

Cheltenham Borough Council

Licensing Sub Committee – 09 May 2013

Licensing Act 2003 Determination of application for a Premises Licence

Morrisons North Place, Cheltenham, GL50 4DW

Report of the Licensing Officer

1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence or a variation of an existing premises licence at any time. In this case, an application was received on 19 March 2013 from WM Morrison Supermarkets PLC, trading as Morrisons, in respect of a new premises located in North Place, Cheltenham, GL50 4DW.

1.2 A copy of the application form is included at **Appendix A**.

1.3 The applicant has applied for a premises licence for the following licensable activities at the dates and times shown:

Sale of alcohol for consumption off the premises	Every Day	06:00 – 00:00
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1.4 If this application is approved a premises licence will be issued.

1.4 Implications

1.4.1 Financial

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1.4.2 Legal

A person can apply for a premises licence before new premises are constructed, extended or changed.

A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, 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.

The Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should only be imposed when they are appropriate for the promotion of the licensing objectives.

In relation to crime and disorder the purpose of the licence is to regulate behaviour on and access to premises where this relates to the licensable activities and the licensing objectives. Licence conditions do not need to replicate offences that are set out in the Licensing Act 2003 or other legislation.

In relation to the protection of children from harm this includes protecting children from the harms associated with alcohol. The sale of alcohol to children is regulated by other legislation.

The Council also has a duty under section 17 of the Crime and Disorder Act to exercise its functions in a reasonable way to prevent crime and disorder however this duty must be exercised in a way that promotes the licensing objectives.

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2. Application (Ref. 13/00533/PRMA)

2.1 Applicant: WM Morrison Supermarkets PLC

2.2 Agent: Gosschalks Solicitors

2.3 Premises: Morrisons, North Place, Cheltenham, GL50 4DW

2.4 As part of the application, the applicants have stated that they intend to take the following steps to promote the licensing objectives:

2.4.1 General

- All staff engaged in the sale of alcohol will be trained in accordance with the premises licence holder's training procedures.

2.4.2 The prevention of crime and disorder

- All staff will receive suitable training (including refresher training) in relation to the proof of age "Challenge 25" scheme to be applied on the premises. The following forms of identification are acceptable: photo driving licence, passport, proof of age standards scheme (PASS) card and any other locally or nationally approved form of identification.

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- CCTV shall be provided on the premises and shall be kept in good working order.
- All checkout operators will operate a refusal log.
- No alcohol shall be displayed within 5 metres of the entrance / exit.

2.4.3 Public safety

- The premises licence holder undertakes ongoing risk assessments in order to comply with health & safety legislation.

2.4.4 The prevention of public nuisance

- The premises are responsibly managed and supervised. No additional measures are believed necessary.

2.4.5 The protection of children from harm

- All staff will receive suitable training (including refresher training) in relation to the proof of age “Challenge 25” scheme to be applied on the premises. The following forms of identification are acceptable: photo driving licence, passport, proof of age standards scheme (PASS) card and any other locally or nationally approved form of identification.
- Till prompts are in use at the store.

2.5 A copy of the application form is included at **Appendix A**. Steps to promote the licensing objectives are included in the operating schedule on pages 11 and 12 of the application form.

2.6 An internal layout plan of the premises is at **Appendix B** of this report.

2.7 A location plan of the premises is at **Appendix C** of this report.

3. **Responsible Authorities**

3.1 **Gloucestershire Constabulary**

During the 28 day statutory consultation period, Gloucestershire Constabulary submitted a representation opposing the grant of the premises licence on the following grounds:

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

3.1.1 The Constabulary’s representation is as follows:

BACKGROUND

As a Responsible Authority under the Licensing Act 2003, the Constabulary has a duty to appraise and risk-assess every Licensing application that is submitted within the County of Gloucestershire.

Whilst the Environmental Health team takes a stronger lead on noise issues, it falls to the Constabulary to take the primary lead on crime & disorder issues, and the Licensing Act Guidance advocates that “Licensing Authorities should look to the police as the main source of advice on crime and disorder.” [2.1]

When new or variation applications are received, the Constabulary identifies:

- The location of the premise/site concerned and its history (if appropriate).
- The activities that are planned.
- The hours during which the activities will take place.
- The previous history of the operator.

- Any other factors that might impinge on the level of crime & disorder on the premises, or the quality of life of nearby residents.

Taking all factors into account, an assessment is made of the crime prevention measures and licence conditions that should be applied to the premises licence in order to fulfil the four licensing objectives that are contained in the Act:

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

The Constabulary’s assessment of applications is carried out by a small dedicated licensing team and is based on considerable experience, extensive research and regular monitoring of 3,000 licensed premises across the county. This team deals with thousands of licensing applications every year. (4,000 including TEN’s during 2012)

The licensing team liaises with applicants during the consultation period to discuss measures offered in the operating schedule, additional measures that might be considered necessary, and attempts to reach agreement with the operator so that a Committee Hearing is avoided. This is normally achieved.

It is worthy of note that, in accordance with the Act, the Constabulary seeks only those licence conditions that are considered necessary (i.e. minimum levels), that are tailored to the individual application, and are reasonable and proportionate to the risk involved.

It is also worth highlighting that the Constabulary adopts the perspective of the Act and the Guidance that measures and conditions should be of a preventative nature. [2.3 “Conditions should be targeted on deterrence and preventing crime and disorder]. Adopting this stance keeps the need for Reviews due to high crime levels very low. It is also clear from the Guidance that a Committee is entitled to place some weight on all types of crime & disorder associated with premises and not solely those that are proven to be directly linked to alcohol. [Section 2.3 refers to “crime generally” and section 11.24 refers specifically to “crime that is not directly connected with licensable activities.”]

The Constabulary is aware of crime & disorder levels associated with all Licensed Premises across the county, including supermarkets. The majority of crime in the retail sector is theft, and shoplifting accounts for over 10% of all crime. In addition, there are also significant numbers of other crimes linked to the retail sector such as Theft by employees and, especially, Theft from the person (theft of purses from shopping trolleys for example). Much of this crime is avoidable if good security levels and systems are in place.

The retail sector, therefore, places enormous demands on the police. Each arrest consumes approximately 7 hours of a Police Officer’s time, during which time they are unavailable for other demands for policing in the local community.

The Constabulary appreciates that superstores are a hive of activity and carry a very high footfall and that a certain level of crime is inevitable. In fact many of the larger supermarkets and superstores experience around 50 crimes per year. Despite having security officers employed, the premises located in more challenging areas can record in excess of 100 crimes per year. In these instances the Constabulary works with the stores to encourage Licence Holders to reduce their Crime & Disorder levels, as many crimes are actually preventable if stronger ‘Target Hardening’ measures are implemented.

THE CURRENT APPLICATION

This application relates to a new Morrisons supermarket situated in North Place, Cheltenham.

Although the Constabulary has a good working relationship with Morrisons regarding their existing 4 stores in Gloucestershire, regrettably, it has not been possible to reach agreement with Morrisons on the crime prevention measures and/or conditions required on this premises licence in order to meet the Licensing Act's objectives or maintain crime and disorder at reasonable levels. In particular, Morrisons does not agree with the Constabulary that minimum levels of Security are needed at the new store.

The Constabulary regard the provision of security officers as a crucial factor in determining the level of crime that will attach to these premises. This representation is therefore made on behalf of the Chief Constable, and the representation is based upon the following grounds:

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

GROUNDS FOR OBJECTION

Store Location

The geographic location of any Licensed premises is a critical factor in the level of crime & disorder and public nuisance that is likely to occur and on the level of security personnel that will be required. For example, a supermarket situated in an affluent housing estate will experience very little in the way of crime & disorder, and consequently requires fewer crime prevention measures. However a supermarket situated in a challenging housing estate or in a busy town centre will face a significantly higher level of problems and will require stronger crime-prevention measures if crime is to be kept at reasonable levels.

When operators decide to operate Licensed Premises in an area that is known to be challenging and a high-crime area they need to take this factor into account in their business planning at the outset and ensure that they implement adequate security and crime-control measures to ensure that they meet the four licensing objectives.

The Constabulary became aware at an early stage that an application was being prepared for a Morrisons supermarket at North Place. This site is quite close to another large supermarket on the edge of the Town Centre, i.e. Tesco at Collett's Drive, which has been trading for many years. The Constabulary is, therefore, able to make an accurate assessment of the likely level of problems of crime & disorder that will accrue to the new store.

Regrettably, the nearby Tesco supermarket has crime levels that are on the high side, despite having up to 3 security staff employed at times. As a result, high levels of police resources have been expended at this store. Consequently, the Constabulary has been closely engaged with Tesco for many years, helping to minimize crime levels. This has involved a number of target-hardening measures on the part of the supermarket that has included improved CCTV in-store, one-way pedestrian barriers, proactive targeting of offenders, robust banning systems (reducing repeat offending), participation in the local shopwatch (DaySafe), and other crime-reduction measures.

In relation to this application, the Constabulary held a meeting with Morrisons and their solicitor at pre-application stage (31st January 2013) and discussed the level of security and crime-prevention measures that would be required. Morrisons were made aware of problems at the nearby Tesco store and it was highlighted that there is a need for a minimum security officer level to be maintained at this new store, or it will be perceived as a 'soft target' and targeted by the criminal fraternity. Unlike the Constabulary, Morrisons do not carry out risk-assessments of the need for security officers in advance of store openings. They determine levels after the problems have developed, based on problems and stock-losses that accrue to the store. Security officer levels and spending on crime-reduction measures is largely determined by comparison with other stores across the UK, which do not readily provide like-for-like comparisons.

Uniformed Security Staff

The use of uniformed security staff as a crime-prevention measure in stores is hard to overstate. Security staff perform a specialist role in dealing with crime & disorder issues, and are the main point-of-contact and providers of good quality evidence when involvement of the Police is necessary.

Security Officer provision enables:

- Visible presence at the store entrance and within the store. This acts as a deterrent for criminals who are intent on stealing goods.
- Valuable goods (including alcohol) to be monitored and given more protection.
- Suspicious individuals/activity to be properly monitored by CCTV and by direct observations.
- Offenders to be detained when necessary.
- Incidents of a minor nature to be dealt with 'in-house', without constantly calling on the Police to assist.
- Bans to be enforced against previous offenders. The latter, if not implemented, permits repeat offenders to return to the store time-after-time.
- Staff searches to be undertaken and staff thefts to be minimized.

They also provide protection for staff and customers when violent incidents occur and are the main means of detaining offenders after a crime has been committed. The presence of security officers, allied with good observations, is the single most effective measure to combat crime, shoplifting and general disorder.

Other shop-staff are busy carrying out other activities (such as shelf-filling or operating checkouts) that prevent them monitoring customer behaviour, and shelving is so high that staff cannot see over it to monitor goods or customers (as they would in a small shop or Off-Licence). As a result these staff play little part in preventing crime or dealing with it. Regular staff cannot, realistically, undertake security duties. In fact they are specifically instructed not to get involved in incidents where their personal safety might be at risk, which includes detaining offenders. In essence, the presence of a security officer has a direct bearing on the level of crime & disorder.

A vulnerable supermarket will also contribute to greater problems in the local community. Alcohol will undoubtedly be stolen from this store, and it is highly likely that some of the alcohol from this store will find its way into the hands of underage persons, drug addicts, alcoholics, etc. It could easily become a frequenting place for youths or those with alcohol problems. This already happens at smaller Town Centre supermarkets, and it has to be kept in check constantly by the police and council working together on the issues.

Child Protection

Alcohol is an age-restricted product with serious or even fatal consequences for any child or teenager who consumes an excessive amount. In addition to the risks it poses for youngsters who consume alcohol, it fuels anti-social behaviour and crime in the community. As with cigarettes, knives, and other age-restricted products there is a fundamental need for access to this product to be controlled to a much higher degree than normal everyday items e.g. groceries, so that under-age children do not have easy access to alcohol.

Store Layout

Morrisons wish to retain the option of displaying alcohol in any part of the store that they choose, including aisle-end and free-standing stack displays as well as the main alcohol aisle. These displays would include spirits, which are the most-frequently-stolen type of alcohol and are also the most dangerous as far as children are concerned.

Gloucestershire Trading Standards and the Constabulary have invested hundreds of hours of work in the county (especially Test Purchasing) over the past few years to try and reduce the accessibility of alcohol to children. Disappointingly, despite making considerable progress, Gloucestershire still fares badly as far as 'protection of children from harm' is concerned. Alcohol-specific hospital admissions for under 18's in Cheltenham are worse than the national average (see Local Alcohol Profiles for England) and have risen again recently. In summary, there is still a huge amount of progress to be made in this area, and no room for complacency.

Drunken Customers

Alcohol is a product that also needs to be restricted when it is being sought by those who are already drunk.

If drunken customers are refused service by staff, they will undoubtedly be tempted to steal the product instead. If alcohol is easy-to-steal and there is little prospect of getting caught, it will inevitably lead to higher levels of theft. Even if shop-staff see thefts occur, there will be no security officer at the store to deal with it. Morrisons staff are instructed not to get involved in detaining offenders, so the responsibility for dealing with the problem would shift entirely to the Police who would have to try to identify, locate and arrest an offender after they had left the store. This is more time-consuming, diverts police resources from other areas, and leads to much higher levels of undetected crime.

Recommended Security Level

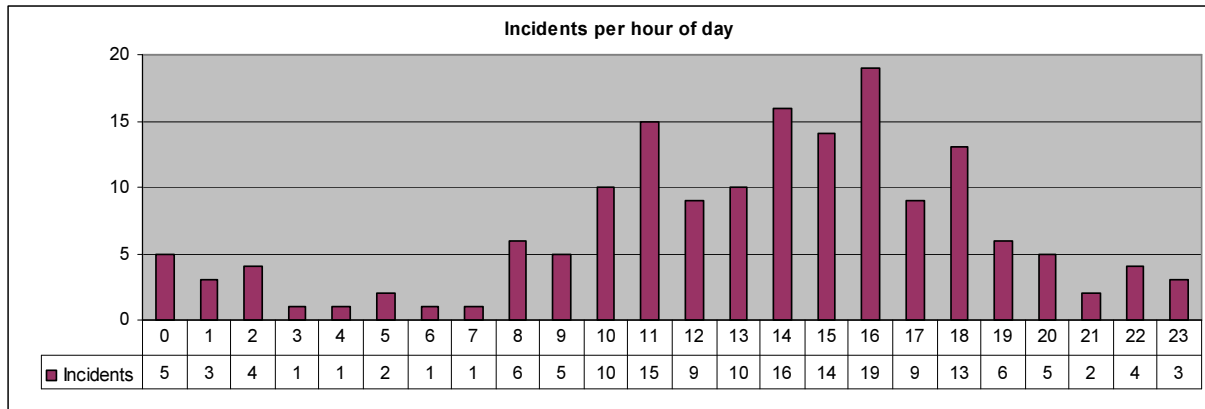
In order to combat known risks, the Constabulary takes the view that a minimum of one security officer is essential at peak times if this store if crime & disorder is to be kept adequately in check and easy theft of alcohol is to be prevented.

This recommendation is based on:

- the nearby Tesco store (which has higher levels of security)
- a good understanding of Morrisons supermarkets
- crime patterns and crime trends at other supermarkets across the county of Gloucestershire.

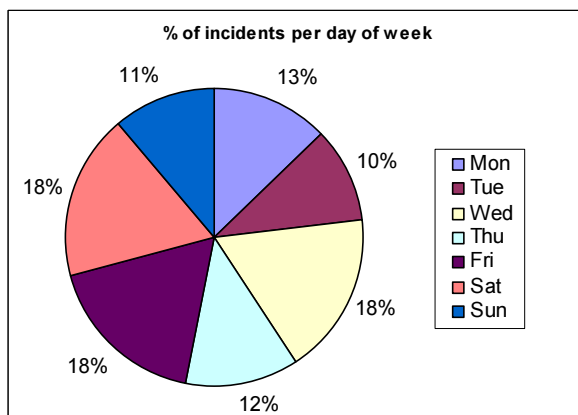
The below chart shows analysis of 164 incidents reported to the Constabulary during the last 12 months at the Tesco store, Collett's Drive. The Committee will see that incidents are occurring throughout the whole range of hours the store is trading, but also that they rise at 10am and remain at higher levels until 7pm. This pattern is fairly typical of supermarkets and it is very likely that this pattern will be replicated at the new Morrisons store.

Incident Analysis (Time of Day) 01/04/12 – 31/03/13.



The committee may also wish to note incident frequency throughout the week, which ranges between 10% and 18%. This is quite an even spread of demand on each day compared with other types of licensed premises, but is, again, fairly typical of supermarkets.

Incident Analysis (Day of Week) 01/04/12 – 31/03/13



The Constabulary would like to point out that security officers often have difficulties detaining offenders when they are working on their own, and that they are out of circulation on the shop floor for considerable periods when an incident has occurred; typically remaining with a detainee in the holding room, downloading CCTV, writing a witness statement and incident report. In addition, they are out of circulation when taking meal breaks. There is an expectation, therefore, that Morrisons will actually provide more than one security officer as soon as it identifies peak times & days, however the Constabulary maintains that at least one is a necessity.

Aside from reducing reported crime, the security officer would help the store reduce stock-losses, so is, at least partially, self-funding for Morrisons.

The Constabulary understands that Morrisons do not wish to have security levels set by condition, so the Constabulary offered to accept an Undertaking for security levels to be supplied for the first 3 months while the exact level of crime is determined and while Morrisons undertake their own risk-assessment. Regrettably, Morrisons have not even given an undertaking, so it is necessary for the levels to be determined by the Committee.

CONCLUSION

For the above reasons, the Constabulary is not satisfied that the 'prevention of crime & disorder', 'prevention of nuisance' and the 'protection of children from harm' objectives have been properly addressed by Morrisons, either in the application or during subsequent discussions.

Without appropriate levels of security, there is likely to be an unacceptably high level of Crime & Disorder, Public Nuisance (both on and off the premises) and increased risk of harm to children. This, along with stolen goods flowing into the local area, would be to the detriment of the local community and local residents.

In addition, extra responsibility would fall on the Constabulary as it would bear the burden for investigating avoidable thefts. Whilst the Constabulary will always advise and support local retailers to assist in dealing with and reducing offending, it is not the role of the Constabulary to fill gaps in security provision.

This application is, therefore, opposed by the Constabulary on the grounds related above.

In the event that the Committee grants this Licence, the Constabulary seeks the Conditions below:

- A minimum of 50 hours of security cover shall be provided each week.
- Spirits over 500ml shall be tagged OR shall only be displayed behind a serving counter.
- Alcohol shall not be displayed within 10 metres of the entrance/exit to the shop, as measured from the top of the travelator.

In addition to the Committees right under the Licensing Act 2003 to apply such conditions as it believes are "appropriate" in the circumstances, the Committee is reminded that under Section 17 of the Crime & Disorder Act the Licensing Authority is entitled to "exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area".

[The Constabulary's representation ends here]

3.1.2 A full copy of the Constabulary's representation is at **Appendix D**.

3.2 **Responsible Authorities**

No representations have been received from any of the other responsible authorities.

4. **Other People**

No representations have been received from any other person.

5. **Local Policy Considerations**

5.1 The 2003 Act introduces a unified system of regulation through two new types of licences: the premises licence and the personal licence (club premises certificates for qualifying clubs). The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities': public entertainment, theatre, cinema, or late night refreshment.

5.2 The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.

- 5.3 The Council's adopted licensing policy statement (Council 10th Feb 2012) includes the following:
- 5.4 The Council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which 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. (Paragraph 4.1)
- 5.5 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (Paragraph 4.2)
- 5.6 In determining a licensing application, the overriding principle adopted by the Council will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those appropriate to promote the licensing objectives will be imposed. (Paragraph 4.3)
- 5.7 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (Paragraph 4.5)
- 5.8 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.9 The operating schedule is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. (Paragraph 5.4)
- 5.10 The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. For premises such as a public house where public entertainment is not provided, only a relatively simple document will be required. For a major public entertainment venue it will be expected that issues such as public safety and crime and disorder will be addressed in detail. (Paragraph 5.7)
- 5.11 The Council has discretion on whether to grant applications for licences and to impose conditions on granting and reviewing licences, only when relevant representations are made by "interested parties" or by "responsible authorities"(Paragraph 6.1)
- 5.12 The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the Council will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the Council over the next three years. It will also inform elected Members of the parameters within which licensing decisions can be made. (Paragraph1.3)
- 5.13 Through this policy the Council hopes that residents of and visitors to Cheltenham will be able to enjoy their leisure time safely and without fear of violence, intimidation or disorder while at licensed premises. (Paragraph1.4)

- 5.14 An effective licensing policy, alongside other initiatives, will work towards promoting the positive aspects of deregulation under the Act, such as promoting tourism, increasing leisure provision and encouraging the regeneration of the town centre as well as controlling the negative impacts such as increase in noise, nuisance, anti-social behaviour and crime and disorder. (Paragraph 1.5)
- 5.15 It should be understood that this policy and the section 182 Guidance cannot anticipate every scenario or set of circumstances that may arise and as such there may be circumstances where the policy or guidance may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the Council will give full reasons for departing from this policy. (Paragraph 1.6)
- 5.16 **The prevention of crime and disorder** - The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective. (Paragraph 5.11)
- 5.17 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events. (Paragraph 5.12)
- 5.18 When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include:-
- (a) Underage drinking;
 - (b) Drunkenness on premises;
 - (c) Public drunkenness;
 - (d) Drugs;
 - (e) Violent behaviour; and
 - (f) Anti-social behaviour. (Paragraph 5.13)
- 5.19 In making their decision, regard should be given to the levels of crime and disorder in and around the venue; the level of compliance with conditions on existing licences; and any available evidence on crime and disorder issues. (Paragraph 5.14)
- 5.20 Annex D part 1 of the Secretary of State's revised Guidance sets out matters that may be relevant to the imposition of conditions relating to crime and disorder on licensed premises. Where relevant representations are received the Council may impose appropriate conditions on premises licences and club premises certificates in accordance with this guidance. (Paragraph 5.15)
- 5.21 Appropriate conditions include:-
- (a) adoption of a 'Challenge 21 or Challenge 25' policy;
 - (b) adoption of best practice guidance including our voluntary code of practice for Reducing Alcohol Related Violence (RARV);
 - (c) agreeing a prescribed capacity for the premises;
 - (d) requirements for an appropriate ratio of tables and chairs to customers, based on capacity, and for areas to be allocated permanently for seated customers in order to prevent overcrowding, which can lead to disorder and violence;
 - (e) a requirement for Security Industry Authority registered door supervisors to control numbers of persons entering the premises and to deny entry to individuals who appear drunk, disorderly or intent on crime;
 - (f) requirements that drinking vessels be made of toughened glass or plastic or other materials that do not form a sharp edge when broken, and that glass bottles are not passed to customers. This may be a particular concern if drinks are to be consumed outside premises;
 - (g) restrictions on drinking in areas within and outside the premises;

- (h) limitations on the types of promotions of alcoholic drinks, so as not to encourage excessive drinking, or drunkenness;
- (i) the maintenance of good order by the management, particularly where alcohol is supplied for consumption and where large numbers of people are admitted;
- (j) dedicated communications networks between management teams, local police and other licensed premises to provide early warning of disorder;
- (k) warning signs about crime prevention measures;
- (l) clear policies and measures to prevent weapons or illegal drugs being brought onto the premises and measures to discourage the use of illegal drugs; and/or
- (m) the installation and maintenance of appropriately sited closed circuit television cameras (CCTV) to be operational during the period of the licence, and other appropriate times both inside and immediately outside the premises which can provide images of a suitable quality for use as evidence. (Paragraph 5.16)

5.22 **Protection of children from harm** - The Council needs to satisfy itself that there are appropriate measures in place to protect children from harm. (Paragraph 5.32)

5.23 The Council will expect applicants, where necessary to consider the measures necessary to promote the licensing objective of protecting children from harm when on the premises. (Paragraph 5.33)

5.24 These measures may include staff training on how to control the entry of children and young people under 18 and the vetting of staff who will supervise them. Applicants will have to give particular regard to these measures in applications for licences involving:-

- (a) the sale of alcohol;
- (b) children's performances;
- (c) attractions or performances likely to attract children. (Paragraph 5.34)

5.25 It is an offence to sell alcohol to children. In this context, children are defined as individuals under 18. The provisions of the Act are that unaccompanied children under 16 should not be on "premises being used exclusively or primarily for the supply of alcohol" (eg "alcohol led" premises such as pubs, bars and nightclubs). In addition, it is an offence to allow unaccompanied children under 16 on premises licensed to sell alcohol for consumption on the premises after midnight but before 05:00. (Paragraph 5.35)

5.26 Issues for consideration include:-

- (a) installing effective measures to check the age of those young people who appear under 21 to ensure that alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises;
- (b) the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises;
- (d) accompanied children under 16 on the premises of which the primary purpose is supply of alcohol for consumption on the premises are taking a table meal or are being entertained by a live performance;
- (e) the hour to which accompanied children under 16 are proposed to be on the premises where the exclusive or primary purpose of the services provided at the premises is the supply of alcohol for consumption on the premises;
- (f) due regard is paid to industry codes of good practice on the labelling and display of alcoholic drinks;
- (g) there are adequate procedures for identifying unaccompanied or lost children and ensuring that they are kept safe and adequately supervised until they can be handed over to a responsible adult;
- (h) the likelihood of children being attracted to the premises; eg by the nature of activities or facilities provided whether or not these are licensed;
- (i) there is evidence of heavy, binge or underage drinking on the premises;
- (j) the premises commonly provides entertainment or services of an adult or sexual nature;

- (k) there is a strong element of gambling on the premises;
- (l) age restricted films are to be shown classified in accordance with the recommendations of the British Board of Film Classification;
- (m) the number of adults required for the supervision of children and the suitability and vetting of those adults to ensure they pose no risk to children. Obtaining Enhanced Disclosure from the Criminal Records Bureau may be appropriate in some cases. (Paragraph 5.36)

- 5.27 **Public nuisance** - The Council will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises. (paragraph 5.22)
- 5.28 Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. (paragraph 5.23)
- 5.29 The role of the Council is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the town including businesses, workers, shoppers and visitors. (paragraph 5.24)
- 5.30 Major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower. (paragraph 5.25)
- 5.31 Where relevant representations are received, the Council may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after midnight the licence holder, will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. (paragraph 5.26)
- 5.32 Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste management program to ensure that the area outside the premises is kept free of litter at all times. (paragraph 5.29)
- 5.33 Where the Council receives relevant representations, or where a responsible authority or an interested party seeks a review, the Council may consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (paragraph 5.30)

6 National Guidance

- 6.1 Guidance has been issued under Section 182 of the Licensing Act 2003.
- 6.2 Para 9.12 of the Guidance states: In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

- 6.3 Para 10.10 of the Guidance states: “The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.”
- 6.4 Para 10.12 of the Guidance states: “The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.”
- 6.5 Proportionality: para 10.14 of the Guidance states: “The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.”
- 6.6 Duplication with other statutory provisions: para 10.16 of the Guidance states: “If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties as conditions.”

7. Licensing Comments

- 7.1 Members are to note that on 25 April 2012, the following amendments to the Licensing Act 2003 came into force:
- 7.2 The Licensing Authority became a Responsible Authority for premises and club premises applications and will have the power to refuse, remove or review a licence without representation from the Police or other Responsible Authority.
- 7.3 Primary Care Trusts and Local Health Boards also joined the list of Responsible Authorities and are able to make representations regarding licensing applications and apply for reviews, even though the licensing objectives have not been revised to include health.
- 7.4 The term 'interested parties' has been replaced by 'any other person' meaning that anyone can voice objections regardless of geographic vicinity, however any such objection must relate to one or more of the licensing objectives.
- 7.5 The Secretary of State has been required to make changes to the Licensing Act Regulations 2005 requiring the Licensing Authority to advertise applications 'in a manner which is prescribed and is likely to bring the application to the attention of the persons who are likely to be affected by it'.
- 7.6 The Committee must have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives which can include:
- Granting the application as requested;
 - Modifying the conditions attached to the licence; or
 - Rejecting all or part of the application.

- 7.7 Members are to note that each application must be determined entirely on its own merits. Therefore, in coming to their determination, Members must only take account of representations which are specific to the premises to which this application relates. Comments relating to other premises, whether nearby or elsewhere, should be disregarded.
- 7.8 Members are to note that the application is for a premises licence for the sale of alcohol. Representations should therefore only be taken into account where they relate to the sale of alcohol and how it will affect the licensing objectives.
- 7.9 In determining this application, Members must have regard to the guidance issued by the Secretary of State and the Council's adopted policy statement.
- 7.10 The Council has a statutory duty to promote the licensing objectives and therefore Members can only give consideration to representations that relate to the likely effect the grant of this licence will have on the promotion of those objectives, these being:
- a. the prevention of crime and disorder;
 - b. public safety;
 - c. the prevention of public nuisance; and
 - d. the protection of children from harm.
- 7.11 Members may impose such conditions as they consider appropriate for the promotion of one or more of the licensing objectives.

Background Papers

Service Records

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