

## **Licensing Act 2003- Consultation over the Gedling Licensing Policy Statement for 2008-2011**

### **Purpose of this Report**

To inform Members of the statutory consultation undertaken by officers on the draft Gedling Licensing Policy statement for 2008-2011 for future adoption by the Full Council.

### **Information**

During the period 23<sup>rd</sup> August to 15<sup>th</sup> November 2007 Gedling Borough Council undertook consultation of its draft Licensing Policy Statement in accordance with the requirement of the Licensing Act 2003 and national guidance.

The following comments were received during the consultation. Officers have viewed the comments in the light of the relevant legislation and national guidance and made changes to the draft Policy Statement which accompanies this report.

### **Nottinghamshire Police**

1. That an appendix be provided which outlines the procedure adopted at hearings before the Licensing Committee or panel. This would assist all parties who have to appear at hearings, since the procedure varies from Authority to Authority. In particular, it would be useful to know how many days before the hearing the Authority expected supporting documentation to be provided for the use of the Committee and other side.

### **Action to be taken to amend the Policy Statement**

The draft Licensing Policy Statement will include the procedure adopted at hearings before the Licensing Committee or Licensing Panel and advice on timescales for the submission of documentation for a hearing.

2. In relation to TENs at 9.36, it would be useful to add a further sentence which makes it clear that if the applicant does not serve the application upon the Police at all, it is invalid and the event unlicensed.

### **Action to be taken to amend the Policy Statement**

The draft Licensing Policy Statement presently states, "Premises users are also encouraged to serve Temporary Event Notices on the police **at the same time** as they serve the Licensing Authority."

A sentence will be added stating, "Premises users are required to send a Temporary Event Notice to both the Licensing Authority and Police as part of the notification process. Where the Licensing Authority and/or the Police are not sent notification the notification is invalid and the temporary event is unlicensed."

### **The British Beer & Pub Association**

1. The British Beer & Pub Association (BBPA) welcomes the positive approach to the licensing of the sale of alcohol and the provision of public entertainment. The draft policy has also recognised one of the key principles of the Licensing Act 2003, namely that each application must be treated on its own merits (Para 8.2).

#### Action to be taken to amend the Policy Statement

No action necessary.

2. The Council also recognises in 2.5 that it cannot attach conditions unless they are either volunteered by the applicant or are determined by the licensing authority following representations being upheld from responsible authorities or interested parties.

#### Action to be taken to amend the Policy Statement

No action necessary.

3. Duplication

We believe that paragraph 7.7 is in need of greater clarification as there may be good reasons why a licensing application has been made first or they are running at the same time. We accept the policy does state there must be a valid reason but surely that suggests the application would not be dealt with without one?

#### Action to be taken to amend the Policy Statement

Amend Para 7.7 to read, "Generally, the Authority will expect an applicant to have obtained the appropriate planning permission before making their licensing application. The Authority however recognises that there may be valid reasons why a licensing application has been made first or at the same time as planning permission."

4. Risk Assessments

The Association is very much in favour of the use of risk assessments, but the provision of a risk assessment to support an application is not a requirement under the Licensing Act 2003. Therefore references in 9.1, 9.10(x) and 10.9 where risk assessments are expected should be

amended so as to be a recommended practice rather than a requirement.

Action to be taken to amend the Policy Statement

In Para 9.1, substitute, “encouraged” for “expected” in point 2 relating to risk assessment.

In Policy APP 1, Para 9.10x remove, “having undertaken a risk assessment process.”

In Para 10.9 change, “expected” to, “encouraged” and in the second sentence change, “These risk assessments should” to, “These risk assessments can”.

5. Plans(9.6)

We would expect to see some flexibility with regard to the scale of plans while showing the location of the CCTV cameras would also go further than the Regulation although it may be that applicants may wish to show them for illustrative purposes.

Action to be taken to amend the Policy Statement

No changes required. The practice of licensing staff towards the scale size of submitted plans and marking the location of location of any CCTV cameras, monitors and recording equipment has been accommodating in the first three years of operation. The use of the word, “should” in Para 9.7 for both plan scales and plans showing the positions of location of any CCTV cameras, monitors and recording equipment gives discretion in both matters. Technically however regulations do prescribe the scale of plans with applications.

6. Operating schedules

In 9.10 Policy: APP 1 (viii) there is no requirement to show the extent of seating available. The Regulations merely state the plans shall show fixed structures which may impact on the ability to use exits.

Action to be taken to amend the Policy Statement

Remove point Policy APP 1 (viii) in Para 9.10.

7. Premises management

In 9.39 Policy: APP 5 there is an expectation of evidence of effective instruction and training etc which again would go beyond the provisions of the Licensing Act.

Action to be taken to amend the Policy Statement

Remove the line, “being specifically addressed within the Operating Schedule” in 9.39 Policy APP5.

8. Paragraph 9.40 may need further clarification. We would hope that the authority is trying to be helpful here in encouraging applicants to risk assess capacity limits but providing a capacity limit could be construed as a blanket requirement and obviously blanket conditions are prohibited under the Licensing Act.

Action to be taken to amend the Policy Statement

None required. Para 40 is intended to be helpful to applicants concerning capacity management and acknowledges that the capacity of a venue undertaken for other risk based legislation can contribute to the promotion of the licensing objectives without the measures becoming a blanket condition for every licensed business or function.

9. Hours (9.52)

It is understandable that the Authority is looking for clear statements of when premises are going to be open but suggesting that applying for later hours could lead to objections is pre-judging the issue and we would suggest that this reference is deleted as it undermines the principle of treating each application on its own merits.

Action to be taken to amend the Policy Statement

Remove Para 9.52 from the draft Policy Statement. The national guidance issued by the Department for Culture, Media and Sport (Paras 13.40–13.42) require that with regard to licensing hours all Statements of Licensing Policy emphasise the consideration which will be given to the individual merits of an application.

10. The impact of licensed activities

In 10.4 Policy: IMP 1 the Association recognises that the list of matters to be considered to address the licensing objectives are meant as examples and would not be applied in all cases. However, some of the examples (v, vi, vii) given do not easily translate into conditions on licences and would be unenforceable or unnecessary.

Action to be taken to amend the Policy Statement

Delete references to v, vi and vii in 10.4 Policy: IMP 1. The point, “(x) Such other matters as may be relevant to the application.” allows for other relevant matters to be considered concerning impact.

11. The impact of licensed activities

The same comments apply to paragraphs 10.6 and 10.7 where there are references to noise and car parking. Car parking is a planning issue and it is not for the licensing committee to attach car parking conditions. Conditions should be specific and should not seek to “micro-manage” premises.

Action to be taken to amend the Policy Statement

No action required. Para 10.6 does not seek to apply parking conditions.

12. The impact of licensed activities.

We are also concerned that list of measures outlined in 10.10, 10.11, 10.12 and 10.13 could be construed as requirements rather than recommended management practice. Participation in an appropriate Pub Watch Scheme or other such scheme aimed at achieving a safe, secure and social drinking environment e.g. adoption of a minimum pricing policy, participation in a good management scheme, etc.

As a major supporter of National Pubwatch we are very keen that public houses participate in their local Pub Watches, but we are opposed to such participation being a condition of the licence. Pub Watches are voluntary organisations and membership must remain voluntary if they are to be effective. They are also co-operative bodies that must be able to determine their own membership, which would become almost impossible if leaving a Pub Watch would result in a breach of condition. We trust that the policy merely seeks to encourage Pub Watch membership rather than make it a condition of licences.

The licensing authority should **not** seek to encourage licensees to breach competition law by advocating a minimum price for alcoholic drinks. Any agreement of a minimum price would be a clear breach of competition law which would leave operators open to prosecution and a financial penalty of 10% of turnover. Any condition of this nature would clearly be unlawful.

Action to be taken to amend the Policy Statement

Para 10.9 identifies that the list of items in 10.10 (minimising crime and disorder); 10.11 (ensuring public safety); 10.12 (protection of children) and 10.13 (preventing nuisance) are examples for consideration where appropriate and are not requirements to be considered in every case. However the reference to the example of a minimum pricing policy, will be deleted in Para 10.10.

As regards Pub Watch membership the policy seeks to encourage Pub Watch membership amongst the trade rather than make it a condition of all licences.

Para 10.14 additionally makes the effort to advise applicants and their advisors that they can discuss their draft operating schedule before formally submitting it to help ensure it properly addresses all relevant issues that might give rise to concern.

13. The impact of licensed activities

Ensuring Public Safety:

- The preparation and application of appropriate risk assessments.
- The setting and monitoring of occupancy levels for the premises.
- Reasonable facilities, access and egress for people with disabilities.
- Having glassware policies.

There is no blanket requirement within the Licensing Act for applicants to declare occupancy levels on their operating schedules. Separate legislation, (the Regulatory Reform (Fire Safety) Order) requires business owners to conduct risk assessments and does not require all premises to declare occupancy levels. We recognise of course that this would be desirable for certain venues but are concerned that this reference might encourage all licensees to volunteer a limitation which would then become a licence condition.

It would be helpful if this section could include a reference to the following approach outlined in the National Alcohol Strategy on alternatives to glass, namely a risk based, per premises approach.

“The Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries.”

The BBPA has consolidated good practice on combating violence in licensed premises into a guide to risk assessment, to be published shortly. This will be available on our website at [www.beerandpub.com](http://www.beerandpub.com) in due course.

Action to be taken to amend the Policy Statement

The bullet points given relating to public safety in the draft Licencing Policy Statement are meant as examples for consideration where appropriate and are not requirements to be considered in every case.

The bullet point relating to having a glass policy will be amended to read, “Having glassware policies based upon a risk based, per premises approach as advocated in the National Alcohol Strategy.”

14. The impact of licensed activities.

Preventing Nuisance:

- In appropriate cases door supervisors or a manager patrolling nearby streets to assess for themselves whether there is a problem and how best to deal with it.
- Banning people who regularly leave in a noisy fashion and liaising with other premises on such bans.
- Where the premises have a membership scheme, including provisions in the conditions of membership concerning conduct and noise when leaving the premises.

Please see our earlier comments about conditions being used inappropriately to “micro-manage” premises. Certainly having managers patrolling nearby streets or banning noisy customers would go way beyond the requirements of the Licensing Act.

#### Action to be taken to amend the Policy Statement

No changes are considered necessary. Para 10.13 bullet point 7 does include the words, “In appropriate cases” before continuing, “ door supervisors or a manager patrolling nearby streets to assess for themselves whether there is a problem and how best to deal with it.” As an example in a particular case it may be helpful to a licensee to consider this as one means to help prevent noise nuisance. Similarly licensees have the ability to ban persons or incorporate conditions of membership concerning conduct and noise when leaving the premises, and these are options which they may take onboard in particular situations to support the licensing objective of preventing nuisance.

#### 15. General Enforcement Statement

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

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

#### Action to be taken to amend the Policy Statement

The support of the BBPA to the risk based approach to enforcement contained within the draft Licensing Policy Statement is welcomed. References to the two sentences will be incorporated into the document.

#### **Recommendation**

To agree the draft Policy for adoption at Full Council.