

Report to Licensing Act Committee

Subject: Review of the Gedling Statement of Licensing Policy

Date: 16th July 2013

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Purpose of the Report

To inform Members on progress with the production of the amended draft Gedling Statement of Licensing Policy and obtain approval for the Statement to undertake statutory consultation as required by Section 5(3) of the Licensing Act 2003.

Background

The Licensing Act 2003 requires a licensing authority to prepare and publish a statement of its licensing policy every three years (the legislation has been recently amended so that in the future this will be required every five years). The first Gedling Statement of Licensing Policy came into effect in January 2005 and has been reviewed every 3 years in line with the requirements of the Licensing Act 2003.

Within Nottinghamshire all the eight local authorities having responsibilities under the Licensing Act have work closely together through the Nottinghamshire Authorities Licensing Group (NALG) to produce a common basis for their licensing policy statements to be developed from. NALG comprises officers with legal, environmental health and licensing backgrounds. In amending the draft policy document regard has been made to the guidance from central Government.

The production of a common document for licensing involving all the Nottinghamshire licensing authorities has received good comments from local and national businesses in the past as it creates a more practical, sensible, consistent and level playing field for operators. In Nottinghamshire each licensing authority has then taken the common document for customisation to reflect local issues prior to embarking on a period of consultation as required by the legislation.

The legal nature of the document reflects the future function of the policy as the basis for determining applications, which are subject to legal appeal to the Magistrates' Court.

Local authorities are required by the Act to consult with:

- The Chief of police for the licensing authority's area.
- The Fire authority for that area.
- Persons considered by the Licensing Authority to be representative of holders of premises licences and club premises certificates issued for their area.
- Persons considered by the Licensing Authority to be representative of holders of personal licences issued by that authority.
- Other persons considered to be representative of businesses and residents in the area.

All ward Members are being consulted on the draft document and all comments may be made to the Licensing Section.

Proposal

Licensing authorities must have finalised their policy statement draft for consultation purposes; carried out twelve weeks of consultation as advocated by central Government best practice; have undertaken the necessary changes to the document arising from consultation and informed Members of the final licensing policy statement for endorsement by full Council prior to coming into effect in January 2014.

At Appendix 1 is a copy of the existing statement of licensing policy and at Appendix 2 is a copy of the draft amended Gedling Statement of Licensing for consultation.

The significant changes from the existing policy are at within Sections 2 (2.1, 2.2, 2.3 and 2.4), 5 (5.2), 6 (6.1, 6.4, 6.5, 6.24, 6.43, 6.46, 6.52, 6.53 and 6.54) and these reflect changes to the legislation and guidance.

The production and external consultation of the draft amended Gedling Statement of Licensing Policy will ensure that this Authority complies with the requirements of the Licensing Act 2003 concerning policy consultation and national licensing guidance.

Resource Implications

There are no resource implications

Recommendation

Members are asked to note the draft amended Gedling Statement of Licensing Policy at Appendix 2 to the report for the purpose of undertaking the necessary statutory consultation in accordance with Section 5(3) of the Licensing Act 2003.



GEDLING
BOROUGH COUNCIL

STATEMENT OF LICENSING POLICY

Effective from 7th January 2011

FINAL VERSION

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Appendix 1

Pool of Potential Conditions – for guidance only

Date: November 2010 Final Version

1 INTRODUCTION

- 1.1 Gedling Borough Council is a Licensing Authority for the purpose of the Licensing Act 2003. Section 5 of the Act requires all licensing authorities to prepare and publish a Statement of Policy that they propose to apply in exercising their functions under the Act during the three-year period to which the policy applies. The Statement of Policy will last for a maximum of three years, but can be reviewed and revised by the authority at any time.
- 1.2 The Borough of Gedling covers 11998 hectares to the north and east of the City of Nottingham, which is the regional centre for the night-time economy. The Borough includes the commutable suburbs to the City Centre of Arnold, Mapperley, Carlton, Gedling and Netherfield, together with ten rural villages, the largest of which are Ravenshead in the north, Burton Joyce to the east, and the former colliery village of Calverton. The Borough of Gedling also shares boundaries with three other local authorities namely Rushcliffe Borough Council, Newark and Sherwood District Council and Ashfield District Council. Around 112,000 people live in the Borough in total.
- 1.3 Gedling Borough Council welcomes the diversity of leisure and entertainment opportunities available locally and recognises that the licensed leisure and entertainment industry brings cultural and financial benefits to the area and the additional businesses operating in both the daytime and nighttime economy support that industry which contributes to local retail and tourism. However, the Authority also recognises the problems that can be caused if licensed activities are not properly managed and premises well run. Gedling Borough Council believes that good management of the entertainment, alcohol and late night refreshment industries (and of the street environment within which it operates) is essential to the continued success of the Borough and to attracting the wide range of people who want to come here to work, to visit and to live. Gedling Borough Council will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music in the area. Arrangements are in place for the Licensing Act Committee to receive reports on the needs of the local tourist economy, the local employment situation, and the need for new investment and employment where appropriate.
- 1.4 This Policy Statement seeks to establish sensible controls and appropriate

guidance to encourage and further the efforts that are being made by the Council and its partners together with the licensed trade to help the Authority deal with issues that arise from licensable activities.

This will be achieved by:-

- Establishing and building upon best practice within the industry;
- Recognising and facilitating the role of partners and stakeholders;
- Encouraging self-regulation by licensees and managers;
- Providing a clear basis for the determination of licence applications; and
- Supporting related policies and strategies of the District Council.
- An inspection and enforcement regime targeted at premises that present a high risk.

1.5 The Authority is committed to working with its licensing partners and stakeholders in delivering the licensing function. This Policy Statement therefore seeks to provide information on the general approach that the Authority will take in carrying out its licensing functions.

1.6 In preparing and publishing this Policy Statement due regard has been given to the guidance issued by the Secretary of State under section 182 of the Act, and to good practice advice issued by approved government advisory bodies. In particular the Authority has consulted those persons and bodies as required by the guidance and given proper weight to their views. Partnership working between licensing authorities in Nottinghamshire has enhanced the production of this Policy Statement and will help ensure consistency in terms of both policy and enforcement where licensing boundaries meet.

1.7 This Policy Statement should not be regarded or interpreted as indicating that any requirement of law may be overridden; each application will be considered and treated on its own merits. No restrictive controls will be introduced or imposed unless they are felt to be necessary and appropriate..

1.8 There are certain matters which the Authority is prevented from taking into account or from dealing with in a specified way. For example the Authority is not entitled to take the issue of the "need" for further licensed premises into account when determining licence applications. On the other hand the cumulative impact of licensed premises on the promotion of the Licensing Objectives is a matter that can be properly considered by the Authority.

Cumulative impact and related matters are dealt with in section 6 of this Policy Statement. With regard to the sale of alcohol the Government has emphasised that longer licensing hours are important to ensure that concentrations of customers leaving premises simultaneously are avoided. This will be taken into consideration when the Authority determines applications.

- 1.9 Nothing in this Statement of Policy prevents any one person or body applying for a variety of current permissions under the Act. Nor does it override the right of any Responsible Authority or Interested Party to make representations or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

2. THE LICENSING OBJECTIVES

- 2.1 In exercising their functions under the Licensing Act 2003, licensing authorities must have regard to the licensing objectives as set out in section 4 of the Act. The licensing objectives are:
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.
- 2.2 Guidance on the Licensing Objectives is available on the Government's website at: <http://www.culture.gov.uk/>
- 2.3 Licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual club, or business holding the licence, certificate or permission concerned.
- 2.4 Licensing is about the management of licensed premises and activities within the terms of the Act. The terms and conditions attached to various permissions will be focused on matters that are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable

activities and the vicinity of those premises and places. Whether or not incidents can be regarded as being “in the vicinity” of licensed premises or places, is ultimately a matter of fact to be decided by the courts in cases of dispute. In addressing such matters consideration will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

- 2.5 The promotion of the Licensing Objectives is the paramount consideration for the Authority. In the absence of valid representations from responsible authorities or interested parties all applications must be granted subject only to any prescribed mandatory conditions and such other conditions which are consistent with the operating schedule provided by the applicant. Where valid representations are received and maintained the application will normally be determined at a hearing before the Licensing Committee or one of its Panels. The Committee or Panel will then assess whether the application would result in the licensing objectives being undermined to such an extent that the application should be refused or, whether it would be possible to grant the licence subject to such conditions as are felt appropriate by the Authority. However, before conditions can be imposed on a licence as a result of representations received, the Authority must be satisfied that the conditions are both necessary for the promotion of one or more of the licensing objectives, and are proportionate to the matter being addressed. Conditions will be tailored to the size, style, characteristics and activities taking place at the premises concerned. The imposition of standardised conditions is prohibited as being disproportionate and burdensome. It should be noted, however, that the Authority is permitted to establish a pool of potential conditions from which appropriate and proportionate conditions may be drawn. (Attached as Appendix 1 for information).

3. HOW THIS STATEMENT OF POLICY WORKS

- 3.1 The purpose of the Statement of Policy is to:

- provide a clear basis for determining licence applications;
- provide a clear framework for licensing strategies, including the effect known as ‘cumulative impact’;
- support wider strategies and policies of the Council.

- 3.2 The text of this Statement of Policy in **bold type** indicates the **Policies** with *the reason* for each policy shown immediately after *in bold italics*.
- 3.3 This Policy sets out the Authority's expectations in relation to certain matters. Whilst applicants are not obliged to meet these expectations in their Operating Schedules they may find that responsible authorities and interested parties are more likely to raise representations if they do not. This can lead to a delay with the application having to be considered by a Committee/Panel which may then either refuse the application or impose conditions if the application is not found to sufficiently promote the licensing objectives and meet this Policy. On appeal the Court is also obliged to have regard to the terms and requirements of this Policy and can only depart from it if it has good reason.
- 3.4 In this Statement of Policy any reference made to the imposition of conditions refers to conditions imposed in accordance with the requirements of the Act outlined in paragraph 2.5 above. As a general rule the Authority will seek to avoid attaching conditions that duplicate existing legal requirements and obligations imposed by other regimes unless such obligations and requirements fail to adequately address the specific circumstances of the case.

4. STRATEGIC LINKS AND OTHER REGULATORY REGIMES

- 4.1 There is a range of strategic influences and statutory controls which affect the licensing system in terms of policy formulation, administration and enforcement activities. Examples of these strategies can be found in the Section 182 guidance. The Authority will seek to have an active involvement in the development and review of these by ensuring an appropriate exchange of dialogue between the Licensing Authority and other relevant regimes. Such involvement may result in the imposition of conditions and formulation of policies supporting the relevant strategies where appropriate.
- 4.2 The granting of a licence, certificate or provisional statement will not override any requirement of the planning system or vice-versa. The licensing system will provide for the detailed control of operational matters, which are unlikely to be addressed through planning processes. However there will be overlapping issues of interest e.g. disturbance, which will remain material

considerations for planning purposes as well as being relevant in terms of the licensing objectives. Applicants should also ensure that they have due regard to any planning restrictions on the use of premises when applying for licence/certification to avoid any possible enforcement action.

5. DELIVERING LICENSING SERVICES

- 5.1 The Authority will make available guidance and such resources as required by law to enable engagement with the licensing process. Such guidance and resources may be accessed through the Gedling Borough Council web site, (www.gedling.gov.uk), or by contacting the Authority direct.
- 5.2 The Licensing Authority will maintain an impartial role in service delivery and cannot act in favour of one party over another.

6. APPLICATIONS, NOTIFICATIONS AND THEIR CONSIDERATION

- 6.1 The procedure and documentation required for the various applications and notices is prescribed by the Act and Regulations. Further advice on these processes is available on the Council's web site. This section of the policy gives basic guidance on how those applications and notifications will be considered. Failure to comply with the statutory requirements may result in the application or notice being invalid.
- 6.2 **Representations**
- 6.3 Guidance on making a representation is available from the DCMS and a preferred form is available on the Council's Liquor Licensing Policy web page for individuals or groups to make their representations. Responsible Authorities have separately agreed the means by which they will make representation in line with the provisions of the Act.
- 6.4 For a representation to be relevant it should be positively tied or linked by a causal connection to particular premises. Representations received outside the statutory period for making such representations will be invalid and will not be taken into consideration when the application is determined.
- 6.5 It is for the Licensing Authority to determine whether any representation by an

interested party is, on its own merits, vexatious or frivolous. The Authority will determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Whilst the Regulations may allow for further information to be put forward at any subsequent hearing, that material must relate to the initial representation made by the Responsible Authority/Interested Party. It is therefore vitally important that as much detail and evidence as possible is included at the time the representation is made. Representations made without supporting detail and evidence may be viewed as frivolous or vexatious and disregarded.

- 6.6 Where representations are received the characteristics of an area and the impact that the premises may have upon that area will be a fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to it. Conditions will be focused on matters that are within the control of individual licensees and others in possession of relevant authorisations. These matters will centre on the premises being used for licensable activities and the vicinity of those premises. What amounts to the "vicinity" will be a question of fact to be determined in the light of the individual circumstances of the case. Consideration will primarily be given to the direct impact of the licensed activity on those who live, work or are engaged in business or other activities in the area concerned.

6.7 Panel/Committee Hearings

- 6.8 The Act creates a presumption that applications will be granted unless a valid representation is raised. An application will then be determined by the Licensing Committee/Panel unless the issue that led to the representation can be negotiated to an agreed conclusion between the parties.
- 6.9 The Authority considers the effective and responsible management of the premises, the instruction, training and supervision of staff and the adoption of best practice in the leisure industry to be amongst the most important control measures for the achievement of all of the Licensing Objectives.

6.10 Policy 1

The Authority expects to see evidence of the effective and responsible management of the licensed premises, such as examples of instruction, training and supervision of staff and the adoption of best practice used in the leisure industry, being specifically addressed within the Operating Schedule.

REASON: To ensure the promotion of the licensing objectives.

6.11 Licensing law is not the primary mechanism for the general control of the anti-social behaviour of patrons once they have left the vicinity of the licensed premises rather it is part of a holistic approach to the management of the District.

6.12 Where appropriate the Authority will seek to identify mechanisms that are available for addressing the potential impact of anti-social behaviour arising both in respect of the management and operation of licensed premises themselves and that arising once patrons leave the licensed premises. Regard will be had to the Section 182 Guidance in this respect and the following may be employed: to address such behaviour and the potential for cumulative impact

- Planning controls.
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority.
- The provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols.
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly.
- Powers of local authorities to ban the sale of alcohol in premises which are open after 3:00a.m.
- Police enforcement of the general law concerning disorder and antisocial behaviour, including the issuing of fixed penalty notices.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.
- The confiscation of alcohol from adults and children in designated areas.
- Police powers to close down instantly for up to 24 hours any licensed premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises causing a nuisance.
- The power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

- Any other local initiatives that similarly address these problems.

6.13 Policy 2

When preparing or considering applications, applicants, responsible authorities, interested parties and the Licensing Authority shall, where appropriate, take into account the following matters in assessing both the potential for the Licensing Objectives to be undermined and the necessity for, and proportionality of, any conditions which may be offered or imposed on any resulting licence, certificate or permission:

- (i) The nature of the area within which the premises are situated.**
- (ii) The precise nature, type and frequency of the proposed activities.**
- (iii) Any measures proposed by the applicant in the Operating Schedule.**
- (iv) The nature (principally in terms of the age and orderliness) and number of any customers likely to attend the licensed premises.**
- (v) Means of access to and exit from the premises.**
- (vi) Transport provision in the area and the likely means of public or private transport that will be used by customers either arriving or leaving the premises.**
- (vii) Parking provision in the area.**
- (viii) The potential cumulative impact (see below).**
- (ix) Other means and resources available to mitigate any impact.**
- (x) Such other matters as may be relevant to the application.**

REASON: To ensure that all relevant matters are taken into consideration during the application process.

- 6.14** Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower. The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible
- 6.15** Applicants should carefully consider the hours that they will wish to operate for each licensable activity and when to close their premises for the entry of customers and to require them to leave. They should consider each licensable activity separately and carefully, and reflect this in their operating schedule. Shops, stores and supermarkets will normally be permitted to sell alcohol and or late night refreshment anytime when they are open for shopping unless there are good reasons related to the promotion of the

licensing objectives for restricting these hours.

- 6.16 Applicants should consider the benefits of stopping serving alcohol before other licensable activities stop and a suitable time before the premises close and customers must leave. In noise sensitive areas operators should consider ceasing the playing of dance music and switching to quieter, slower tempo music with a less pronounced beat for a period prior to the closure of the premises.
- 6.17 Applicants should also consider making arrangements with local transport operators to provide information to customers to ensure they can access public transport and leave the vicinity of the premises quickly by the most appropriate route.
- 6.18 The Authority is mindful of the responsibilities that licence holders have for preventing anti social behaviour on and within the vicinity of their premises. The Authority must, however, also bear in mind its statutory duty under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the District. Where appropriate conditions will be imposed which reflect local Crime Prevention strategies.
- 6.19 Applicants are expected to have carried out the relevant assessments under other legislation (e.g. fire precautions, health and safety at work, etc) prior to submitting their applications. These assessments should be used to identify particular issues which may need to be addressed in the operating schedule in order to ensure that the objectives will not be undermined. Suggested methods of addressing Policy 2 may be outlined in more detail in any guidance issued by the Responsible Authorities but could include the matters listed below where appropriate.
- 6.20 Examples of recommended management practice to minimise Crime and Disorder:
- Use of CCTV both within and outside the premises.
 - Metal detection and search facilities.
 - Procedures for risk assessing promotions and events such as “happy hours” and plans for minimising such risk.
 - Measures to prevent the use or supply of illegal drugs.

- Employment of licensed door supervisors and other appropriately trained staff.
- Participation in an appropriate Pub Watch Scheme or other such scheme aimed at achieving a safe, secure and social drinking environment e.g. bar tariffs (for all bar price lists to carry a guide of how many units of alcohol each individual drink contains) and recommendations that all licensees, managers or supervisors attend regular MALV meetings or send a representative if they cannot attend.
- The licensee providing a taxi call point, waiting and concierge service for taxi marshalling at the licensed premises.
- Use of measures aimed at ensuring patrons are more relaxed and quieter when leaving the licensed premises e.g. playing quieter music and promoting non-alcoholic drinks towards the end of the event, ensuring good lighting outside the premises, staggering the closing time with regard to nearby licensed premises, etc.

6.21 Examples of recommended management practice to ensure 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.

6.22 Examples of recommended management practice for the protection of children:

- Exclusion from the premises in certain circumstances.
- Implementation of a robust proof of age scheme.

6.23 Examples of recommended management practice for preventing nuisance:

- Keeping doors and windows of licensed premises closed to minimise noise break out.
- Sound limiting devices, or insulation to contain sound and vibration so as to address noise break out not only from music but also, for example, from air handling equipment, generators or patrons.
- With popular premises that attract queues ensuring that the direction of any queue is away from residential accommodation.
- Proper and adequate door supervision.
- Erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors and repeating such requests verbally.
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down.

- Arrangements with licensed taxis or private hire vehicles to take patrons from the premises.
- 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.
- Adequate provisions for dealing with litter/refuse arising from the operation of premises.
- Appropriate times for and methods of dealing with bottle delivery, disposal and collection.
- The licensee providing a help line or contact number for concerned residents.

6.24 In some cases it may be helpful for applicants and/or their advisors to discuss their draft Operating Schedule with representatives of Responsible Authorities, before it is formally submitted. This will help ensure it properly addresses all relevant issues that might give rise to concern.

6.25 Cumulative Impact

6.26 In some areas concentrations of licensed premises exist where the combined effect of all of the premises, causes problems for a wider area and undermines, or potentially undermines, the Licensing Objectives.

6.27 This potential impact on the promotion of the Licensing Objectives by a significant number of licensed premises concentrated in one area is called “cumulative impact”. This should not be confused with the issue of “need” which relates to the commercial demand for licensed premises and cannot be taken into account when determining licensing applications.

6.28 Having consulted those individuals and organisations listed in Section 5(3) of the Licensing Act the Authority is satisfied that there are no areas within the Borough which currently suffer from cumulative impact. However the Authority feels that it is both necessary and appropriate to include an approach to this issue in this Policy.

6.29 Policy 3

Where representations about crime and disorder and/or nuisance are received in respect of applications for premises in a particular area of the Borough a rebuttable presumption will apply that such applications shall be refused. However, this policy only applies to applications of the types listed below and which include the sale or supply of alcohol and/or late night refreshment namely:-

- **New premises licences;**
- **New club premises certificates;**
- **Material variations to existing premises licences/club premises certificates (for example, these may include matters such as increases in capacity or hours);**
- **Late Night Refreshments.**

and in the case of applications for Provisional Statements an indication will be given that any subsequent application for a premises licence/club premises certificate is likely to be refused.

REASON: To ensure that those applications which may add to the levels of crime, disorder and nuisance already being experienced in the area are refused.

6.30 This policy creates a rebuttable presumption that certain types of applications will be refused. The presumption may be rebutted where applicants can demonstrate through the Operating Schedule and, where appropriate, supporting evidence such as risk assessments, that the operation of the premises will not potentially add to the cumulative impact already being experienced.

6.31 Whilst the policy will not be applied inflexibly the circumstances in which the presumption of refusal may be rebutted will need to be exceptional and directly related to the reasons why the policy was adopted. An application is not likely to be classed as exceptional merely on the grounds that the premises have been or will be operated within the terms of its licence or that they are or will be well managed. This is to be expected of any application. An example of the type of application which might be granted could be where

premises are being re-located or act as a direct replacement for others and where the impact is likely to be similar to the original location.

6.32 Policy 3 however does not relieve Responsible Authorities or Interested Parties of the need to make representations before such applications are refused. If no representations are received then the application must be granted in terms consistent with the submitted operating schedule. The Authority will regularly review this Policy to assess its impact.

6.33 Where a provisional statement has been issued by the Authority and the relevant works are completed satisfactorily then any subsequent application for a premises licence must be granted and any objection which could have been raised at the Provisional Statement stage must be disregarded. It is important therefore that if there is potential for new or altered premises to contribute to or cause cumulative impact in any given area that the issue is addressed as soon as possible in the licensing process. For this reason Provisional Statements are included in Policy IMP 3. Whilst applications for Provisional Statements cannot be refused it is considered that such statements could properly be used to indicate that even if the works were satisfactorily completed that the subsequent premises licence application could be refused on the grounds of cumulative impact.

6.34 Responsible Authorities and Interested Parties may still make representations on specific applications concerning cumulative impact even though those applications are not for premises in designated saturation zones. In such circumstances the application may be refused, (though there will be no presumption that this will be the case), and the Authority may then choose to review this Statement of Policy and consult as to whether the particular area should be designated as a saturation zone to which policy IMP3 should apply.

6.35 Policy 4

In cases where Responsible Authorities or Interested Parties seek to establish that an application should be refused on the grounds that it would result in or further contribute to a cumulative impact in an area not designated as a saturation zone, which would undermine one or more of the Licensing Objectives the Local Authority expects that they shall:

- (i) Identify the boundaries of the area from which it is alleged problems are arising;
- (ii) Identify the Licensing Objective(s) which it is alleged will be undermined;
- (iii) Identify the type of licensable activity alleged to be causing the problem (e.g. sale of alcohol, late night refreshment etc)
- (iv) Provide full details and evidence to show the manner and extent to which it is alleged that the Licensing Objective(s) are being, or are at risk of being, undermined in the area;
- (v) Provide evidence to show that the undermining of the objective(s) is caused by the patrons of licensed premises in the area.

REASON: To ensure that objections are neither frivolous nor vexatious and that there is an evidential basis for the Committee to reach a decision.

6.36 Adult Entertainment

- 6.37 The potential for the provision of adult entertainment to impact on the licensing objectives is recognised in the prescribed application form and all applicants are required by the prescribed application form to indicate in their operating schedules whether they intend to provide any such entertainment which may give rise to concerns in respect of children.
- 6.38 The Policing and Crime Act 2009 potentially provides an additional licensing requirement for operators who provide “sexual entertainment venues” to licence them as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. These are essentially premises which provide live entertainment or performances to a live audience which either involve nudity (such as lap or pole dancing establishments) or which are for the purpose of sexually stimulating a member of the audience. The new licensing provisions are adoptive and do not necessarily apply in every Licensing Authority’s district. [Name of Council] has/ has not however adopted those provisions.
- 6.39 Where a business wishes to operate as a sexual entertainment venue it may still need to be licensed under the Licensing Act for the sale of alcohol and the provision of regulated entertainment. The provision of sexual entertainment

will however be regulated solely under the terms of any sex establishment licence which may be granted under the 1982 Act. Transitional provisions will allow for existing sexual entertainment venues and those with applications in progress at the time that the Act was adopted to continue to operate under the terms of any Licensing Act licence which is in force or is subsequently granted until *12 months after the amendment to the adopted resolution takes effect*. On this date all existing conditions on the relevant Licensing Act Licence which relate to sexual entertainment will cease to have effect and the entertainment will be governed by the provisions of the 1982 Act alone. The Licensing Act licence will then continue to regulate the other licensable activities.

6.40 Certain forms of adult entertainment are excluded from requiring sex establishment licences under the Local Government (Miscellaneous Provisions) Act 1982, and these will still be regulated under the terms of the Licensing Act 2003.

6.41 The provision of adult entertainment on premises may mean that access by children will not be permitted during periods when such entertainment is taking place. Where such entertainment is to be provided under the terms of the premises licence or club premises certificate the Authority expects applicants to include arrangements for restricting children from viewing any adult entertainment in their Operating Schedule. The Authority expects licensees to ensure that any age restrictions for shows or entertainment of an adult or sexual nature are properly complied with. In addition it may be appropriate to impose age restrictions for persons working in the premises, and applicants are advised to also consider the wider crime and disorder issues which can be associated with such forms of entertainment such as issues relating to drugs and prostitution.

6.42 Responsible authorities are likely to continue to consider all applications involving adult entertainment very carefully with regard to the promotion of the licensing objectives within the vicinity in which the premises are located.

6.43 **Reviews**

6.44 At any stage following the grant of a premises licence or club premises certificate a Responsible Authority or an Interested Party may ask for a

review. Evidence will however be required to show that a specific concern exists relating to one or more of the licensing objectives.

6.45 Where a review Hearing is held the Licensing Authority has a variety of options that it may take ranging from taking no action at all, to varying conditions or suspending or revoking the licence. The Guidance reminds the Authority that the powers of review are to be used in the interests of the wider community and not that of the individual licence/certificate holder. Whilst the financial circumstances of the licence/certificate holder will be a consideration for the Licensing Authority the promotion of the licensing objectives will be the Authority's primary concern. In some circumstances e.g. the use of premises for the purchase and consumption of alcohol by minors, revocation may be considered an appropriate course of action even in the first instance.

6.46 Personal Licences

6.47 Where an applicant for a personal licence has relevant convictions, a licence will still be granted unless the Chief Officer of Police lodges an objection within the prescribed period that he is satisfied that the granting of the licence would undermine the Licensing Objectives. In such circumstances the application will be considered at a Hearing of the Licensing Panel.

6.48 Policy 5

In determining initial and renewal applications for personal licences where the Chief Officer of Police has lodged an objection notice the Authority will take the following matters into consideration:

- (i) The circumstances in which the offences were committed;**
- (ii) The period that has elapsed since the offence(s) were committed;**
- (iii) Whether the offences reveal a pattern of offending or were a one off occurrence; and**
- (iv) Any mitigating circumstances.**

The Authority will reject the application unless the applicant can show that it is unnecessary to do so in order to promote the Crime Prevention Objective.

REASON: Prevention of crime is both an objective of the Licensing Act

2003 and an important responsibility of the Authority under the Crime and Disorder Act 1998. Granting a licence to a person with relevant convictions will in many cases undermine rather than promote the crime prevention objective.

6.49 Where a Personal Licence holder is convicted of a relevant offence the Court may order that the licence be forfeit. If an applicant is convicted of a relevant offence during the application period and this only comes to light after the licence has been granted or renewed then the Authority must notify the Chief Officer of Police and if an objection notice is lodged within the relevant period a Hearing will be held to determine whether the licence should be revoked.

6.50 Temporary Event Notices

6.51 Whilst the Authority recognises that a Temporary Event Notice may be served at least ten clear working days prior to the commencement of a Permitted Temporary Activity, the current Guidance issued under the Act encourages a locally established preferred period of notice. There is a case for not serving such Notices too early as this could make it difficult for a sensible assessment to be made of the implications of such an event on the Crime and Disorder Objective. The Authority considers that a reasonable period of notice for the service of a Temporary Event Notice is 28 days. Temporary event notices may only be signed by the premises user and not by other persons (e.g. solicitors or other agents) on their behalf. Premises users are also encouraged to serve Temporary Event Notices on the police **at the same time** as they serve the Notice on the Licensing Authority.

7. CHILDREN

7.1 Where there are concerns over the potential for harm to children from licensable activities the Authority recognises the following body as competent to advise on matters relating to the protection of children from harm:

- The Nottinghamshire Safeguarding Children Board.

Applications should therefore be copied to this body in its capacity as a responsible authority

7.2 Examples which may give rise to concerns in respect of children include those:

- Where there have been convictions for serving alcohol to minors
- Where there is a reputation for underage drinking
- Where there is a known association for drug taking or dealing
- Where there is a strong element of gambling on the premises
- Where entertainment of an adult or sexual nature is provided

7.3 Where premises are used for film exhibitions, the Authority will impose the mandatory condition restricting access only to persons who meet the required age limit in line with any certificate granted by the British Board of Film Classification or the Authority itself.

7.4 The Authority expects applicants to include any arrangements for restricting under-age children from viewing age-restricted films in their Operating Schedule. The Authority expects that licensees will ensure that any age restrictions for cinema exhibitions are properly complied with.

7.5 **Policy 6**

Where representations have raised concerns in respect of individual premises and it is felt that access of children should be restricted, the Authority will consider imposing conditions which may include the following:

- (i) **Limitations on the hours when children may be present.**
- (ii) **Age limitations for persons under 18.**
- (iii) **Limitations or exclusion when certain activities are taking place.**
- (iv) **Full exclusion of persons under 18 when certain licensable activities are taking place.**
- (v) **Limitations of access to certain parts of the premises for persons under 18.**
- (vi) **A requirement for adults to be present.**

REASON: To protect children from harm..

8. EQUALITY AND DIVERSITY

- 8.1 Gedling Borough Council recognises that the people it serves have different needs and priorities. The Council is committed to treating all of its customers and staff fairly without discrimination and prejudice and providing equal access to our services, citizen participation and employment and training opportunities. Gedling Borough Council has an Equality Improvement Plan for 2009-2012 ("Towards an Even Fairer Gedling") aimed at providing direction to elected members and staff within the Council. The Authority will continue to work to embody the requirements of the Equality Act 2010 in its Licensing role. Equality Impact Need Assessment (EIAs) are used to ensure that policies, services and procedures do not have an adverse impact on a particular group of people due to their gender, sexuality, religion or belief, race, age, gender identity or because they are disabled people or have caring responsibilities. The EIA for this Licensing Policy is periodically reviewed and the actions arising from it are fed back into future into this organisation's service plan and also help to shape the consultation over future licensing policies.
- 8.2 Gedling Borough Council is committed to implementing and upholding equality and diversity in everything it does. The Council strives to be an effective service provider, community leader and corporate body, and in doing so, recognises the importance of meeting the needs of the diverse mix of communities represented amongst its residents, service users and workforce. In meeting those needs the Council will develop and harness a safe and sustainable community inclusive to all.
- 8.3 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. On request the Council will signpost customers to providers of guidance and information relating to translation services.

9. GENERAL ENFORCEMENT STATEMENT

- 9.1 All decisions, determinations, inspections and enforcement action taken by the Authority will have regard to the relevant provisions of the Licensing Act 2003, national guidance and the enforcement policy of the Council which is produced to the principles of the Enforcement Concordat and the Regulators

Compliance Code

- 9.2 The Authority has established and maintains enforcement protocols with the local police and other relevant enforcement agencies.

10. MONITORING AND REVIEW OF THIS STATEMENT OF POLICY

- 10.1 This Statement of Policy will be reviewed within legislative timescales and as and when appropriate. In preparing the succeeding Statement of Policy regard will be had to data and information collated over the operating period of the current policy together with trends and the outcome of related initiatives from both local sources and nationally issued data and guidance.



Draft
STATEMENT
OF
LICENSING POLICY
Effective from 7th January 2014

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1 INTRODUCTION

- 1.1 Gedling Borough Council is a Licensing Authority for the purpose of the Licensing Act 2003. Section 5 of the Act requires all licensing authorities to prepare and publish a Statement of Policy that they propose to apply in exercising their functions under the Act during the five-year period to which the policy applies. The Statement of Policy will last for a maximum of three years, but can be reviewed and revised by the authority at any time.
- 1.2 The Borough of Gedling covers 11998 hectares to the north and east of the City of Nottingham, which is the regional centre for the night-time economy. The Borough includes the commutable suburbs to the City Centre of Arnold, Mapperley, Carlton, Gedling and Netherfield, together with ten rural villages, the largest of which are Ravenshead in the north, Burton Joyce to the east, and the former colliery village of Calverton. The Borough of Gedling also shares boundaries with three other local authorities namely Rushcliffe Borough Council, Newark and Sherwood District Council and Ashfield District Council. Around 112,000 people live in the Borough in total.
- 1.3 Gedling Borough Council welcomes the diversity of leisure and entertainment opportunities available locally and recognises that the licensed leisure and entertainment industry brings cultural and financial benefits to the area and the additional businesses operating in both the daytime and nighttime economy support that industry which contributes to local retail and tourism. However, the Authority also recognises the problems that can be caused if licensed activities are not properly managed and premises well run. Gedling Borough Council believes that good management of the entertainment, alcohol and late night refreshment industries (and of the street environment within which it operates) is essential to the continued success of the Borough and to attracting the wide range of people who want to come here to work, to visit and to live. Gedling Borough Council will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music in the area. Arrangements are in place for the Licensing Act Committee to receive reports on the needs of the local tourist economy, the local employment situation, and the need for new investment and employment where appropriate.
- 1.4 This Policy Statement seeks to establish sensible controls and appropriate

guidance to encourage and further the efforts that are being made by the Council and its partners together with the licensed trade to help the Authority deal with issues that arise from licensable activities.

This will be achieved by:-

- Establishing and building upon best practice within the industry;
- Recognising and facilitating the role of partners and stakeholders;
- Encouraging self-regulation by licensees and managers;
- Providing a clear basis for the determination of licence applications; and
- Supporting related policies and strategies of the District Council.
- An inspection and enforcement regime targeted at premises that present a high risk.

1.5 The Authority is committed to working with its licensing partners and stakeholders in delivering the licensing function. This Policy Statement therefore seeks to provide information on the general approach that the Authority will take in carrying out its licensing functions.

1.6 In preparing and publishing this Policy Statement due regard has been given to the guidance issued by the Secretary of State under section 182 of the Act, and to good practice advice issued by approved government advisory bodies. In particular the Authority has consulted those persons and bodies as required by the guidance and given proper weight to their views. Partnership working between licensing authorities in Nottinghamshire has enhanced the production of this Policy Statement and will help ensure consistency in terms of both policy and enforcement where licensing boundaries meet.

1.7 This Policy Statement should not be regarded or interpreted as indicating that any requirement of law may be overridden; each application will be considered and treated on its own merits. No restrictive controls will be introduced or imposed unless they are felt to be necessary and appropriate..

1.8 There are certain matters which the Authority is prevented from taking into account or from dealing with in a specified way. For example the Authority is not entitled to take the issue of the “need” for further licensed premises into account when determining licence applications. On the other hand the cumulative impact of licensed premises on the promotion of the Licensing Objectives is a matter that can be properly considered by the Authority.

Cumulative impact and related matters are dealt with in section 6 of this Policy Statement.

- 1.9 Nothing in this Statement of Policy prevents any one person or body applying for a variety of current permissions under the Act. Nor does it override the right of any Responsible Authority, any person or business to make representations or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

2. LICENSING OBJECTIVES AND LICENSABLE ACTIVITIES

- 2.1 In exercising their functions under the Licensing Act 2003, licensing authorities must have regard to the licensing objectives as set out in section 4 of the Act. The licensing objectives are:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

- 2.2 Guidance on the Licensing Objectives is available on the Government's website at: <http://www.homeoffice.gov.uk/drugs/alcohol/>

- 2.3 Licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual club, or business holding the licence, certificate or permission concerned. Licensing is about the management of licensed premises and activities within the terms of the Act

The Act only covers certain "licensable activities" namely:-

- (a) the sale by retail of alcohol
- (b) the supply of alcohol by or on behalf of a club to a member
- (c) the provision of "regulated entertainment" and
- (d) the provision of late night refreshment

The definition of what constitutes "regulated entertainment" is complex and has been (and remains) the subject of Government deregulation. Whilst "regulated entertainment" potentially covers live or recorded music, dancing,

plays, films, and certain types of sporting activity the Act itself provides various exemptions and restrictions on the types of activities which are subject to Licensing. Other legislation such as the Live Music Act 2012 has removed the ability of the Licensing Authority to regulate live music at certain times and in certain circumstances. At the time of writing this Policy, deregulation of certain other forms of regulated entertainment is planned, primarily between 8am and 11pm and where that entertainment takes place before an audience of a prescribed size. It cannot be assumed therefore that a licence is required for all forms of entertainment or, even if a licence is required, that the Licensing Authority will necessarily have the power to impose restrictions or conditions on such entertainment.

- 2.4 Where an activity is licensable the promotion of the Licensing Objectives is the paramount consideration for the Authority. In the absence of valid representations from responsible authorities, other persons or businesses, all applications must be granted subject only to any prescribed mandatory conditions and such other conditions which are consistent with the operating schedule provided by the applicant. Where valid representations are received and maintained the application will normally be determined at a hearing before the Licensing Committee or one of its Panels. The Committee or Panel will then assess whether the application would result in the licensing objectives being undermined to such an extent that the application should be refused or, whether it would be possible to grant the licence subject to such conditions as are felt appropriate by the Authority. Conditions will be tailored to the size, style, characteristics and activities taking place at the premises concerned. Conditions will be focused on matters that are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places. Whether or not incidents can be regarded as being "in the vicinity" of licensed premises or places, is ultimately a matter of fact to be decided by the courts in cases of dispute. In addressing such matters consideration will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. The imposition of standardised conditions is prohibited as being disproportionate and burdensome. It should be noted, however, that the Authority is permitted to establish pools of conditions from which appropriate and proportionate conditions may be drawn. Further details regarding such

conditions can be obtained from the Licensing Team.

3. HOW THIS STATEMENT OF POLICY WORKS

3.1 The purpose of the Statement of Policy is to:

- provide a clear basis for determining licence applications;
- provide a clear framework for licensing strategies, including the effect known as 'cumulative impact';
- support wider strategies and policies of the Council.

3.2 The text of this Statement of Policy in **bold type** indicates the **Policies** with *the reason* for each policy shown immediately after *in bold italics*.

3.3 This Policy sets out the Authority's expectations in relation to certain matters. Whilst applicants are not obliged to meet these expectations in their Operating Schedules they may find that responsible authorities, other persons and businesses are more likely to raise representations if they do not. This can lead to a delay with the application having to be considered by a Committee/Panel which may then either refuse the application or impose conditions if the application is not found to sufficiently promote the licensing objectives and meet this Policy. On appeal the Court is also obliged to have regard to the terms and requirements of this Policy and can only depart from it if it has good reason.

3.4 In this Statement of Policy any reference made to the imposition of conditions refers to conditions imposed in accordance with the requirements of the Act outlined in paragraph 2.5 above.

4. STRATEGIC LINKS AND OTHER REGULATORY REGIMES

4.1 There is a range of strategic influences and statutory controls which affect the licensing system in terms of policy formulation, administration and enforcement activities. Examples of these strategies can be found in the Section 182 guidance. The Authority will seek to have an active involvement in the development and review of these by ensuring an appropriate exchange of dialogue between the Licensing Authority and other relevant regimes. Such involvement may result in the imposition of conditions and formulation of

policies supporting the relevant strategies where appropriate.

- 4.2 The granting of a licence, certificate or provisional statement will not override any requirement of the planning system or vice-versa. The licensing system will provide for the detailed control of operational matters, which are unlikely to be addressed through planning processes. However there will be overlapping issues of interest e.g. disturbance, which will remain material considerations for planning purposes as well as being relevant in terms of the licensing objectives. Applicants should also ensure that they have due regard to any planning restrictions on the use of premises when applying for licence/certification to avoid any possible enforcement action.

5. DELIVERING LICENSING SERVICES

- 5.1 The Authority will make available guidance and such resources as required by law to enable engagement with the licensing process. Such guidance and resources may be accessed through the Gedling Borough Council web site, (www.gedling.gov.uk), or by contacting the Authority direct.
- 5.2 The Licensing Authority will maintain an impartial role in service delivery and cannot act in favour of one party over another. The Licensing Authority may, in certain circumstances, act as a Responsible Authority. However this will only be done in exceptional circumstances and the Licensing Authority will not normally take over the role of other Responsible Authorities or parties.
- 5.3 Details of Responsible Authorities can be found on the Council's website www.gedling.gov.uk

6. APPLICATIONS, NOTIFICATIONS AND THEIR CONSIDERATION

- 6.1 The procedure and documentation required for the various applications and notices is prescribed by the Act and Regulations. Further advice on these processes is available on the Council's web site. This section of the policy gives basic guidance on how those applications and notifications will be considered. Failure to comply with the statutory requirements may result in the application or notice being invalid.

The process of applying for new premises licences and full variations of

current premises licences are dealt with in same way and involve serving the application on all responsible authorities and advertising the application in the prescribed way. If objections are received the matter will be heard by the Licensing Committee of the Council. The fee for such applications depends on the size of the premises. The process of a minor variation to current premises licences are dealt with differently. Minor variations can be applied for to vary times of activities but not to increase the hours when alcohol can be sold. The process can also be used when making minor structural alterations to the premises and to add or remove conditions from the licence. These minor variations should not have a material effect on the way in which the premises are operated and there is one set fee. The granting of a minor variation is determined at officer level after consultation with those responsible authorities affected. If the application is refused the applicant can resort to the full variation process.

6.2 Representations

6.3 Guidance on making a representation is available from the Home Office and a preferred form is available on the Council's Liquor Licensing Policy web page for individuals or groups to make their representations.

6.4 For a representation to be relevant it should be positively tied or linked by a causal connection to particular premises. Representations received outside the statutory period for making such representations will be invalid and will not be taken into consideration when the application is determined. The Licensing Authority also has the power to reject a representation made by someone other than a Responsible Authority if it finds it to be vexatious or frivolous. An example could be where a representation was made solely on the basis that the application would provide competition to an existing trader or where no link was made to any of the licensing objectives

6.5 Where a representation proceeds to a hearing the Hearings Regulations allow for further information to be put forward in support of that representation. However, that material must only relate to the initial representation-and must not add new grounds of objection It is therefore vitally important that as much detail and evidence as possible is included at the time the representation is made. Representations made without supporting detail and evidence may be viewed as frivolous or vexatious and disregarded.

6.6 Where representations are received the characteristics of an area and the impact that the premises may have upon that area will be a fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to it. Conditions will be focused on matters that are within the control of individual licensees and others in possession of relevant authorisations. These matters will centre on the premises being used for licensable activities and the vicinity of those premises. What amounts to the “vicinity” will be a question of fact to be determined in the light of the individual circumstances of the case. Consideration will primarily be given to the direct impact of the licensed activity on those who live, work or are engaged in business or other activities in the area concerned.

6.7 Panel/Committee Hearings

6.8 The Act creates a presumption that applications will be granted unless a valid representation is raised. An application will then be determined by the Licensing Committee/Panel unless the issue that led to the representation can be negotiated to an agreed conclusion between the parties.

6.9 The Authority considers the effective and responsible management of the premises, the instruction, training and supervision of staff and the adoption of best practice in the leisure industry to be amongst the most important control measures for the achievement of all of the Licensing Objectives.

6.10 Policy 1

The Authority expects to see evidence of the effective and responsible management of the licensed premises, such as examples of instruction, training and supervision of staff and the adoption of best practice used in the leisure industry, being specifically addressed within the Operating Schedule.

REASON: To ensure the promotion of the licensing objectives.

6.11 Licensing law is not the primary mechanism for the general control of the anti-social behaviour of patrons once they have left the vicinity of the licensed premises rather it is part of a holistic approach to the management of the District.

6.12 Where appropriate the Authority will seek to identify mechanisms that are available for addressing the potential impact of anti-social behaviour arising both in respect of the management and operation of licensed premises themselves and that arising once patrons leave the licensed premises. Regard will be had to the Section 182 Guidance in this respect. The following may be employed to address such behaviour and the potential for cumulative impact:

- planning controls;
- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- the provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- the confiscation of alcohol from adults and children in designated areas;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale);
- police powers to close down instantly for up to 24 hours (extendable to 48 hours) any licensed premises in respect of which a TEN has effect on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a nuisance;
- the power of the police, other responsible authorities or other persons to seek a review of a licence or certificate; and
- Early Morning Alcohol Restriction Orders (EMROs).
- Any other local initiatives that similarly address these problems.

6.13 Policy 2

When preparing or considering applications, applicants, responsible authorities, other persons, businesses and the Licensing Authority shall, where appropriate, take into account the following matters in assessing both the potential for the Licensing Objectives to be undermined and the appropriateness of any conditions which may be offered or imposed on any resulting licence, certificate or permission:

- (i) The nature of the area within which the premises are situated.**
- (ii) The precise nature, type and frequency of the proposed activities.**
- (iii) Any measures proposed by the applicant in the Operating Schedule.**
- (iv) The nature (principally in terms of the age and orderliness) and number of any customers likely to attend the licensed premises.**
- (v) Means of access to and exit from the premises.**
- (vi) Transport provision in the area and the likely means of public or private transport that will be used by customers either arriving or leaving the premises.**
- (vii) Parking provision in the area.**
- (viii) The potential cumulative impact (see below).**
- (ix) Other means and resources available to mitigate any impact.**
- (x) Such other matters as may be relevant to the application.**

REASON: To ensure that all relevant matters are taken into consideration during the application process.

6.14 Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower. The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible. The impact of noise arising from patrons that are temporarily outside the premises (e.g. smoking), must be recognised and mitigated against.

6.15 Applicants should carefully consider the hours that they will wish to operate for each licensable activity and when to close their premises for the entry of customers and to require them to leave. They should consider each licensable activity separately and carefully, and reflect this in their operating schedule. Shops, stores and supermarkets will normally be permitted to sell alcohol and or late night refreshment anytime when they are open for

shopping unless there are good reasons related to the promotion of the licensing objectives for restricting these hours.

- 6.16 Applicants should consider the benefits of stopping serving alcohol before other licensable activities stop and a suitable time before the premises close and customers must leave. In noise sensitive areas operators should consider ceasing the playing of dance music and switching to quieter, slower tempo music with a less pronounced beat for a period prior to the closure of the premises.
- 6.17 Applicants should also consider making arrangements with local transport operators to provide information to customers to ensure they can access public transport and leave the vicinity of the premises quickly by the most appropriate route.
- 6.18 The Authority is mindful of the responsibilities that licence holders have for preventing anti social behaviour on and within the vicinity of their premises. The Authority must, however, also bear in mind its statutory duty under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the District. Where appropriate conditions will be imposed which reflect local Crime Prevention strategies.
- 6.19 Applicants are expected to have carried out the relevant assessments under other legislation (e.g. fire precautions, health and safety at work, etc) prior to submitting their applications. These assessments should be used to identify particular issues which may need to be addressed in the operating schedule in order to ensure that the objectives will not be undermined. Suggested methods of addressing Policy 2 may be outlined in more detail in any guidance issued by the Responsible Authorities but could include the matters listed below where appropriate.
- 6.20 Examples of recommended management practice to minimise Crime and Disorder:
- Use of CCTV both within and outside the premises.
 - Metal detection and search facilities.
 - Procedures for risk assessing promotions and events such as "happy hours" and plans for minimising such risk.
 - Measures to prevent the use or supply of illegal drugs.

- Employment of licensed door supervisors and other appropriately trained staff.
- Participation in an appropriate Pub Watch Scheme or other such scheme aimed at achieving a safe, secure and social drinking environment e.g. bar tariffs (for all bar price lists to carry a guide of how many units of alcohol each individual drink contains) and recommendations that all licensees, managers or supervisors attend regular Pub Watch meetings or send a representative if they cannot attend.
- The licensee providing a taxi call point, waiting and concierge service for taxi marshalling at the licensed premises.
- Use of measures aimed at ensuring patrons are more relaxed and quieter when leaving the licensed premises e.g. playing quieter music and promoting non-alcoholic drinks towards the end of the event, ensuring good lighting outside the premises, staggering the closing time with regard to nearby licensed premises, etc.

6.21 Examples of recommended management practice to ensure 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.

6.22 Examples of recommended management practice for the protection of children:

- Exclusion from the premises in certain circumstances.
- Implementation of a robust proof of age scheme.

6.23 Examples of recommended management practice for preventing nuisance:

- Keeping doors and windows of licensed premises closed to minimise noise break out.
- Sound limiting devices, or insulation to contain sound and vibration so as to address noise break out not only from music but also, for example, from air handling equipment, generators or patrons.
- With popular premises that attract queues ensuring that the direction of any queue is away from residential accommodation.
- Proper and adequate door supervision.
- Erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors and repeating such requests verbally.
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down.

- Arrangements with licensed taxis or private hire vehicles to take patrons from the premises.
- 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.
- Adequate provisions for dealing with litter/refuse arising from the operation of premises.
- Appropriate times for and methods of dealing with bottle delivery, disposal and collection.
- The licensee providing a help line or contact number for concerned residents.

6.24 In some cases it may be helpful for applicants and/or their advisors to discuss their draft Operating Schedule with representatives of Responsible Authorities, before it is formally submitted. This will help ensure it properly addresses all relevant issues that might give rise to concern.

Reference to council's pool of conditions to be inserted here.

Any condition attached to a licence or certificate should be

- clear
- enforceable
- evidenced
- proportionate
- relevant
- be expressed in plain language capable of being understood by those expected to comply with them.

As a general rule, the Licensing Authority will seek to avoid attaching conditions that duplicate existing legal requirements and obligations imposed by other regimes unless such obligations and requirements fail to adequately address the specific circumstances of the case.

6.25 Cumulative Impact

6.26 In some areas concentrations of licensed premises exist where the combined

effect of all of the premises, causes problems for a wider area and undermines, or potentially undermines, the Licensing Objectives.

- 6.27 This potential impact on the promotion of the Licensing Objectives by a significant number of licensed premises concentrated in one area is called “cumulative impact”. This should not be confused with the issue of “need” which relates to the commercial demand for licensed premises and cannot be taken into account when determining licensing applications.
- 6.28 If having consulted with the relevant bodies, and taking into account the evidence presented, the Council is satisfied that there are no areas within the borough presently suffering from cumulative impact. However there is potential for this situation to change. The Authority therefore considers it both necessary and appropriate to include an approach to this issue, which can be applied in the event of evidenced need being established
- 6.29 In order to address cumulative impact in particular areas the Authority may apply the policies below (*“The Cumulative Impact Policies”*) which create a rebuttable presumption that certain types of applications for new premises licences or club certificates or material variations will normally be refused. The presumption will be rebutted where applicants can demonstrate through the operating schedule and, where appropriate, supporting evidence that the operation of the premises will not add to the cumulative impact already being experienced or that the risk factors associated with the application are such that cumulative impact will not be an imminent threat were the application to be granted. The policies however do not relieve responsible bodies, other persons or businesses of the need to make representations before such applications are considered. If no representations are received then the application must be granted in terms consistent with the submitted operating schedule.

6.30 Policy 3

Where representations about crime and disorder and/or nuisance are received in respect of applications for premises in a particular area of the Borough a rebuttable presumption will apply that such applications

shall be refused. However, this policy only applies to applications of the types listed below and which include the sale or supply of alcohol and/or late night refreshment namely:-

- New premises licences;
- New club premises certificates;
- Material variations to existing premises licences/club premises certificates (for example, these may include matters such as increases in capacity or hours);
- Late Night Refreshments.

and in the case of applications for Provisional Statements an indication will be given that any subsequent application for a premises licence/club premises certificate is likely to be refused.

REASON: To ensure that those applications which may add to the levels of crime, disorder and nuisance already being experienced in the area are refused.

- 6.31 This policy creates a rebuttable presumption that certain types of applications will be refused. The presumption may be rebutted where applicants can demonstrate through the Operating Schedule and, where appropriate, supporting evidence such as risk assessments, that the operation of the premises will not potentially add to the cumulative impact already being experienced.
- 6.32 Whilst the policy will not be applied inflexibly the circumstances in which the presumption of refusal may be rebutted will need to be exceptional and directly related to the reasons why the policy was adopted. An application is not likely to be classed as exceptional merely on the grounds that the premises have been or will be operated within the terms of its licence or that they are or will be well managed. This is to be expected of any application. An example of the type of application which might be granted could be where premises are being re-located or act as a direct replacement for others and where the impact is likely to be similar to the original location.
- 6.33 Policy 3 however does not relieve Responsible Authorities, other persons or businesses of the need to make representations before such applications are

refused. If no representations are received then the application must be granted in terms consistent with the submitted operating schedule. The Authority will regularly review this Policy to assess its impact.

6.34 Where a provisional statement has been issued by the Authority and the relevant works are completed satisfactorily then any subsequent application for a premises licence must be granted and any objection which could have been raised at the Provisional Statement stage must be disregarded. It is important therefore that if there is potential for new or altered premises to contribute to or cause cumulative impact in any given area that the issue is addressed as soon as possible in the licensing process. For this reason Provisional Statements are included in Policy IMP 3. Whilst applications for Provisional Statements cannot be refused it is considered that such statements could properly be used to indicate that even if the works were satisfactorily completed that the subsequent premises licence application could be refused on the grounds of cumulative impact.

6.35 Responsible Authorities, other persons or businesses may still make representations on specific applications concerning cumulative impact even though those applications are not for premises in designated saturation zones. In such circumstances the application may be refused, (though there will be no presumption that this will be the case), and the Authority may then choose to review this Statement of Policy and consult as to whether the particular area should be designated as a saturation zone to which policy IMP3 should apply.

6.36 Policy 4

In cases where Responsible Authorities, other persons or businesses seek to establish that an application should be refused on the grounds that it would result in or further contribute to a cumulative impact in an area not designated as a saturation zone, which would undermine one or more of the Licensing Objectives the Local Authority expects that they shall:

- (i) Identify the boundaries of the area from which it is alleged problems are arising;**
- (ii) Identify the Licensing Objective(s) which it is alleged will be undermined;**

- (iii) Identify the type of licensable activity alleged to be causing the problem (e.g. sale of alcohol, late night refreshment etc)
- (iv) Provide full details and evidence to show the manner and extent to which it is alleged that the Licensing Objective(s) are being, or are at risk of being, undermined in the area;
- (v) Provide evidence to show that the undermining of the objective(s) is caused by the patrons of licensed premises in the area.

REASON: To ensure that objections are neither frivolous nor vexatious and that there is an evidential basis for the Committee to reach a decision.

6.37 Adult Entertainment

- 6.38 The potential for the provision of adult entertainment to impact on the licensing objectives is recognised in the prescribed application form and all applicants are required by the prescribed application form to indicate in their operating schedules whether they intend to provide any such entertainment which may give rise to concerns in respect of children.
- 6.39 The Policing and Crime Act 2009 potentially provides an additional licensing requirement for operators who provide “sexual entertainment venues” to licence them as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. These are essentially premises which provide live entertainment or performances to a live audience which either involve nudity (such as lap or pole dancing establishments) or which are for the purpose of sexually stimulating a member of the audience. The new licensing provisions are adoptive and do not necessarily apply in every Licensing Authority’s district. Gedling Borough Council has however adopted those provisions.
- 6.40 Where a business wishes to operate as a sexual entertainment venue it may still need to be licensed under the Licensing Act for the sale of alcohol and the provision of regulated entertainment. The provision of sexual entertainment will however be regulated solely under the terms of any sex establishment licence which may be granted under the 1982 Act. The Licensing Act licence will then continue to regulate the other licensable activities.

- 6.41 Certain forms of adult entertainment are excluded from requiring sex establishment licences under the Local Government (Miscellaneous Provisions) Act 1982, and these will still be regulated under the terms of the Licensing Act 2003.
- 6.42 The provision of adult entertainment on premises may mean that access by children will not be permitted during periods when such entertainment is taking place. Where such entertainment is to be provided under the terms of the premises licence or club premises certificate the Authority expects applicants to include arrangements for restricting children from viewing any adult entertainment in their Operating Schedule. The Authority expects licensees to ensure that any age restrictions for shows or entertainment of an adult or sexual nature are properly complied with. In addition it may be appropriate to impose age restrictions for persons working in the premises, and applicants are advised to also consider the wider crime and disorder issues which can be associated with such forms of entertainment such as issues relating to drugs and prostitution.
- 6.43 Responsible authorities are likely to continue to consider all applications involving adult entertainment very carefully with regard to the promotion of the licensing objectives within the vicinity in which the premises are located.

Licence Suspensions

The Licensing Act 2003 requires Licensing Authorities to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due unless an administrative error or dispute has been notified to the Licensing Authority. In such cases there will be a grace period of 21 days to allow the matter to be resolved. If the matter is not resolved within grace period the licence must be suspended.

Where such a suspension takes place the Licensing Authority must give a minimum of two days notice and may inform the police and other responsible authorities of the suspension. All licensable activities must cease when the suspension takes effect. The suspension will only cease on payment of the outstanding fee irrespective of any transfer or hearing which may take place.

6.44 Reviews

- 6.45 At any stage following the grant of a premises licence or club premises certificate a Responsible Authority, any person or business, may ask for a review. Evidence will however be required to show that a specific concern exists relating to one or more of the licensing objectives.
- 6.46 Where a review Hearing is held the Licensing Authority has a variety of options that it may take ranging from taking no action at all, to varying conditions or suspending or revoking the licence. The Guidance reminds the Authority that the powers of review are to be used in the interests of the wider community and not that of the individual licence/certificate holder. Whilst the financial circumstances of the licence/certificate holder will be a consideration for the Licensing Authority the promotion of the licensing objectives will be the Authority's primary concern. In some circumstances e.g. the use of premises for the purchase and consumption of alcohol by minors, revocation may be considered an appropriate course of action even in the first instance.

Early Morning Restriction Orders (EMROs)

The legislation gives licensing authorities discretion to restrict sales of alcohol by introducing an EMRO to restrict the sale or supply of alcohol to tackle high levels of alcohol related crime and disorder, nuisance and anti-social behaviour. The order may be applied to the whole or part of the licensing authority area and if relevant on specific days and at specific times. The licensing authority must be satisfied that such an order would be appropriate to promote the licensing objectives.

The only exemptions relating to EMROs are New Years Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.

The decision to implement an EMRO should be evidence based and may include consideration of the potential burden imposed as well as the potential benefits.

6.47 Personal Licences

6.48 Where an applicant for a personal licence has relevant convictions, a licence will still be granted unless the Chief Officer of Police lodges an objection within the prescribed period that he is satisfied that the granting of the licence would undermine the Licensing Objectives. In such circumstances the application will be considered at a Hearing of the Licensing Panel.

6.49 Policy 5

In determining initial and renewal applications for personal licences where the Chief Officer of Police has lodged an objection notice the Authority will take the following matters into consideration:

- (i) The circumstances in which the offences were committed;**
- (ii) The period that has elapsed since the offence(s) were committed;**
- (iii) Whether the offences reveal a pattern of offending or were a one off occurrence; and**
- (iv) Any mitigating circumstances.**

The Authority will reject the application unless the applicant can show that it is unnecessary to do so in order to promote the Crime Prevention Objective.

REASON: Prevention of crime is both an objective of the Licensing Act 2003 and an important responsibility of the Authority under the Crime and Disorder Act 1998. Granting a licence to a person with relevant convictions will in many cases undermine rather than promote the crime prevention objective.

6.50 Where a Personal Licence holder is convicted of a relevant offence the Court may order that the licence be forfeit. If an applicant is convicted of a relevant offence during the application period and this only comes to light after the licence has been granted or renewed then the Authority must notify the Chief Officer of Police and if an objection notice is lodged within the relevant period a Hearing will be held to determine whether the licence should be revoked.

6.51 Temporary Event Notices (TEN)

6.52 There are two types of types of Temporary Event Notice,

- A Standard TEN, and
- A Late TEN

A standard TEN must be served no later than ten working days before the event to which it relates and this does not include the day it is given or the day of the event, and a late TEN is served not before nine and not less than five working days before the event to which it relates.

6.53 Whilst the Council recognises that a Temporary Event Notice may be served at least ten clear working days prior to the commencement of a Permitted Temporary Activity (the event), the current Guidance issued under the Act encourages a locally established preferred period of notice. There is a case for not serving such Notices too early as this could make it difficult for a sensible assessment to be made of the implications of such an event on the Crime and Disorder and Prevention of Public Nuisance objective's. The Council considers that a reasonable period of notice for the service of a Temporary Event Notice is 28 days.

6.54 Persons serving Temporary Event Notices must also serve a copy notice on the Police and the responsible authority for Environmental Health functions i.e. the Councils Public Protection Service.

6.55 Further information regarding Temporary Event Notice's is contained on the Councils web pages.

7. CHILDREN

7.1 Where there are concerns over the potential for harm to children from licensable activities the Authority recognises the following body as competent to advise on matters relating to the protection of children from harm:

- The Nottinghamshire Safeguarding Children Board.

Applications should therefore be copied to this body in its capacity as a responsible authority

7.2 Examples which may give rise to concerns in respect of children include those:

- Where there have been convictions for serving alcohol to minors
- Where there is a reputation for underage drinking
- Where there is a known association for drug taking or dealing
- Where there is a strong element of gambling on the premises
- Where entertainment of an adult or sexual nature is provided

7.3 Where premises are used for film exhibitions, the Authority will impose the mandatory condition restricting access only to persons who meet the required age limit in line with any certificate granted by the British Board of Film Classification or the Authority itself.

7.4 The Authority expects applicants to include any arrangements for restricting under-age children from viewing age-restricted films in their Operating Schedule. The Authority expects that licensees will ensure that any age restrictions for cinema exhibitions are properly complied with.

7.5 **Policy 6**

Where representations have raised concerns in respect of individual premises and it is felt that access of children should be restricted, the Authority will consider imposing conditions which may include the following:

- (i) **Limitations on the hours when children may be present.**
- (ii) **Age limitations for persons under 18.**
- (iii) **Limitations or exclusion when certain activities are taking place.**
- (iv) **Full exclusion of persons under 18 when certain licensable activities are taking place.**
- (v) **Limitations of access to certain parts of the premises for persons under 18.**
- (vi) **A requirement for adults to be present.**

REASON: To protect children from harm..

8. EQUALITY AND DIVERSITY

- 8.1 Gedling Borough Council recognises that the people it serves have different needs and priorities. The Council is committed to treating all of its customers and staff fairly without discrimination and prejudice and providing equal access to our services, citizen participation and employment and training opportunities. Gedling Borough Council has an Equality Improvement Plan for 2009-2012 ("Towards an Even Fairer Gedling") aimed at providing direction to elected members and staff within the Council. The Authority will continue to work to embody the requirements of the Equality Act 2010 in its Licensing role. Equality Impact Need Assessment (EIAs) are used to ensure that policies, services and procedures do not have an adverse impact on a particular group of people due to their gender, sexuality, religion or belief, race, age, gender identity or because they are disabled people or have caring responsibilities. The EIA for this Licensing Policy is periodically reviewed and the actions arising from it are fed back into future into this organisation's service plan and also help to shape the consultation over future licensing policies.
- 8.2 Gedling Borough Council is committed to implementing and upholding equality and diversity in everything it does. The Council strives to be an effective service provider, community leader and corporate body, and in doing so, recognises the importance of meeting the needs of the diverse mix of communities represented amongst its residents, service users and workforce. In meeting those needs the Council will develop and harness a safe and sustainable community inclusive to all.
- 8.3 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. On request the Council will signpost customers to providers of guidance and information relating to translation services.

9. GENERAL ENFORCEMENT STATEMENT

- 9.1 All decisions, determinations, inspections and enforcement action taken by the Authority will have regard to the relevant provisions of the Licensing Act 2003, national guidance, relevant codes of practice and the enforcement policy of the Council which is produced to the principles of the Enforcement

Concordat and the Regulators Compliance Code

- 9.2 The Authority has established and maintains enforcement protocols with the local police and other relevant enforcement agencies.

10. MONITORING AND REVIEW OF THIS STATEMENT OF POLICY

- 10.1 This Statement of Policy will be reviewed within legislative timescales and as and when appropriate. In preparing the succeeding Statement of Policy regard will be had to data and information collated over the operating period of the current policy together with trends and the outcome of related initiatives from both local sources and nationally issued data and guidance.