing an application and those acting in its role as a responsible authority intending to make representations. This may not always be possible within smaller authorities. Councillors should ensure sufficient resources are in place so the licensing authority can exercise its role to administer and enforce the Act, (including appropriately trained and qualified officers) and to act as a responsible authority.

# Summary of key permissions under the Act

## Premises licences

### Key features

- Can apply to 'any place' (including outdoors).
- Can last indefinitely or for a fixed duration.
- Must name a Designated Premises Supervisor (DPS) in order to allow alcohol sales.
- Subject to public consultation before grant or variation.
- May be reviewed on application by residents/other persons or responsible authorities.

### Application process

A premises licence is required to allow licensable activities to be provided in a specific location.<sup>21</sup> Licences can be granted for an indefinite period, or for a fixed period such as for a music festival in a local park. More than one premises licence can be in force for an area or premises at a time.

To allow public engagement in the process, applicants are required to prominently advertise applications for new or varied licences on the premises for 28 days (10 working days for minor variations). There is a prescribed format for notices that are displayed which need to be at least A4 and printed on pale blue paper. Whilst the LGA has called for the end of the requirement for public notices to be published in a local paper as a way to save businesses money

<sup>21</sup> Some places do not require a licence, eg military establishments and airside at most airports (although the Government have committed to looking at whether the Licensing Act should extend to airside at airports).

this is still a requirement and an application needs to be advertised in a local newspaper (except for minor variations). It is the responsibility of the licensing authority to advertise applications for new licences and full variation applications on its website from the day after they are received.

Every licensing authority must be able to accept electronic applications to comply with the EU Provision of Services Regulations 1990. Where applications come in online, the licensing authority is responsible for sharing them with responsible authorities in a timely manner as set out in regulations. However, in the case of postal applications, applicants themselves must distribute applications to all responsible authorities, licensing authorities application forms should therefore include addresses for responsible authorities.

### There are four key parts to a premises licence application:

- the application fee
- the operating schedule, where the applicant details how they propose to operate and promote the licensing objectives
- a detailed plan of the premises
- the consent of the person designated as the premises supervisor (DPS) if alcohol is to be sold.

Since 2017 personal applicants for premises licences (such as sole traders or partnerships) also have to demonstrate they have a right to work in the UK as part of their application process.

### **Operating schedule**

An operating schedule is an important part of a premises licence (or club premises certificate) setting out how the applicant will promote the licensing objectives. It is good practice for applicants to discuss their operating schedules with officers from the appropriate responsible authorities before an application is submitted so that any potential issues can be identified early on and advice given. There is no rule to prevent ward councillors being involved in these discussions, providing they do not subsequently sit on a licensing sub-committee which considers an application they have been involved in discussing.

### **Making changes to a licensed premises**

Where changes occur, there are provisions for varying a premises licence. A full variation application (similar to the process for the grant of a new licence) is required for significant changes, for example extending the hours during which alcohol may be sold.

A minor variation can only be used for less significant changes such as the removal of outdated or redundant licence conditions, or minor changes to the premises layout. The minor variation process involves a more streamlined 10-day consultation period compared to 28 days for a full variation.

### **Granting a licence**

If no representations are made about a premises licence application during the consultation period, the licence must be granted subject to the mandatory conditions and any conditions consistent with the operating schedule. Where relevant representations are received, a hearing will need to be held to consider these. The next section considers these in more detail.

Once a licence has been granted, a review of a current licence can be called for by anyone. Someone experiencing 'noise' well outside the vicinity can still make a representation, as long as it is about the effect of granting the licence on the promotion of one of the licensing objectives. Reviews are explored in more detail later on.

Premises licences may be suspended if the annual licence fee is not paid. Procedures are laid down as to notices that must be given by the licensing authority before a licence can be suspended, and suspensions last until the outstanding fee is paid.

### **Ways to support businesses**

Westminster, Cheltenham and Cherwell are among a number of licensing authorities offering a cost recovery, pre-application advisory service for business licences. This service collaborates with businesses to advise on the most appropriate, cost-effective and sustainable licence for them.

For new or growing businesses, the licensing process can be particularly complex, costly and difficult to get right the first time. Business licences can stretch the most fragile budgets and therefore investing a proportionate amount of time and money into a pre-application advisory service can result in businesses trading sooner. An additional benefit of this service is that these councils now receive more appropriate, full and accurate licence applications which overall speeds up the time required to grant businesses their licence to trade.

# Temporary event notices

## Key features

- Can apply to ‘any place’.
- Can be held by any individual over the age of 18 whether or not they hold a personal licence.
- May not allow temporary events to last for more than seven days.
- No premises may be used for more than 21 days in total a year under a TEN.
- May be objected to by the police or environmental health.

Unlike licences, carrying out ‘temporary licensable activities’ does not have to be authorised by the licensing authority, instead the person holding an event is required to give notice to the licensing authority in the form of a temporary event notice (TEN).

TENs usually account for the largest number of authorisations or transactions for a licensing authority. They can be used to hold ‘one-off’ licensable events at unlicensed premises where a premises licence, club premises certificate or the presence of a personal licence holder might not be necessary. They can also be used to temporarily extend the hours or activities permitted by existing premises licences or club premises certificates, although there are limitations on the amount of times a premises, and an individual, can use a TEN, depending on whether or not they are a personal licence holder.

Notices can be submitted to the licensing authority online (for example via [www.gov.uk](http://www.gov.uk)) or by post, in which case they will need to be sent by the applicant to the police and environmental health, and acknowledged by the licensing authority.

The key features of TENs are that an individual, rather than a business, will need to make the application as a ‘premises user’. The premises user has the same responsibilities as a Designated Premises Supervisor (DPS) but is not required to be a personal licence holder.

Compared to other types of notices the timeframes for TENs are relatively short – no less than 10 clear working days for a standard TEN and no less than five working days for a late TEN. A late TEN is simply a TEN that is submitted late; again there are restrictions on the amount of times this can be done by an individual or at a premises.

Whilst only environmental health or the police can object to either type of TEN, an objection to a standard TEN could lead to a hearing whereas objections to late TENs (due to the timescales involved) means the TEN cannot be used. This does not always mean the associated event has to be cancelled – for instance, a TEN may seek to allow alcohol to be sold at a school fund-raising event. The event could still take place, but not with the alcohol sales.

The police or environmental health may also intervene by agreeing a modification of the proposed arrangements directly with the proposed premises user. If they send an objection, this may result in the licensing authority imposing conditions on a TEN if there is an existing premises licence or club premises certificate.

As a matter of practice, licensing teams will often notify ward councillors when a TEN has been given, particularly if the premises or event is likely to cause concern locally. The ward councillor cannot however object to a TEN.

Issues frequently arise when a premises user does not give a notice in sufficient time. The Act is very prescriptive and the licensing authority does not have any discretion to override those timescales.

Licensable activities under a TEN may not last for more than seven days at a time, and there must be a 24-hour gap between successive TENs when given by the same premises user. No more than 499 people may be present on the premises at any one time, which includes staff.

The licensing authority’s officers will issue a counter-notice if any of the limits (for example in relation to the number of TENs given in a year) have been exceeded.



The LGA has raised concerns that in many areas these are not being used by the community groups and clubs for whom it was intended, but instead to extend the regular operating hours of premises without the safeguards normally imposed by a licence. TENs are also the area where there is the biggest discrepancy between the fee charged and the costs received by licensing authorities, while also making up a significant administrative volume.

## Club premises certificates

### Key features

- May only be granted to a bona fide non-commercial qualifying club consisting of at least 25 members.
- A DPS is not required.
- The club may be open to members and to guests (not the general public).
- Subject to public consultation before grant or variation.
- May be reviewed on application by residents or other persons, club members or responsible authorities.

'Qualifying' clubs can operate under club premises certificates instead of premises licences. This means, for example, that they are not required to have a designated premises supervisor, and sales of alcohol do not need to be authorised by a personal licence holder.

The club premises certificate authorises the supply of alcohol and regulated entertainment. To be classified as a qualifying club, a number of requirements need to be met which are outlined in the Act. Examples of qualifying clubs are Labour, Conservative and Liberal clubs, the Royal British Legion, other ex-services clubs, working men's clubs, miners' welfare institutions and social and sports clubs.

As with the premises licence, where an application for a club premises certificate has been made lawfully and there have been no representations, the licensing authority must grant the application subject only to the conditions that are consistent with the operating schedule and relevant mandatory conditions. A hearing will be held to consider any relevant representations.

There are various benefits for qualifying clubs. There is technically no sale by retail of alcohol (except to guests of members) as the member owns part of the alcohol stock and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another.

This means that there is no requirement for a personal licence holder or a DPS to authorise the supply of alcohol. The premises are considered private as they are not open to the public which means the police and the licensing authority have more limited powers of entry. They would also be exempt in the case of a Magistrates' court order to close all licensed premises in an area where disorder is happening or expected to happen.

Applications for club premises certificates must be in a specific format and be accompanied by the required fee, plans (if applicable), a copy of the club rules, and a club operating schedule (which is equivalent to an operating schedule). The licensing authority may inspect the premises before an application is considered

A club may apply to a licensing authority to vary a certificate in the same way as a premises licence. Certificates may be suspended for non-payment of fees in the same way as premises licences.

# Personal licences

## Key features

- Applicants must have attended an approved training course.
- Authorities have the power to suspend or revoke a licence following conviction for a relevant offence.
- Licences last indefinitely.
- Applicants must demonstrate they have a right to work in the UK.

A personal licence is granted to an individual to make a sale of alcohol, or to authorise others to make sales of alcohol from licenced premises. Whilst all sales of alcohol must be made by or under the authority of a personal licence holder, not everyone who makes a sale has to hold a personal licence. A personal licence holder will need to give 'meaningful' authorisation for the sale of alcohol by non-licence holders which could mean either by being on the premises, or by written permission from the Designated Premises Supervisor (DPS) or another personal licence holder.

In a similar way to a driving licence, a personal licence is 'portable' and is not attached to a specific premises. Personal licence holders no longer have to apply for a renewal of their licence, meaning it lasts in perpetuity unless it is surrendered by the licence holder, or revoked/suspended by the licensing authority, or a court.

To qualify to be a personal licence holder applicants must be over 18 and hold a licensing qualification that has been accredited by the Secretary of State, the intention being that licence holders are aware of licensing law and the wider social responsibilities attached to the sale of alcohol.

Applicants will also need to prove their right to work in the UK and submit a police disclosure check with their application. If there are relevant current offences (as set out in Schedule 4 to the Act), the police can make a representation against the application on

crime prevention grounds. If the police make a representation then there will be a hearing on the application.

A court can order a licence to be forfeited or suspended for up to six months following a conviction for one of the relevant offences. New powers introduced in 2017 allow licensing authorities to also suspend or revoke personal licences following a conviction for a relevant offence, or if the holder has been required to pay an immigration penalty.

## Role of Designated Premises Supervisor

Each licensed premises must have a DPS, the person named on the premises licence as the individual designated to supervise the premises; they must always be a personal licence holder. The DPS will be the single point of contact for responsible authorities, particularly the police and licensing authority. They also have responsibility to make sure licensable activities are carried out lawfully in the premises, although they are not required to be on the premises at all times.

There can only be one DPS in relation to each premises, although the same personal licence holder could be the DPS for several premises. The DPS may also be the, or one of the, premises licence holders.

It is a breach of a mandatory condition for alcohol to be sold without a DPS being named on the licence. There are routine procedures in place for a DPS to be replaced, for example when changing their job. A DPS may be removed following a licence review; the police may object to an incoming DPS on the grounds that they would undermine the crime prevention objective.

Premises that are run as community facilities such as village halls may apply to remove the requirement to have a DPS, making the management committee collectively responsible for the supervision of alcohol sales instead.

# Representations

Licensing sub-committees will need to meet to consider relevant representations about the likely effect of an application on the promotion of the licensing objectives, unless all parties agree that a hearing is unnecessary.

## What is a 'relevant' representation?

Representations by parties other than RAs, for example individuals or businesses, are not relevant if the licensing authority considers them to be vexatious or frivolous, ie are not serious or there are insufficient grounds for action. Representations can be made in favour of or against an application. Equally, a representation may contain both relevant and irrelevant matters.

Representations must be made in writing within the required time period, and are copied or summarised to the applicant for them to consider. Officers can reject representations that are out of time (outside the 28 day period) or irrelevant, or if they are from persons other than responsible authorities and are considered vexatious or frivolous. Statutory guidance recommends that the benefit of the doubt should be given to those making representations and borderline submissions allowed to be considered by the sub-committee.

In the case of a review, representations should not be repetitious, ie identical or substantially similar to grounds for review already made should not be considered if a reasonable interval has not elapsed since an earlier application or a review (at least 12 months).

### Councillors may make representations:

- in their capacity as a private individual
- as a ward councillor
- on behalf of local residents or organisations.

Representations can be withdrawn in writing at any time up to 24 hours before the start of a hearing, or alternatively at the hearing itself.

Hearings are convened where relevant representations have been made and those issues have not been satisfactorily resolved. In the run up to the hearing it is quite proper and indeed should be encouraged, for applicants, responsible authorities and other persons to discuss issues that may lead to the application being amended, additional conditions agreed and/or the representations being withdrawn. Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by their application before formulating it so that the mediation process may begin before the statutory time limits on hearings (addressed later in this handbook) come into effect following the submission of an application.

# Licence conditions

## Overview

The setting of conditions is one of the most significant ways in which licensing authorities can influence the running of a premises. As well as mandatory conditions which are set out in the Act, authorities can also add 'voluntary' conditions to a licence. Used effectively, this can mean that authorities put in place the elements that are essential to promoting the licensing objectives.

However, poorly designed or inappropriate conditions can have the effect of hampering a premises, preventing it from being financially viable and potentially leaving the community with an empty premises. The general rule is that conditions should be appropriate to the specific premises, necessary and proportionate.

Many licensing authorities publish pools of conditions, which give applicants an idea of the types of conditions that may be imposed. It is recommended that these are published separately from the SLP to allow them to be updated in a more flexible way than the SLP would allow. Whilst pools of conditions are helpful, licensing committees should always avoid imposing these conditions as a matter of course, or as blanket conditions to be applied to every premises. The wording of such conditions should be seen as a template to ensure conditions are tailored to the specific operation of the premises.

Licensing authorities must bear in mind that breach of any licence condition can potentially amount to a criminal offence, punishable by an unlimited fine and/or up to six months' imprisonment. Conditions must therefore be clear, precise and proportionate in order for them to be enforceable.

Applications that do not attract any representations (or where representations have been withdrawn) are granted subject only to conditions consistent with the operating schedule and the relevant mandatory conditions. Officers will draft those conditions under delegated authority in that situation, drawing on their expertise and any pools of model conditions.

However, if there have been representations then licensing authorities have the opportunity to impose or amend/modify conditions on the licence. Like any decision during a licensing hearing, the steps taken to impose conditions must be appropriate to promote the licensing objectives.

A sub-committee should be proactive with conditions and it is always worth considering whether objections could be overcome by conditions. Comments should be invited on proposed conditions before they are imposed. Conditions can be imposed in any case where they are considered 'appropriate'.

The key thing to remember with conditions is that less is more. The premise licence holder will need to be able to easily implement them if they are genuinely to make a difference to how the premises are run. Licences may be issued with just the mandatory conditions.

Licensing authorities should not aim to micro-manage premises through the use of conditions. Premises that appear to need more conditions than usual may have more fundamental problems in terms of management or planned operation.

Many operators will put forward their own conditions when they make an application. This is to be welcomed, but licensing

committees will need to ensure that all of these proposed conditions are genuinely necessary; properly worded so that they are enforceable; and are achievable. These conditions can also be modified or new conditions added.

### Example 1

A poorly-worded condition which is imprecise and difficult to comply with at all times might read:

'Windows and doors must be kept closed'.

A better-worded condition which is more appropriate (addressing the particular concern of the prevention of public nuisance objective) and proportionate (only applying during specific times) might read:

'The Designated Premises Supervisor shall ensure that (apart from access and egress) all external windows and doors are kept closed when live music is played between 10.00 pm and the closing time of the premises on any day.'

### Example 2

An inappropriate condition might read:

'The premises licence holder shall ensure customers use public transport to travel to the premises.'

A better-worded condition might read:

'The premises licence holder shall prominently display signs and notices in the premises promoting the use of public transport to travel to the premises.'

The premises licence holder would be unable to control their customers' action beyond the immediate vicinity of the premises, as stated in the statutory guidance.

Similarly, conditions that relate solely to best practice or management styles are often more effectively addressed by a code of practice on effective management. A number of licensing authorities have adopted this approach and it has proven effective, removing any distracting conditions from the licence and emphasising the crucial importance of those remaining on the licence.

However, there will always be individual cases where a specific condition may be appropriate to include on the actual licence; for instance, serving drinks in polycarbonate or polycarbonate containers may be appropriate where a premises has a history of violence or where broken glass is routinely found on nearby public footpaths. In this example, the conditions would be imposed during a review of the premises.

## Mandatory conditions

There are five mandatory conditions<sup>22</sup> which all licensed premises and club premises must follow.

1. Staff on relevant premises must not carry out, arrange or participate in any irresponsible promotions in relation to the premises. This includes drinking games, encouraging someone to drink as much as possible with or without a time limit; providing free or unlimited alcohol or for a fixed or undetermined fee, including as a prize; using posters that promote or glamorise anti-social behaviour or present the effects of drunkenness in a positive manner.
2. Provide free potable drinking water on request to customers in on-licensed premises.
3. Have in place an age-verification policy and apply it to the sale of all alcohol.

<sup>22</sup> The full details are set out in legislation, which can be found at [www.legislation.gov.uk/ukxi/2014/2440](http://www.legislation.gov.uk/ukxi/2014/2440), with supporting guidance at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/350507/2014-08-29\\_MC\\_Guidance\\_v1\\_0.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350507/2014-08-29_MC_Guidance_v1_0.pdf)

4. Must ensure that the following drinks if sold or supplied for consumption on the premises are available in the following measures:

- beer or cider – half pint
- gin, rum, vodka or whisky – 25ml or 35ml
- still wine in a glass – 125ml.

The availability of these measures must be displayed in a menu, price list, or other printed material available to customers and must be brought to a customer's attention if they do not specify what quantity they want.

5. Not sell alcohol below the cost of duty plus VAT.

## Volunteered conditions

In a premises licence application, the applicant has the opportunity to volunteer conditions, which will be measures that the licenced premises will introduce, above and beyond the mandatory conditions to promote the licensing objectives.

There are some conditions which need to be approached particularly carefully, as the choice of words used could make the difference between something that makes a meaningful difference to the safety and background noise of the area, and something that causes a regulatory burden to business but fails to protect the community.

### Example

There shall be a minimum of four door supervisors employed at the premises (or more if required in writing by the police) from 9.00 pm until 30 minutes after the time for the premises to close on Fridays, Saturdays and any Sunday falling within a bank holiday.

It is not clear if this volunteered condition applies every Friday, every Saturday and any Sunday or only those that are also a bank holiday (in which case there would not be a Saturday or Sunday bank holiday).

These risks exist with all conditions, but experience has shown that they are most acute when it comes to conditions that require the installation of CCTV or the imposition of noise limits. There have been a number of instances where CCTV has been installed at the licensing committee's request, but the quality of the system failed to meet the standards needed for it to be used by the police.

Similarly, a number of noise conditions have been overturned in Magistrates' courts due to wording that required the premises to keep noise levels 'inaudible' – raising questions of audibly by whom, in what location, and failing to take account of the fact that for the most part young people can detect more sounds than older people.

Where conditions concerning noise or CCTV are being imposed, the final wording must have the input of the police or the council's acoustic expert in the environmental health team. This will ensure the conditions meet their purposes, although the licensing officer will need to ensure that they remain intelligible to the DPS, who will not be trained in these technical areas but must understand how to meet them. Again, these sort of conditions need to be proportionate.

### 'Mediating' conditions in advance of a hearing

#### Example 1

Following an application for a late night restaurant, the police make representations about crime and disorder; environmental health make representations about noise control, and local residents make representations about possible late-night noise. The applicant agrees to install CCTV, to include licence conditions to keep windows and doors shut after 9.00 pm, and to close an hour earlier than originally applied. All parties withdraw their representations and no hearing is necessary.

**Example 2**

An off-licence wants to extend its premises into the shop next door. The police's representations about crime prevention measures and trading standards representations about under-age sales have been resolved by the applicant agreeing to include appropriate conditions. However, the residents' association representation about possible anti-social behaviour has not been withdrawn and a hearing is arranged.

**Example 3**

A petrol station submits an application to extend its sales of late-night refreshment until 3.00 am. A number of representations are made and the application is withdrawn.

**Example 4**

A nightclub applies to vary its hours for licensable activities until 6.00 am. Representations are made and the applicant decides that an application to allow closing at 7.00 am would allow customers to use public transport better to get home. As this is applying for longer than the original hours, a new application is needed.

**Example 5**

A nightclub within a cumulative impact area is being refurbished and will need to submit an application to vary its licensing plans and also extend its hours. The applicant meets with officers from various responsible authorities, local residents and ward councillors. New conditions are agreed between all the parties that are included on the operating schedule. If no representations are made the varied licence is granted by officers under delegated authority.

# Hearings and appeals: What to expect

## Purpose of hearings

The purpose of a hearing is to decide whether granting an application would undermine the licensing objectives in the light of any relevant representations, the statutory guidance and the authority's SLP.

Potential issues in terms of an applicant not meeting the licensing objectives should be identified early. Licensing officers should provide pre-application advice and guidance to applicants to help avoid the need for a hearing, this advice could form part of the SLP. In cases where relevant representations are made about either granting or changing a licence, early mediation is encouraged between parties; this can help avoid the need for a hearing.

### Conducting a hearing

Provisions for holding hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 which provide for the various notification requirements, conduct at, and timings of, hearings.

Where specific provisions for the procedure for hearings have not been made, councils are able to set and control their own procedure as long as it is not contrary to the Regulations. The purpose of procedure should always be to enable those with the right to, to appear and advance their point of view and to test the case of their opponents. This will assist the licensing sub-committee to gather evidence and understand relevant issues. Expectations should be clearly documented in a member's Code of Conduct.

Councillors should be aware there may often be an imbalance of expertise between applicants who may be represented by lawyers, and residents (or even representatives from responsible authorities) who do not have the same degree of familiarity with the Act or the licensable activities being proposed. A degree of latitude and discretion may be necessary.

There is a growing body of case law around licensing hearing procedures, but the following should act as a guide to help avoid decisions being challenged.

### Procedural issues

The Act delegates hearings to the licensing committee or sub-committee, and cannot be delegated to officers. They must be held within 20 working days of the end of the consultation period for premises licences and full variation applications.<sup>23</sup> Hearings may be held during normal working hours, and this may be more suitable if all of the parties are available. Hearings during an evening may be more suitable if local residents are unable to attend during the day but run the risk of being more rushed for parties to make their case and for members to reach a reasoned decision.

Regulations set out timescales for the giving of notices of the hearing, and specify that details of the representations should be provided to the applicant in advance. The Local Government Act 1972 requires that agendas should be published at least five clear days before the meeting (although this would not apply to hearings for TENs or for expedited reviews).

<sup>23</sup> Other time-scales apply to other applications.



Where there are no longer any matters of dispute a hearing is usually cancelled. If the licensing committee wants to hold the hearing anyway, it is recommended that the reasons why should be communicated as soon as possible to the applicant/licensee. It should be clear within the scheme of delegation in the SLP who has the authority to dispense with a hearing. Hearings should not be held where all parties agree one is unnecessary.

Licensing officers should prepare a report for committee members in advance of the hearing. Whilst there is no standard format for these reports they should collate and summarise relevant representations.

In some councils the sub-committee may receive a briefing before the start of the hearing. This should be solely confined to procedural matters. The merits of any material or the application before the sub-committee must not be discussed.

### **Who may attend the hearing**

Any party making an application or making a representation can attend the hearing, and may be accompanied by anyone to represent them or give evidence.

A hearing can still take place in the absence of a person making representations although it is recommended it should not take place in the absence of an applicant/licence holder (particularly for a review) unless they have previously indicated otherwise.

If a party has indicated they will attend as required by the regulations but are absent at the stated time, the hearing should be temporarily adjourned to allow officers the opportunity to try and contact the people concerned.

Powers exist for a hearing to be adjourned in the above circumstances. Hearings may be adjourned in the public interest before they start (for example to allow an applicant to arrange legal representation following consideration of the representations). Hearings may be adjourned during the hearing if for example further information is needed in order to reach a decision. However, case law determines that a matter cannot be adjourned indefinitely but, instead, to a specific date.<sup>24</sup>

## **Member conduct**

Members must, at all times, comply with the council's member code of conduct which should set out the standards that members must observe and include:

- treat others with respect
- do not bully or intimidate anyone
- do not compromise the impartiality of an officer
- give reasons for all decisions
- the 'prejudicial interest' concept.

A prejudicial interest is 'one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest'.

### **Appearance of bias**

While third party lobbying of elected members is legitimate and councillors may make representations to the licensing committee on behalf of other persons, it is crucial for the licensing authority and its committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which led to the first Nolan Committee on Standards in Public Life.

<sup>24</sup> R (on the application of Murco Petroleum Limited) v Bristol City Council

Section 25 of the Localism Act 2011 does not prevent councillors from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate. However it is recommended that to avoid an appearance of bias the following advice should be observed.

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing sub-committee must avoid expressing personal opinions prior to the licensing sub-committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Local Government Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no

member of the sub-committee is bound by any party whip.

- Councillors must not be members of the licensing sub-committee if they are involved in campaigning about the particular application.
- Other members (ie those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as bias/pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with. Such guidance could include a definition of what is viewed as excessive, eg attempting to obtain a commitment as to how the member might vote.
- Councillors must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Member behaviour is also governed by the code of conduct which members should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities.
- Members should consult their monitoring officers for further advice where necessary.

A well-defined policy and comprehensive scheme of delegation to officers can go a long way to avoiding many of these pitfalls, although, of course, members must retain full oversight of how the scheme is working.

There are no rules preventing councillors from sitting on applications within their own wards, although some authorities adopt their own rules to avoid this. Members may make representations about applications,

make representations on behalf of others, or appear at a hearing if asked to do so by another person who has made a representation (subject to the rules above).

### **Principles of good practice**

Ultimately, there are three objectives in holding a hearing; to conduct it fairly, so that each party, regardless of the outcome, would ultimately accept that they have had a fair opportunity to put forward their case; to grant a licence (if appropriate) that promotes the licensing objectives; and also to assist in producing well-reasoned, balanced, and proportionate decisions which will withstand the scrutiny of an appeal.

Procedures should be published before the hearing and reiterated at the outset of a hearing. The chair (who may be elected at the start of the hearing) also has the role of ensuring members have read and understood papers. During a hearing (within the boundaries of fairness), needless formality should be avoided, the meeting should proceed as a discussion, and there should be a dialogue with the chair who is keeping order. The cross-examination of parties at the hearing (the repeated questioning of a person on the same point) should be avoided.<sup>25</sup>

Time limits can be a useful way of managing the hearing, but must be sufficient to allow an applicant or their representative to effectively put their case forward. The practise of allowing a limited amount of time, for example five minutes, for each party to address the sub-committee should be discouraged in all apart from exceptional cases such as where there are a very large number of people wishing to address the sub-committee. Parties must also have adequate time to respond to submissions or questions.

Members must take into account anything relevant, and use this to make judgements or inferences, about potential harm and what is necessary to avoid it. For example they can draw on local knowledge, regardless of whether it would qualify as 'evidence' in a court. However, it is sensible to raise any specific areas of local knowledge for comment by the parties. The committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives.

The committee may accept hearsay evidence, such as when a witness gives evidence of something which they did not personally see or hear. For example, a newspaper report about a fight at the premises or a neighbour's description of dispersal noise from the premises at night. Hearsay is admissible but it inherently carries less weight than the direct evidence of a witness who experienced the events being described.

Many SLPs contain rules about how petitions would be treated by the sub-committee. It may also refer to 'round robin' letters, and how much weight will be attached to those.

Part of the role of the committee is to keep order, which can mean making sure people stick to the point and to 'cut through issues'. Committees also need to ensure fair treatment of witnesses for example preventing them from being interrupted, and ensuring no 'leading questions' are asked on contentious matters. It is good practice to ask open-ended questions and preferably through the chair.

The committee should be proactive with conditions and it is always worth considering whether objections could be overcome by conditions. Comments should be invited on proposed conditions before they are imposed.

<sup>25</sup> Regulation 23, Licensing Act 2003 (Hearing) Regulations 2005 states: 'A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.'

Members should not express a view on merits before giving decisions. There is a duty to behave impartially so members should not make up their mind until the end, nor appear to do so. Merits of the case should not be discussed with the press or residents or any of the parties to the hearing. If this does happen, disqualification from the hearing should be considered.

This also applies to the time leading up to the hearing. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any member with a 'closed mind' on any application should be disqualified from sitting on the Licensing Committee which considers that application.

The sub-committee has up to five working days after the end of the hearing to make its decision and give its reasons. Sometimes this additional time is useful to fully consider the representations and the application in more depth.

### **Late representations and evidence**

Representations can be supported with any other relevant material, and can be provided at any time up to 24 hours before the hearing. If material is provided at the hearing, it must be with the consent of all the parties, to avoid a party being ambushed with material they might not be able to respond to.

It is up to the committee's discretion whether to allow late evidence. You may want to consider:

- length, content, complexity and impact of the document
- explanation for any delay
- prejudice to other parties
- whether an adjournment (even to later the same day) would assist the parties to assess the material.

### **Decision making**

Licensing hearings are administrative in nature – neither party has a burden of proof – but the procedures may be slightly different to the usual arrangements for other council committee meetings. The rules of natural justice apply, ie a party must know the case against them; anyone affected by a decision has a right to be heard; and no one should be a judge in his own cause.

All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner. Licensing applications must all be considered on the basis of whether they promote the four licensing objectives as incorporated in the SLP. Each application must be considered on its own merits and whilst consistency is important similar applications may be decided in different ways.

Decisions must accord with the Wednesbury<sup>26</sup> principle of reasonableness.

Wednesbury principle

'[A decision] So outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'

Wednesbury criteria

- in making the decision, the sub-committee took into account factors that ought not to have been taken into account, or
- the sub-committee failed to take into account factors that ought to have been taken into account, or
- the decision was so unreasonable that no reasonable authority would ever consider imposing it.

<sup>26</sup> Associated Provincial Picture Houses Ltd. v Wednesbury Corporation' [1948] 1 KB 223

In reaching their decisions under the Act, the Licensing Committee must have regard to all relevant considerations including (but not limited to):

- the relevant statutory provisions
- relevant statutory guidance issued under Section 182 of the Act
- the SLP
- the licensing objectives
- the material facts based on the relevant evidence presented and representations received
- the individual merits of each case
- the public interest.

The sub-committee must also ensure decisions are compatible with the Human Rights Act 1998, and take account of the council's wider duties to prevent crime under the Crime and Disorder Act 1998 and to promote equalities under the Equalities Act 2010.

The sub-committee can either grant or refuse a licence application where it is appropriate to do so for the promotion of the licensing objectives, and in accordance with its SLP (unless there are good reasons to depart from the SLP). It may impose additional conditions if it is appropriate to do so, and those conditions should be appropriate to those issues raised in representations or volunteered by the applicant.

### **Giving reasons**

Formulating effective reasons for any decision is vital. The sub-committee will need to make clear to parties why they have reached a decision, not just what the decision is. Reasons do not have to be lengthy (see below) but must deal with the main issues: it is important to explain any findings of fact which were necessary to reach the decision. This ensures that a court can judge whether the decision was correctly made.

### **Case law – full and detailed reasons**

Strong reasons are important if an appeal is made. The fuller and clearer the reasons, the more weight they are likely to carry. The Hope and Glory<sup>27</sup> case is helpful here:

'Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on.

'In a sense questions of fact, they are not question of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location... (this) is essentially a matter of judgment rather than a matter of pure fact.'

Reasons must also refer to all representations – including referring back to the officer report. A useful structure to follow is:

- summarise key points from the evidence heard
- explain why a particular approach was taken rather than others, ie why some conditions might or might not have been appropriate
- refer to policy, guidance and licensing objectives as applicable.

If the sub-committee has departed from the SLP or the statutory guidance, there should be good, cogent reasons for this and these should be clearly stated. (For example, the statutory guidance advises that shops and supermarkets should be allowed to sell alcohol during the same times as other goods in the premises. A sub-committee may find it appropriate to limit alcohol sales to particular times to avoid the risk of sales to under-age people or street drinkers.)

<sup>27</sup> R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others (2011) EWCA Civ 312

Many licensing authorities have standard templates in which to record decisions and reasons. The decision notice also often serves as the minutes of the sub-committee and is retained as a public record.

### **Examples of reasons**

Reasons should articulate which party's evidence was preferred and why. If for example a party provided inconsistent or vague evidence, the decision notice should say so and make reference to that being the reason that their evidence was not preferred over that of other parties present during the hearing who were more precise and consistent in their submissions.

Rather than just saying a condition has been imposed 'to promote the crime prevention licensing objective', they should also articulate how it would do so and why it is appropriate to impose the condition for example:

'The condition imposed requiring CCTV to be installed is considered appropriate to promote the prevention of crime and disorder as the presence of CCTV will deter people from engaging in criminal or disorderly behaviour and assist in providing evidence to the police of those who have been involved in such behaviour so that appropriate action can be taken against them.'

Other examples could include:

'The condition requiring self-closing devices to be fitted to the external doors of the premises is considered appropriate to promote the prevention of public nuisance as this will help to minimise noise breaking out from the premises when people enter or leave the building.'

## **Roles**

### **The role of the chair of the licensing committee/sub-committee**

The role of the chair is not explicitly referred to in the Act or the Section 182 guidance. However it can be helpful to clearly set out expectations of the role of the chair.

Ultimately, the chair is responsible for oversight of the conduct of hearings and make sure they are carried out properly, this includes ensuring that all relevant matters are discussed and that effective decisions are made. The chair is also responsible for deciding whether any individual councillors should be prohibited from sitting on the committee, for example where there is a conflict of interest.

Before a meeting begins, the chair should ensure members have read and understood the papers. At the beginning of a hearing, the chair should introduce members of the (sub) committee and the council officers and ask others present to introduce themselves.

The chair should explain procedures that are intending to be followed, including a maximum period of time each party will be allowed in which to present their case if deemed necessary. The chair should also ensure procedures are followed throughout the hearing.

Following this, the chair should then ask the licensing officer to outline the background to the case, with each party then asked to confirm that this summary is correct. It is the responsibility of the chair to make sure that issues raised in relation to the case are considered at the hearing.

The chair may ask the licensing officer to clarify factual matters as and when they arise and also where necessary seek advice from the legal advisor or governance officer.

Ultimately, the chair should ensure the (sub) committee reach a decision that is based on criteria set out in the Licensing Act and that clear reasons for this decision are provided.

### **The role of the legal adviser**

The legal adviser's role is to guide and provide advice to the sub-committee, whether or not it is requested, for example:

- questions of law – interpreting any legislation
- matters of practice/procedure
- admissibility of evidence

- range of options available to the committee
- any relevant higher court decisions
- drafting and formulation of conditions
- what the Section 182 guidance says.

The advisor may not take part in findings of fact or decision making, and members should not invite views. Legal advisors have an important but limited role to assist in the formulation and recording of reasons, but not the underlying decision. The legal advisor should advise the committee on the law and, where necessary, steer the committee procedurally to ensure that matters progress fairly and impartially. It is therefore important for legal advisors to receive appropriate training before sitting on a licensing committee or sub-committee as they play an important role and can help ensure consistency.

It is recommended that should any legal advice be given that was not raised during the hearing it should be repeated to the parties before a decision is announced so that any contrary arguments to be taken into account can be made.

### **The role of the licensing officer**

The licensing officer is responsible for preparing a report in advance of the hearing, which should collate and summarise representations. The licensing officer should make a judgement around whether representations are frivolous or vexatious. Practice varies between licensing authorities as to the extent and content of the officer report, and the degree of intervention the licensing officer can have at the hearing. However, the professionalism and expertise of the officers should be recognised and they may be able to help in clarifying matters that arise during the course of the hearing that are not set out in the report or the representations.

Following the hearing, the licensing officer must transpose conditions onto the licence. These will include mandatory conditions, any 'conditions consistent with the operating schedule', and any other conditions imposed at the hearing. The key point here is that these conditions need to be enforceable.

If a licensing officer has made representations on behalf of the licensing authority as a responsible authority they should be treated in the same way as other parties to the hearing.

## **What happens if the committee's decision is challenged?**

### **Process for appeals**

Applicants and others may complain using the council's corporate complaints system if they think their application has been poorly handled administratively: they may also complain to the Local Government and Social Care Ombudsman if they remain dissatisfied.

However should they wish to challenge the committee's decision, any party to a hearing has the right to appeal to the Magistrates court within 21 days of being notified of the licensing authority's decision.

The licensing authority is always the respondent to an appeal and the parties at the sub-committee hearing who are not appealing effectively become witnesses on behalf of the licensing authority, should they wish to do so.

The licensing authority will almost always be represented at an appeal hearing, whether by the council's legal services, external legal advisors or a lawyer specialising in licensing law. Whilst the cost of external legal representation can be daunting, Magistrates can and will award costs against the council if they are found to have departed unreasonably from their policy; however, they should not award costs if the council has acted reasonably but came to an erroneous decision. This is backed up in case law.

Magistrates are effectively 'in the shoes' of the licensing authority and are therefore bound in the same way by its policy, ie if they depart from it they must also record their reasons for doing so. The Magistrates cannot however 'challenge' or disagree with the licensing authority's policy. This can only be done by way of a judicial review.

A Magistrates court should assess the appeal solely on the basis of the facts and the licensing authority's licensing policy; they will not find against the authority simply on the basis that they disagree with the conclusion – the assessment is on whether the authority could reasonably and legally reach the conclusion that it did. The key test for the courts is whether the authority's decision was 'wrong'.

As the appeal is a 'hearing de novo' (a fresh hearing) the court may hear evidence of events or changes since the original sub-committee hearing – for example the police may have evidence of further crimes at the premises, or the appellants may have evidence of new, improved operating procedures.

In light of that, there are some very simple steps that licensing authorities can take at each hearing to ensure the authority is in a robust, defensible position if there is an appeal:

- Ensure proper administrative procedure is followed and that all parties are dealt with fairly.
- Avoid any instance of bias or having predetermined the case. If a councillor has campaigned politically on a relevant issue they may ask how the applicant is able to address the particular issue, but must demonstrably show that they consider the response with an open mind.
- Always set out the reasons for decisions. This includes the relevant weight that licensing committee members applied to the evidence presented by different parties; and whether or not they have followed or are departing from the authority's policy. Members may depart from your council policy, but must be clear about your reasons for doing so.

'behind every ground for refusal there have to be adequate reasons, and for those reasons there has to be a proper basis in fact, ie there must be adequate material to substantiate any ground of refusal' *Leisure Inns UK v Perth and Kinross*

It is worth noting that licensing appeals can take a significant length of time to be heard in the Magistrates' courts. Hearings can take months to arrange and premises continue to carry on licensable activities while the appeal process is ongoing.

### **Pre-appeal negotiations**

Negotiations may take place during the period after a sub-committee hearing and an appeal hearing between the appellant and other parties – for example, a premises licence holder may have further discussions with a responsible authority about the way in which they propose to operate the premises. (This is similar to the process following the receipt of representations and prior to the sub-committee hearing).

An agreement may be reached for the operating schedule to be amended or other conditions to be added to the licence and for the appeal to be withdrawn. As the licensing authority is always the respondent to the appeal, it is recommended good practice that the authority's legal advisers or licensing officers consult with the chair and/or sub-committee members and any other party to the appeal about the terms of any possible agreement. The court can then be invited to confirm a consent order agreed between the parties, requiring the licensing authority to issue a licence on the agreed terms, or to remit the appeal back to the sub-committee for its further determination.

### **Councillor presence at an appeal**

Some licensing authorities may wish to call the chair of the licensing committee or relevant sub-committee to give evidence to the court as to why they reached their particular conclusion. Whilst it may be helpful, such reasons should be contained within the committee minutes or determination notice which can be produced in the licensing officers' evidence. It will be a matter of fact in each case how much weight the court puts on a councillor's evidence in this regard, taking into account that the appeal is a new hearing, operating as if the original decision had not been made.



In most cases either the licensing officer will give evidence as to the fact of the sub-committee's determination, or it will be accepted by the court as a matter of public notice.

# Responding to issues at licensed premises

It is good practice for officers and responsible authorities to give licensees early warning of any concerns or issues relating to the licensing objectives that are linked to the premises and to offer advice on the need for improvement.

A graduated approach consisting of advice, warnings, the use of action plans or statutory notices is sometimes appropriate depending on the nature and severity of the concern.

However, where there is a failure to respond to warnings or where concerns are particularly serious licensing authorities can be asked to review a licence. It is important to note that the vast majority of licensed premises are responsible businesses and reviews are relatively rare.<sup>28</sup>

## Reviews

A review functions as a safeguard or 'check and balance' for communities in the case where problems associated with the licensing objectives are occurring once a licence has been granted, or varied.

There are four types of reviews which licensing authorities can use depending on the circumstances relating to the request. These are:

- a standard review
- a summary/expedited review
- a review following a closure order
- a review following a compliance order made under the Immigration Act.

For the purpose of this section the focus will be on the standard review which can relate to the failure to promote licensing objectives, or a breach of conditions.

A responsible authority, residents, businesses or councillors, indeed anyone may seek a review of a premises licence and, in the case of a club premises certificate, that includes the members of the club. This can be done at any point following the grant or variation of a licence or certificate. Home Office figures show that the police are responsible for instigating most reviews, and most relate to the 'crime and disorder' objective.

The review process includes a 28-day consultation process to allow for public engagement. In a similar way to a hearing, any relevant material can be considered by the sub-committee and the party applying for the review has to persuade the sub-committee the licensing objectives are being undermined.

The primary purpose of a review is to act as a deterrent to prevent further breaches. It can also prevent any licensable activities which are causing concern from happening in future

There are a range of options open to a sub-committee:

- to modify or add conditions, including reducing hours
- change management – remove the DPS
- suspend all or any of the licensable activities for up to three months
- revoke the licence.

<sup>28</sup> As of March 2018, only 611 reviews were completed in England and Wales (Home Office: 2018) [www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018](http://www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018)

Any of these steps needs to be shown to be appropriate and proportionate. Clearly revocation is the most serious of these and will need careful consideration. In most cases, reviews result in the modification or addition of conditions to the licence.

In certain circumstances the police have the power to apply to a Magistrate's Court for a Closure Order, these should not be used lightly and should only be sought where necessary to prevent disorder. Following the making of a Closure Order the licensing authority must complete a review of the Premises Licence within 28 days. The Home Office issues separate guidance<sup>29</sup> around police powers to close premises.

### Summary reviews

Summary reviews can be made by the police (a police superintendent or above) where premises are associated with serious crime and/or disorder. This would typically be involving violence or money laundering. The Home Office issues guidance which includes issues to take into consideration.<sup>30</sup>

Summary reviews are fast track reviews within 28 days with the power to impose interim steps within 48 hours of the application pending a full review hearing. Interim steps could be modifying conditions, ceasing the sale of alcohol, removing the DPS or suspending a licence.

These are very much a last resort and not a routine step. Again, the Home Office issues specific guidance around summary reviews and forms are set out in statute.

## Prosecution

Either before or in conjunction with a review officers may also consider using other statutory powers, including commencing a prosecution.

Prosecutions must relate to a specific breach of licence condition or specific offence under the Act with each element of the offence needing to be proved beyond reasonable doubt. Prosecutions can only be commenced by a responsible authority and must be started within 12 months of discovery of the offence.

The purpose of a prosecution is punitive and for licensing offences a review (with the threat of revocation or suspension) can often be more of a deterrent.

Range of options open to the court:

- unlimited fine
- imprisonment for up to six months (or suspended sentence)
- forfeit or suspend a personal licence where the defendant is a personal licence holder.

In practice, a case can take a significant amount of time to come to court – if there are issues with the promotion of the licensing objectives which can't be resolved amicably, then review is likely to be the most appropriate response.

<sup>29</sup> Home Office (2011) 'Guidance on police powers to close premises under the Licensing Act 2003'

<sup>30</sup> [www.gov.uk/government/publications/summary-review-application-for-the-review-of-a-premises-licence-under-section-53a-of-the-licensing-act-2003-premises-associated-with-serious-crime-serious-disorder-or-both](http://www.gov.uk/government/publications/summary-review-application-for-the-review-of-a-premises-licence-under-section-53a-of-the-licensing-act-2003-premises-associated-with-serious-crime-serious-disorder-or-both)

# Glossary

Designated Premises Supervisor (DPS)	A DPS is the person named on the premises licence as the individual designated to supervise the premises.
Operating schedule	An operating schedule sets out how an applicant for a premises licence (or club premises certificate) will promote the licensing objectives.
Responsible authority (RA)	<p>RAs are statutory bodies who need to be notified of every application for a new premises licence, or variation of an existing licence.</p> <p>RAs include the police, fire authority, trading standards, health and safety and environmental health.</p>



**Local Government Association**

18 Smith Square  
London SW1P 3HZ

Telephone 020 7664 3000

Email [info@local.gov.uk](mailto:info@local.gov.uk)

[www.local.gov.uk](http://www.local.gov.uk)

© Local Government Association, July 2019

For a copy in Braille, larger print or audio,  
please contact us on 020 7664 3000.  
We consider requests on an individual basis.



# Supporting Guidance - Pools of Conditions

**The content of this guidance broadly reflects but is not the statutory guidance (or any part of the statutory guidance) issued by the Secretary of State under section 182 of the Licensing Act 2003. This good practice guidance should be viewed as indicative and may be subject to change. Revised statutory guidance issued under section 182 of the Licensing Act 2003 was laid in Parliament on 25 April 2012 and is available on the Home Office website.**

## CORE PRINCIPLES

1. Licensing authorities and other responsible authorities (in considering applications) and applicants for premises licences and clubs premises certificates (in preparing their operating schedules) should consider whether the measures set out below are appropriate to promote the licensing objectives.
2. Any risk assessment to identify appropriate measures should consider the individual circumstances of the premises and the nature of the local area, and take into account a range of factors including:
  - the nature, type and location of the venue;
  - the activities being conducted there and the potential risk which these activities could pose to the local area;
  - the location (including the locality in which the premises are situated and knowledge of any local initiatives); and
  - the anticipated clientele.

**Under no circumstances should licensing authorities regard these conditions as standard conditions to be automatically imposed in all cases.**

3. Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those below, as a step they intend to take to promote the licensing objectives. When measures are incorporated into the licence or certificate, they become enforceable under the law and breach could give rise to prosecution.
4. Licensing authorities should carefully consider conditions to ensure that they are not only appropriate but realistic, practical and achievable, so that they are capable of being met. Failure to comply with conditions attached to a licence or certificate could give rise to a prosecution, in particular, as the provision of unauthorised licensable activities under the 2003 Act, which, on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises. It is also important that conditions which are imprecise or difficult to enforce must be excluded.

## PART 1. CONDITIONS RELATING TO THE PREVENTION OF CRIME AND DISORDER

### RADIO LINKS AND TELEPHONE COMMUNICATIONS

Two-way radio links and telephone communications connecting staff of premises and clubs to local police and other premises can enable rapid responses to situations that may endanger the customers and staff on and around licensed premises. It is recommended that radio links or

telephone communications systems should be considered for licensed premises in city and town centre leisure areas with a high density of premises selling alcohol. These conditions may also be appropriate in other areas. It is recommended that a condition requiring a radio or telephone link to the police should include the following requirements:

- the equipment is kept in working order (when licensable activities are taking place);
- the link is activated, made available to and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public;
- relevant police instructions/directions are complied with where possible; and
- instances of crime or disorder are reported via the radio link by the designated premises supervisor or a responsible member of staff to an agreed police contact point.

## DOOR SUPERVISORS

Conditions relating to the provision of door supervisors and security teams may be valuable in relation to:

- keeping out individuals excluded by court bans or by the licence holder;
- searching those suspected of carrying illegal drugs, or carrying offensive weapons;
- assisting in the implementing of the premises' age verification policy; and
- ensuring that queues outside premises and departure of customers from premises do not undermine the licensing objectives.

Where the presence of door supervisors conducting security activities is to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority, it may also be appropriate for conditions to stipulate:

- That a sufficient number of supervisors be available (possibly requiring both male and female supervisors);
- the displaying of name badges;
- the carrying of proof of registration; and
- where, and at what times, they should be in operation.

Door supervisors also have a role to play in ensuring public safety (see Part 2) and the prevention of public nuisance (see Part 4).



## RESTRICTING ACCESS TO GLASSWARE

Traditional glassware and bottles may be used as weapons or result in accidents and can cause very serious injuries. Conditions can prevent sales of drinks in glass for consumption on the premises. This should be expressed in clear terms and can include the following elements:

- no glassware, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff service away from the bar; or
- no customers carrying glassware shall be admitted to the premises at any time that the premises are open to the public (note: this needs to be carefully worded where off-sales also take place).

In appropriate circumstances, the condition could include exceptions, for example, as follows:

- but bottles containing wine may be given to customers for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

The banning of glass may also be a relevant and appropriate measure to promote public safety (see Part 2).

## ALTERNATIVES TO TRADITIONAL GLASSWARE

Where appropriate, consideration should therefore be given to conditions requiring the use of safer alternatives to prevent crime and disorder, and in the interests of public safety. Location and style of the venue and the activities carried on there are particularly important in assessing whether a condition is appropriate. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of alternatives to traditional glassware may be an appropriate condition during the showing of televised live sporting events, such as international football matches, when there may be high states of excitement and emotion.

## OPEN CONTAINERS NOT TO BE TAKEN FROM THE PREMISES

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. This is lawful where premises are licensed for the sale of alcohol for consumption off the premises. However, consideration should be given to a condition preventing customers from taking alcoholic and other drinks from the premises in open containers (e.g. glasses and opened bottles) for example, by requiring the use of bottle bins on the premises. This may again be appropriate to prevent the use of these containers as offensive weapons, or to prevent consumption of alcohol, in surrounding streets after individuals have left the premises. Restrictions on taking open containers from the premises may also be appropriate measures to prevent public nuisance (see Part 4).

## CCTV

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise location of each camera, the requirement to maintain cameras in working order, to retain recordings for an appropriate period of time and produce images from the system in a required format immediately to the police and local authority. The police should provide individuals conducting risk assessments as part of preparing their operating schedules with advice on the use of CCTV to prevent crime.

## RESTRICTIONS ON DRINKING AREAS

It may be appropriate to restrict the areas of the premises where alcoholic drinks may be consumed after they have been purchased. An example would be at a sports ground where it is appropriate to prevent the consumption of alcohol on the terracing during particular sports events. Conditions should not only specify these areas, but indicate the circumstances and times during which the ban would apply.

Restrictions on drinking areas may also be relevant and appropriate measures to prevent public nuisance (see Part 4).

## CAPACITY LIMITS

Capacity limits are most commonly made a condition of a licence on public safety grounds (see Part 2), but can also be considered for licensed premises or clubs where overcrowding may lead to disorder and violence. If such a condition is appropriate, door supervisors may be required to ensure that the numbers are appropriately controlled (see above).

## PROOF OF AGE CARDS

It is unlawful for persons aged under 18 years to buy or attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent the commission of these criminal offences, the mandatory conditions require licensed premises to ensure that they have in place an age verification policy. This requires the production of age verification (which must meet defined criteria) before alcohol is served to persons who appear to staff at the premises to be under 18 (or other minimum age set by premises).

Such verification must include the individual's photograph, date of birth and a holographic mark e.g. driving licence, passport, military ID. Given the value and importance of such personal documents, and because not everyone aged 18 years or over necessarily has such documents, the Government endorses the use of ID cards which bear the PASS (Proof of Age Standards Scheme) hologram. PASS is the UK's national proof of age accreditation scheme which sets and maintains minimum criteria for proof of age card issuers to meet. The inclusion of the PASS hologram on accredited cards, together with the verification made by card issuers regarding the personal details

of an applicant, gives the retailer the assurance that the holder is of relevant age to buy or be served age-restricted goods. PASS cards are available to people under the age of 18 for other purposes such as access to 15 rated films at cinema theatres so care must be taken to check that the individual is over 18 when attempting to purchase or being served alcohol.

## CRIME PREVENTION NOTICES

It may be appropriate at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. Some premises may be reluctant to voluntarily display such notices for commercial reasons. For example, in certain areas, a condition attached to a premises licence or club premises certificate might require the display of notices at the premises which warn customers about the need to be aware of pickpockets or bag snatchers, and to guard their property. Similarly, it may be appropriate for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism. Consideration could be given to a condition requiring a notice to display the name of a contact for customers if they wish to report concerns.

## DRINKS PROMOTIONS

Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area. This may be unlawful under current law. It is also likely to be unlawful for licensing authorities or the police to promote generalised voluntary schemes or codes of practice in relation to price discounts on alcoholic drinks, 'happy hours' or drinks promotions. The mandatory licensing conditions (see chapter 10 of the statutory guidance) ban defined types of behaviour referred to as 'irresponsible promotions'.

## SIGNAGE

It may be appropriate that the hours at which licensable activities are permitted to take place are displayed on or immediately outside the premises so that it is clear if breaches of these terms are taking place. Similarly, it may be appropriate for any restrictions on the admission of children to be displayed on or immediately outside the premises to deter those who might seek admission in breach of those conditions.

## LARGE CAPACITY VENUES USED EXCLUSIVELY OR PRIMARILY FOR THE "VERTICAL" CONSUMPTION OF ALCOHOL (HVVDs)

Large capacity "vertical drinking" premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises that have exceptionally high capacities, are used primarily or exclusively for the sale and consumption of alcohol, and provide little or no seating for their customers.

Where appropriate, conditions can be attached to licences for these premises which require adherence to:

- a prescribed capacity;

- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of security staff holding the appropriate SIA licence or exemption (see Chapter 10 to control entry for the purpose of compliance with the capacity limit.

## **PART 2. CONDITIONS RELATING TO PUBLIC SAFETY**

The attachment of conditions to a premises licence or club premises certificate will not relieve employers of their duties to comply with other legislation, including the Health and Safety at Work Act 1974 and associated regulations; and, especially, the requirements under the Management of Health and Safety at Work Regulations 1999 and the Regulatory Reform (Fire Safety) Order 2005 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control them. Conditions enforcing these requirements are therefore inappropriate.

From 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. Licensing authorities should note that under article 43 of the Regulatory Reform (Fire Safety) Order 2005 any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order have no effect. This means that licensing authorities should not seek to impose fire safety conditions where the Order applies. See Chapter 2 of the statutory guidance for more detail about the Order or <http://www.communities.gov.uk/fire/firesafety/firesafetylaw/>

### **GENERAL**

Additional matters relating to cinemas and theatres are considered in Part 3. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

In addition, to considering the points made in this Part, those preparing operating schedules or club operating schedules; and licensing authorities and other responsible authorities may consider the following guidance, where relevant:

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904031 11 0 (Entertainment Technology Press – ABTT Publications)
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2

- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through: [www.streetartsnetwork.org.uk/pages/publications.htm](http://www.streetartsnetwork.org.uk/pages/publications.htm) The London District Surveyors Association's "Technical Standards for Places of Public Entertainment" ISBN 0 9531229 2 1

The following British Standards should also be considered:

- BS 5588 Part 6 (regarding places of assembly)
- BS 5588 Part 9 (regarding ventilation and air conditioning systems)
- BS 5588 Part 9 (regarding means of escape for disabled people)
- BS 5839 (fire detection, fire alarm systems and buildings)
- BS 5266 (emergency lighting systems)

**In most premises, therefore, relevant legislation will provide adequately for the safety of the public or club members and guests. However, where this is not the case, consideration might be given to the following conditions.**

#### SAFETY CHECKS

- Safety checks are carried out before the admission of the public.
- Details of such checks are recorded and available to the relevant authorities for inspection.

#### ESCAPE ROUTES

- Exits are not obstructed (including by curtains, hangings or temporary decorations), and accessible via non-slippery and even surfaces, free of trip hazards and clearly identified.
- Where chairs and tables are provided in restaurants and other premises, internal gangways are kept unobstructed.
- All exits doors are easily opened without the use of a key, card, code or similar means.
- Doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept.
- Any removable security fastenings are removed whenever the premises are open to the public or occupied by staff.
- The edges of the treads of steps and stairways are maintained so as to be conspicuous.

#### DISABLED PEOPLE

That adequate arrangements exist to enable the safe evacuation of disabled people in the event of an emergency; and that disabled people on the premises are made aware of those arrangements.

## LIGHTING

- That lighting in areas accessible to the public, members or guests shall be adequate when they are present.
- That emergency lighting functions properly.
- In the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged; and, if the emergency lighting battery has a capacity of three hours, the appropriate period by the end of which the public should have left the premises is one hour.

## CAPACITY LIMITS

- Arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate is not exceeded.
- The licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and be required to inform any authorised person on request.

## ACCESS FOR EMERGENCY VEHICLES

- Access for emergency vehicles is kept clear and free from obstruction.

## FIRST AID

Adequate and appropriate supply of first aid equipment and materials is available on the premises.

If necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.

## TEMPORARY ELECTRICAL INSTALLATIONS

- Temporary electrical wiring and distribution systems are not provided without notification to the licensing authority at least ten days before commencement of the work and/or prior inspection by a suitable qualified electrician.
- Temporary electrical wiring and distribution systems shall comply with the recommendations of BS 7671 or where applicable BS 7909.

- Where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

In relation to the point in the first bullet above, it should be recognised that ten days notice may not be possible where performances are supported by outside technical teams (for example, where temporary electrical installations are made in theatres for television show performances). In such circumstances, the key requirement is that conditions should ensure that temporary electrical installations are only undertaken by competent qualified persons (for example, those employed by the television company).

#### INDOOR SPORTS ENTERTAINMENTS

- If appropriate, a qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature.
- Any ring is constructed by a competent person and/ or inspected by a competent authority.
- At any wrestling or other entertainments of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring.
- At water sports entertainments, staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Executive and Sport England).

#### SPECIAL EFFECTS

The use of special effects in venues being used for regulated entertainment can present significant risks. Special effects or mechanical installations should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff. Further details and guidance are given in Part 3.

#### ALTERATIONS TO THE PREMISES

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence to delete the relevant public safety condition. The applicant will need to propose how they intend to take alternative steps to promote the public safety objective in a new operating schedule reflecting the proposed alteration to the premises.

The application for variation will enable responsible authorities with expertise in safety matters to consider whether the proposal is acceptable.

## OTHER MEASURES

Other measures previously mentioned in relation to the Prevention of Crime and Disorder may also be appropriate to promote public safety. These might include the provision of door supervisors, bottle bans, and requirements to use plastic or toughened glass containers (see Part 1 for further detail).

## **PART 3. THEATRES, CINEMAS, CONCERT HALLS AND SIMILAR PLACES (PROMOTION OF PUBLIC SAFETY)**

In addition to the points in Part 2, there are particular public safety matters which should be considered in connection with theatres and cinemas.

### **PREMISES USED FOR CLOSELY SEATED AUDIENCES**

#### ATTENDANTS

(a) The number of attendants on each floor in a closely seated auditorium should be as set out on the table below:

<b>Number of members of the audience present on a floor</b>	<b>Minimum number of attendants required to be present on that floor</b>
1 – 100	One
101 – 250	Two
251 – 500	Three
501 – 750	Four
751 -1,000	Five
And one additional attendant for each additional 250 persons (or part thereof)	

- (b) Attendants shall not be engaged in duties that would prevent them from promptly discharging their duties in the event of an emergency or require their absence from that floor or auditorium where they are on duty.
- (c) Attendants shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).
- (d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to an authorised person on request.



- (e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.
- (f) A copy of any certificate relating to the design, construction and loading of temporary seating shall be kept available at the premises and shall be shown to an authorised person on request.

## SEATING

Where the potential audience exceeds 250 all seats in the auditorium should be securely fixed to the floor or battened together in lengths of not fewer than four and not more than twelve.

Standing and sitting in gangways etc

- (a) Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.
- (b) Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.
- (c) In no circumstances shall anyone be permitted to-
  - (i) sit in a gangway;
  - (ii) stand or sit in front of an exit; or
  - (iii) stand or sit on a staircase, including landings.

## DRINKS

Except as authorised by the premises licence or club premises certificate, no drinks shall be sold to, or be consumed by, a closely seated audience except in plastic and paper containers.

## BALCONY FRONTS

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

## SPECIAL EFFECTS

Special effects or mechanical installations should be arranged and stored so as to minimise risk to the safety of the audience, the performers and staff.

Specials effects include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators;
- pyrotechnics, including fireworks;
- real flame;

- firearms;
- motor vehicles;
- strobe lighting;
- lasers; and
- explosives and highly flammable substances.

In certain circumstances, it may be appropriate to require that certain special effects are only used with the prior notification of the licensing authority. In these cases, the licensing authority should notify the fire and rescue authority, who will exercise their inspection and enforcement powers under the Regulatory Reform (Fire Safety) Order. Further guidance can be found in the following publications:

- HSE Guide ‘The radiation safety of lasers used for display purposes’ (HS(G)95)
- ‘Smoke and vapour effects used in entertainment’ (HSE Entertainment Sheet No 3);
- ‘Special or visual effects involving explosives or pyrotechnics used in film and television production’ (HSE Entertainment Sheet No 16);
- ‘Electrical safety for entertainers’ (HSE INDG 247)
- ‘Theatre Essentials’ – Guidance booklet produced by the Association of British Theatre Technicians 8

## CEILINGS

Ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person, who will decide when a further inspection is necessary, and a certificate concerning the condition of the ceilings forwarded to the licensing authority.

## PREMISES USED FOR FILM EXHIBITIONS

### ATTENDANTS – PREMISES WITHOUT A STAFF ALERTING SYSTEM

Where the premises are not equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty
1 – 250	Two
And one additional attendant for each additional 250 members of the audience present (or part thereof)	
Where there are more than 150 members of audience in any auditorium or on any floor	At least one attendant shall be present in any auditorium or on any floor

## ATTENDANTS – PREMISES WITH A STAFF ALERTING SYSTEM

(a) Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 – 500	Two	One
501 – 1,000	Three	Two
1001 – 1,500	Four	Four
1,501 or more	Five plus one for every 500 (or part thereof) persons over 2,000 on the premises	Five plus one for every 500 (or part thereof) persons over 2,000 on the premises

(b) Staff shall not be considered as being available to assist in the event of an emergency if they are:

- (i) the holder of the premises licence or the manager on duty at the premises; or
- (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay their response in an emergency situation; or
- (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which they are required to go on being alerted to an emergency situation.

(c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.

(d) The staff alerting system shall be maintained in working order.

## MINIMUM LIGHTING

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film; and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the standards specified in BS CP 1007 (Maintained Lighting for Cinemas).

## **PART 4. CONDITIONS RELATING TO THE PREVENTION OF PUBLIC NUISANCE**

It should be noted that provisions of the Environmental Protection Act 1990, the Noise Act 1996 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from public nuisance, including noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are appropriate for the prevention of public nuisance.

### **HOURS**

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted for the prevention of public nuisance. Licensing authorities are best placed to determine what hours are appropriate. However, the four licensing objectives should be paramount considerations at all times.

Restrictions could be appropriate on the times when certain licensable activities take place even though the premises may be open to the public as such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue. Or the playing of recorded music might only be permitted after a certain time where conditions have been attached to the licence or certificate to ensure that any potential nuisance is satisfactorily prevented.

Restrictions might also be appropriate on the parts of premises that might be used for certain licensable activities at certain times. For example, while the provision of regulated entertainment might be permitted while the premises are open to the public or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time.

In premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to the following conditions.

### **NOISE AND VIBRATION**

In determining which conditions are appropriate, licensing authorities should be aware of the need to avoid disproportionate measures that could deter the holding of events that are valuable to the community, such as live music.

Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. The following conditions may be considered:

Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:

- a simple requirement to keep doors and windows at the premises closed;
- limiting live music to a particular area of the building;
- moving the location and direction of speakers away from external walls or walls that abut private premises;
- installation of acoustic curtains;
- fitting of rubber seals to doorways;
- installation of rubber speaker mounts;
- requiring the licence holder to take measures to ensure that music will not be audible above background level at the nearest noise sensitive location;
- require licence holder to undertake routine monitoring to ensure external levels of music are not excessive and take action where appropriate;
- noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful);
- prominent, clear and legible notices to be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- the placing of refuse – such as bottles – into receptacles outside the premises to take place at times that will minimise the disturbance to nearby properties.

## NOXIOUS SMELLS

Noxious smells from the premises are not permitted to cause a nuisance to nearby properties; and the premises are properly vented.

## LIGHT POLLUTION

Flashing or particularly bright lights at the premises do not cause a nuisance to nearby properties. Any such condition needs to be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places.

## OTHER MEASURES

Other measures previously mentioned in relation to the crime prevention objective may also be relevant as appropriate to prevent public nuisance. These might include the provision of door supervisors, open containers not to be taken from the premises, and restrictions on drinking areas (see Part 1 for further detail).

## **PART 5. CONDITIONS RELATING TO THE PROTECTION OF CHILDREN FROM HARM**

An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely. This would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm while on the premises.

### ACCESS FOR CHILDREN TO LICENSED PREMISES – IN GENERAL

The 2003 Act prohibits unaccompanied children from premises that are exclusively or primarily used for the supply of alcohol for consumption on the premises. Additional restrictions on the access of children under 18 to premises where licensable activities are being carried on should be made where they are appropriate to protect children from harm. Precise policy and details will be a matter for individual licensing authorities.

It is recommended (unless there are circumstances justifying the contrary) that in relation to:

- premises with known associations (having been presented with evidence) with or likely to give rise to: heavy or binge or underage drinking;
- drugs, significant gambling, or any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature, there should be a strong presumption against permitting any access at all for children under 18 years;
- premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time.

Applicants wishing to allow access under the above circumstances should, when preparing new operating schedules or club operating schedules or variations of those schedules:

- explain their reasons; and
- outline in detail the steps that they intend to take to protect children from harm on such premises.

In any other case, it is recommended that, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children, subject to the terms of the 2003 Act.

#### AGE RESTRICTIONS – SPECIFIC

Whilst it may be appropriate to allow children unrestricted access at particular times and when certain activities are not taking place, licensing authorities will need to consider:

- The hours in a day during which age restrictions should and should not apply. For example, the fact that adult entertainment may be presented at premises after 8.00pm does not mean that it would be appropriate to impose age restrictions for earlier parts of the day.
- Types of event or activity that are unlikely to require age restrictions, for example:
  - family entertainment; or
  - alcohol free events for young age groups, such as under 18s dances,
- Types of event or activity which give rise to a more acute need for age restrictions than normal, for example: during “Happy Hours” or drinks promotions;

#### AGE RESTRICTIONS – CINEMAS

The British Board of Film Classification classifies films in accordance with its published Guidelines, which are based on research into public opinion and professional advice. It is therefore recommended that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role.

Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

Licensing authorities should be aware that the BBFC currently classifies films in the following way:

- U Universal – suitable for audiences aged four years and over
- PG – Parental Guidance. Some scenes may be unsuitable for young children.
- 12A – Suitable for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
- 15 – Suitable for viewing by persons aged 15 years and over.
- 18 – Suitable for viewing by persons aged 18 years and over.

- R18 - To be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to adults of not less than 18 years.

Licensing authorities should note that these classifications may be subject to occasional change and consult the BBFC's website at [www.bbfc.co.uk](http://www.bbfc.co.uk) before applying relevant conditions. In addition to the mandatory condition imposed by section 20, conditions restricting the admission of children to film exhibitions should include that:

- where the licensing authority itself is to make recommendations on the admission of children to films, the cinema or venue operator must submit any film to the authority that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it so that the premises licence holder is able to adhere to any age restrictions then imposed;
- immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film;
- when a licensing authority has made a recommendation on the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer.

Such a condition might be expressed in the following terms:

“Where a programme includes a film recommended by the licensing authority as falling into an age restrictive category no person appearing to be under the age specified shall be admitted to any part of the programme; where a programme includes a film recommended by the licensing authority as falling into a category requiring any persons under a specified age to be accompanied by an adult no person appearing to be under the age specified shall be admitted to any part of the programme unaccompanied by an adult, and the licence holder shall display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements. For example:

**Persons under the age of [insert Appropriate age] cannot be admitted to any part of the programme**

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction. This condition does not apply to members of staff under the relevant age while on-duty provided that the prior written consent of the person's parent or legal guardian has first been obtained.”



## THEATRES

The admission of children to theatres, as with other licensed premises, is not expected to be restricted normally unless it is appropriate to promote the protection of children from harm. However, theatres may be the venue for a wide range of activities. The admission of children to the performance of a play should normally be left to the discretion of the licence holder and no condition restricting the access of children to plays should be attached. However, theatres may also present entertainment including, for example, variety shows, incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be appropriate. Entertainment may also be presented at theatres specifically for children (see below). Licensing authorities are also expected to consider whether a condition should be attached to a premises licence which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of children during any emergency (See Part 3).

## PERFORMANCES ESPECIALLY FOR CHILDREN

Where performances are presented especially for unaccompanied children in theatres and cinemas, licensing authorities will also wish to consider conditions to specify that:

- an attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

Licensing authorities should also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

## CHILDREN IN PERFORMANCES

There are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968 as amended prescribe requirements for children performing in a show. Licensing authorities should familiarise themselves with these Regulations and not duplicate any of these requirements. However, if it is appropriate to consider imposing conditions, in addition to these requirements, for the promotion of the protection of children from harm then the licensing authority should consider the matters outlined below.

- **Venue** – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- **Special effects** – it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.

- **Care of children** – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

## THE PORTMAN GROUP CODE OF PRACTICE ON THE NAMING, PACKAGING AND PROMOTION OF ALCOHOLIC DRINKS

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important mechanism in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors. Consideration can be given to attaching conditions to premises licences and club premises certificates that require compliance with the Portman Group's Retailer Alert Bulletins.

## PROOF OF AGE CARDS

Proof of age cards are discussed under Part 1 in connection with the prevention of crime and disorder.