

Cheltenham Borough Council

Licensing Sub Committee – 25th October 2013

Licensing Act 2003: Determination of Application for a Variation of a Premises Licence

BP Prestbury Road Service Station 80 - 86 Prestbury Road, Cheltenham, Gloucestershire, GL52 2DJ

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 a premises licence at any time. In this case, an application was received on 6th September 2013 from Global Fuel (UK) Ltd in respect of BP Prestbury Road Service Station, located at 80-86 Prestbury Road, Cheltenham. A copy of the application form is included at **Appendix A**.

1.2 The applicants have applied for a variation of their existing premises licence to extend the hours during which alcohol may be sold and to include the provision of late night refreshment during the hours shown.

Times and activities authorised by the existing premises licence:

Sale / supply of Alcohol	Monday to Saturday	08:00 – 23:00
	Sunday	10:00 – 22:30

Times and activities applied for by way of variation of the premises licence:

Sale / supply of alcohol	Every day	00:00 – 00:00 (24 hours)
Late night refreshment	Every day	23:00 – 05:00

1.3 If this application is approved a varied premises licence will be issued.

1.4 Implications

1.4.1 Financial **Contact officer: Sarah Didcote**
E-mail: sarah.dicote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.4.2 Legal 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.

Vikki Fennell
E-mail: vikki.fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Application (Ref. 13/01577/PRMV)

2.1 Applicant: Global Fuel (UK) Ltd

2.2 Premises: BP Prestbury Road Service Station, 80-86 Prestbury Road, Cheltenham GL52 2DJ.

2.3 Steps to promote the four licensing objectives that are identified in this application. The applicants have stated that they intend to take the following steps:

- Between 24:00 & 06:00 hours, unless there are two staff on duty in-store, then the entrance doors are to be locked and alcohol will only be sold via the night hatch, spirits located behind the counter.
- Appropriate staff alcohol sales training to be satisfactorily completed and recorded. Written training records to be made available for inspection upon reasonable request by a relevant officer of a responsible authority. Appropriate training manual utilised.
- Appropriately worded notices to be displayed prominently inside and outside the store requesting customers to leave the site quietly at night.
- Forecourt to be swept regularly. Forecourt bins to be emptied regularly.

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

3 Responsible Authorities

3.1 No representations have been received from responsible authorities

4. Other people

4.1 Valid representations have been received from 13 people on the grounds of public safety, the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

4.2 **Andrea Clarke of 77 Prestbury Road** has highlighted that the premises is in a residential area and noise nuisance could be caused by customers ordering through the serving hatch. Ms Clarke has also highlighted concerns about the potential for disorder if alcohol sales are refused late at night.

4.3 **Mr and Mrs Hatton, of Selkirk House, 73 Prestbury Road** have highlighted concerns about increased disruption, noise and litter caused by additional customers visiting the premises at night.

4.4 **Mr and Mrs Biston, of 103 Prestbury Road** have expressed concerns about the potential for noise disturbance caused by increased vehicular traffic as well as people making noise late at night while making their purchases.

4.5 **Penny McCracken and John Mumford of 56 Prestbury Road** have highlighted that the premises is in a residential area and any increase to the operating hours of the premises will cause additional traffic, litter, noise and the potential for “undesirable elements” with the consequent potential for disorder.

4.6 **Mrs Maureen Edwards of 93 Prestbury Road** has expressed concern over light pollution caused by lights at the premises during the night and disturbance caused by delivery vehicles.

4.7 **Councillor Colin Hay, Cheltenham Borough Council’s Ward Member for nearby Oakley Ward**, has highlighted the fact that night-time sales at the premises will be through a serving hatch, which means the customers will be outside, and that any refusal of a sale is likely to cause antisocial behaviour outside the premises with consequences for local residents.

4.8 **Mark and Helen Clay, of 96 Prestbury Road**, has highlighted that they have already been disturbed by the increased traffic at night-time caused by the premises’ increased operating hours, by the sound of car doors and voices, as well as by the light pollution from the lighting at the premises.

- 4.9 **Mr Steve Ashley of 87 Prestbury Road** has expressed concern over the potential for additional noise disturbance and disorder if the premises starts selling alcohol late at night, as well as disturbance caused by car doors slamming, shouting, loud music from cars, and the potential for these disturbances to increase if the licence variation is granted.
- 4.10 **Liz Allan of 101 Prestbury Road** has explained that she has already been disturbed by premises now that it is open 24 hours a day, and that this disturbance is likely to increase if the application is granted. Ms Allan has referred to noise disturbance caused by car engines left running, car doors slamming, shouting, music from car stereos, wheels spinning and the potential for drink driving and under-age drinking.
- 4.11 **Mrs and Mrs Haynes of 95 Prestbury Road** have highlighted that they have already experienced disturbance from the premises since it began 24 hour trading, in the form of customers shouting, and that this could potentially increase if their application to extend the hours for alcohol sales and late night refreshment is granted.
- 4.12 **Mr and Mrs Surman of 99 Prestbury Road** have highlighted issues relating to litter, crime and disorder, the potential for increased vandalism and disturbance from people and their cars.
- 4.13 **Nicholas Edwards of 93 Prestbury Road** has alleged that there has already been overnight noise and disturbance since the premises began trading 24 hours a day which he has said is likely to increase if the licence variation is granted.
- 4.14 **Mr and Mrs Garside of 63 Prestbury Road** have said there is already a problem in the area from vandalism and littering which they fear may increase if the licence variation is granted.
- 4.15 Copies of all the residents' representations are attached at **Appendix B**.
- 4.16 **Petition in support of the application.**
The applicant has provided a petition signed by 157 of the service station's customers, of which 149 people (95%) indicated that they were in support of the application, 5 signatories objected to the application and 3 entries were spoilt. A copy of the petition is attached at **Appendix C**.
- 4.17 The locations of the residents' properties and that of the premises are shown on the location plan at **Appendix D**.
- 4.18 An internal layout plan of the premises is attached at **Appendix E**.

5. Local Policy Considerations

- 5.1 The 2003 Act introduces a unified system of regulation through two new types of licences: the premises licence (club premises certificates for qualifying clubs) and the personal licence. 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 The Council will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure. (Paragraph 4.4)
- 5.8 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)
- 5.9 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.10 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)
- 5.11 Applicants will be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises. (Paragraph 5.6)
- 5.12 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)
- 5.13 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)
- 5.14 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)

5.15 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)

5.16 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)

5.17 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)

5.18 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)

5.19 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. (Paragraph 1.3)

5.20 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. (Paragraph 1.4)

- 5.21 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)
- 5.22 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)

Crime and disorder

- 5.23 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)
- 5.24 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)

Public Safety

- 5.25 The Council in its role as Licensing Authority must try to ensure the safety of people visiting and working in licensed premises. The Council will need to be satisfied that measures to promote public safety including risk assessments, setting safe capacities and adequate means of escape are put in place and maintained, if not adequately provided for by other regulatory regimes. (Paragraph 5.17)
- 5.26 Consideration should be given to whether:
- (a) appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the Licensing Authority, that demonstrate that the public will be safe within and in the vicinity of the premises;
 - (b) the premises already has a licence or a fire certificate that specifies the maximum number of people that can attend it or be present and, if not, whether a risk assessment has been undertaken to assess the maximum number of people in terms of capacity in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency;
 - (c) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
 - (d) patrons can arrive at and depart from the premises safely;
 - (e) music, dance and performance venues will use equipment or special effects that may affect public safety (i.e. moving equipment, pyrotechnics, strobe lights, smoke machines);
 - (f) there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services, and/or
 - (g) the levels of compliance with conditions on existing licences relating to public safety.
- (Paragraph 5.18)
- 5.27 The Borough-wide Nightsafe network encourages its members to work together to promote the licensing objectives in their premises by providing a forum for sharing information, disseminating best practice and meeting with representatives of the Council, the police and other responsible authorities. The Council actively supports the scheme and is keen to support the development of more schemes where there is a demand. (Paragraph 5.20)

5.28 Best Bar None (BBN) is a national award scheme supported by the Home Office and aimed at promoting responsible management and operation of alcohol licensed premises. It was piloted in Manchester in 2003 and found to improve standards in the night time economy, with premises now competing to participate. The aim of BBN is to reduce alcohol related crime and disorder in a town centre by building a positive relationship between the licensed trade, police and local authorities. The Council will actively encourage licensed premises to sign up to the BBN scheme. (Paragraph 5.21)

Public Nuisance

5.29 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)

5.30 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)

5.31 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)

5.32 Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other 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)

5.33 Where relevant representations are received, the Council may attach appropriate conditions to licences, appropriate 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. The Council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (Paragraph 5.26)

5.34 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)

5.35 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)

5.36 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies; provision of signs, publicity and dispersal policies. (Paragraph 5.31)

6 National Guidance

6.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003. The committee must have regard to the guidance when determining this application. Below are relevant extract for the benefit of the committee. Emphasis added.

Licensing objectives and aims

BP Prestbury Road Service Station	Page 7 of 13	Last updated 16 October 2013
-----------------------------------	--------------	------------------------------

6.2 The legislation provides a clear focus on the promotion of four statutory objectives *which must be addressed when licensing functions are undertaken*. (1.2)

6.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm. (1.3)

6.4 *Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times*. (1.4)

6.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them. (1.5)

Legal status

6.6 *Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent*. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (1.9)

Licence conditions – general principles

6.7 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;

- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format. (1.16)

Each application on its own merits

- 6.8 *Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned.* This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (1.17)

Crime and disorder

- 6.9 *Conditions should be targeted on deterrence and preventing crime and disorder.* For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. (2.3)
- 6.10 *Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences.* The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety. (2.6)

Public nuisance

- 6.11 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. (2.18)

- 6.12 *Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community.* It may also include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (2.19)
- 6.13 *Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises.* This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. *Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises.* Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. (2.20)
- 6.14 *As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises.* But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate. (2.21)
- 6.15 *Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.* For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave. (2.22)
- 6.16 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues. (2.23)
- 6.17 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. *However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.* (2.24)

Protection of children from harm

- 6.18 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated with alcohol but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). (2.25)

6.19 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:

- adult entertainment is provided;
- a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
- it is known that unaccompanied children have been allowed access;
- there is a known association with drug taking or dealing; or
- in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises. (2.26)

6.20 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises. (2.28)

6.21 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises. (2.29)

6.22 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;
- restrictions or exclusions on the presence of children under certain ages when
- particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place. (2.30)

6.23 *Licensing authorities should give considerable weight to representations about child protection matters.* (2.32)

Variations

6.24 Where a premises licence holder wishes to amend the licence, the 2003 Act in most cases permits an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.

6.25 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation.

They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation. (9.33)

6.26 *In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*

- *the steps that are appropriate to promote the licensing objectives;*
- *the representations (including supporting information) presented by all the parties;*
- *this Guidance;*
- *its own statement of licensing policy. (9.34)*

7. Licensing Comments

7.1 The committee must have regard to the statutory guidance issued by the Secretary of State and the Council's adopted policy statement when determining this application. In particular, the committee must seek to promote the four licensing objectives when determining the application.

7.2 The committee, having regard to the representations made and the evidence it hears, must take such steps as it considers appropriate for the promotion of the licensing objectives which can include:

- Granting the application as requested;
- Grant the application subject to appropriate conditions; or
- Rejecting all or part of the application.

7.3 This is an application for the variation of an existing premises licence and as such, the scope of the committee's consideration is limited to the variation applied for, not the existing premises licence.

7.4 Members are to note that the premises already trade 24 hours a day although licensable activities are carried out in accordance with the existing issued licence. Due to the fact that the premises already trades 24 hours a day, a number of grounds of objection will be irrelevant:

- **Light pollution** – A number of residents have objected on the grounds of light pollution potentially causing a public nuisance. However, the lights in question are already in existence and the grant or refusal of this application will not affect this because the premises' general trading hours will not be affected by this application.
- **Traffic and parking congestion** – A number of residents have objected on the grounds that the grant of this application is likely to increase traffic and potentially cause parking congestion. In order for the committee to accept this as a valid ground for objection, it must be satisfied that traffic and parking congestion is relevant to one of the licensing objectives and, if so, is likely to cause a sufficiently significant increase to adversely affect the licensing objectives. Members are further to note that there is in existence other primary legislation that can deal with any concerns relating to traffic and parking congestion and in order to avoid statutory duplication, it may not be appropriate for the committee to attach conditions relating to traffic and parking congestion.
- **Litter** – Similarly with litter, in order for the committee to accept this as a valid ground for objection, it must be satisfied that litter is relevant to one of the licensing objectives and, if so, is likely to cause a sufficiently significant increase to adversely affect the licensing objectives. Members are further to note that there is in existence other primary legislation that can deal with any concerns relating to litter and in order to avoid statutory duplication, it may not be appropriate for the committee to attach conditions litter.

- **Delivery vehicles** – Members are to note that due to the existing operation of the premises, it will already be accepting deliveries. Since the scope of Member’s consideration is limited to the merits of the application to vary the existing licence, objections relating to delivery vehicles is only relevant in so much as the grant of the variation is likely to cause an increase in the number of late night deliveries causing a public nuisance.

7.5 For the avoidance of doubt, the committee is advised that this application is *to extend the hours during which licensable activities are authorised* (the sale / supply of alcohol and the provision of late night refreshment), not the opening hours of the premises, which are unrestricted. The committee’s decision should therefore relate to the effects of those licensable activities, rather than the opening times, on the licensing objectives.

Background Papers

Service Records

Report Author

Contact officer: Mr Phil Cooper
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200