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Our Ref: PB/RC/DCMS

Officer: Paul Brookes

Date: 26th March 2007

Dear Mr Richardson

**Consultation Response to Revised Guidance Made Under Section 182 of the Licensing Act 2003**

I have pleasure in providing you with Chelmsford Borough Council's response to the above consultation, as requested the response is in the form of answers to the questions raised in the consultation paper. For your information Chelmsford Borough covers 131 square miles, has a population of 158,600 and 532 licensed premises of which 178 (33%) are located within, or near to central Chelmsford. This consultation response incorporates the views of Officers, the Council's Licensing Committee, and the Council's Portfolio Holder for the Environment.

**Question 1: Do you agree that the current guidance on 'vicinity' should remain unchanged?**

Yes. Chelmsford Borough Council successfully applies a very pragmatic and flexible approach to the definition of 'in the vicinity' that incorporates a knowledge and understanding of local factors. Any further defining of the definition could limit this excellent use of local knowledge and common sense in interpreting national guidance.

**Question 2: If, not what factors do you think should be considered and why?**

N/A



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**Question 3: Do you agree that the current guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental?**

In Chelmsford Borough Council's experience the matter of whether music is incidental or not has not been a contentious issue. Whilst not wishing to see a narrowing of the definition, due to it possibly restricting the interpretation of the licensing authority, the proposed text in paragraph 3.21 of the revised guidance does not give the Council cause for concern. However, Chelmsford Borough Council does not agree to any further expansion other than the proposed text, as written, in the revised guidance.

**Question 4: If not, please explain why and outline any alternative?**

N/A

**Question 5: Do you agree that the current guidance on cumulative impact policies should remain unchanged?**

Yes. Chelmsford Borough Council currently considers that there is no particular part of the Borough causing a cumulative impact on any of the licensing objectives and it has no reason to consider that existing guidance would prevent or hinder it in establishing a cumulative impact policy if, in the future, it was deemed necessary.

**Question 6: If not, what amendments do you think should be made, and why?**

N/A

**Question 7: Which of the above options do you agree with?**

Option 1 – Remove Annexes D-H from the guidance, but consider establishing an alternative source of advice for good practice purposes.

There is benefit from having a source of good practice, however, the guidance due to the potentially lengthy periods of time between revisions is not the best place for such a source. Best practice by its very nature needs to be continually updated and therefore should sit outside of the guidance.

**Question 8: Do you think that there are any other options that should be considered?**

No

**Question 9: Do you think that, if retained, there is a risk that the pools of conditions will be considered exhaustive and therefore inhibit the promotion of innovative conditions by the police, other responsible authorities and interested parties to address emerging problems? If so why?**

No. Disagree with this line of thought as the drafting of conditions is based on operating schedules and therefore the onus is, rightly so, on the applicant to address emerging problems. This coupled with good communication between all parties, including the applicant, should lead to conditions that if necessary are innovative and specific to individual applications and premises.

**Question 10: Do you think that pools of potential conditions have value in promoting consistency and/or best practice?**

No. The advantage to national chains in having uniform conditions across the country is obvious, but the advantage in having consistency in this way is negated by the need to have conditions that address specific concerns of the four statutory licensing objectives that arise because of local circumstances and peculiarities of individual premises.

**Question 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?**

The clarification of the role of ward councillors is welcomed but it fails to address the important issue of ward councillors being able to act as an interested party irrespective of where they live in relation to the premises.

At its Council meeting of 26<sup>th</sup> January 2006 a motion was carried that stated that *Chelmsford Borough Council believes that ward councillors and members of parish or town councils, acting in that capacity, should have the right to make representations as an interested party on licensing applications within their own ward, and the Government has enacted legislation on this matter in contravention of their own public statements that local matters should be determined locally and that ward councillors are civic and community leaders.*

Whilst it is recognised that this would require amendment of primary legislation and therefore is outside the scope of this consultation it is important to note that acceptance of proposed guidance on the clarification of the current role of the ward councillor in the licensing process does not equate to agreement that the role itself is correct.

**Question 12: If not, please explain why and provide brief details of any alternative proposal.**

See reply to Question 11.

**Question 13: Do you agree with the proposed amendments to the guidance on authorisation of sale?**

No

**Question 14: If not, please explain why.**

Written authorisation should be a mandatory requirement. This will not only remove any ambiguity over who should be serving alcohol but will prove that when the Designated Premises Supervisor is not on the premises and alcohol is being served by non personal licence holders some thought and preparation has gone into determining who will be selling alcohol, this should reduce the incidence of the unintentional, inappropriate and illegal selling of alcohol e.g. to minors. As stated in the guidance many trade associations already believe this to be best practice and are advising their members accordingly.

**Question 15: Do you agree that the guidance on variations should be amended as proposed?**

No

**Question 16: If not, please explain why.**

Paragraph 8.33 of the revised guidance is not clear as to whether a licence could be varied where extended hours and additional licensable activities were to be included. It is the view of Chelmsford Borough Council that a premises where an extension of hours and additional licensable activities were to be applied for should result in a new application rather than a variation. To avoid any ambiguity paragraph 8.33 should read:

*Where an applicant seeks to make any other change to a premises licence, such as extending the hours during which a licensable activity is permitted; or including additional activities; or amending...*

**Question 17: Do you agree that the guidance on evidence to support representations should remain unchanged?**

Yes. The current guidance gives licensing authorities discretion to deal with each application as it sees fit and view the evidence as presented. Any guidance that tried to restrict this discretion could inadvertently disadvantage some interested parties, especially those with justified concerns but no objective evidence.

**Question 18: If not, please explain why.**

N/A

**Question 19: Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties?**

Yes. It enables the very rare case where there is a real justifiable fear of intimidation to proceed to a hearing whilst protecting the identity of the interested party.

**Question 20: If not, please explain why.**

N/A

**Question 21: Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed?**

Any clarification would be useful, however, Chelmsford Borough Council already conditions licenses to promote the prevention of crime and disorder immediately outside of premises that are located in the night-time economy.

**Question 22: If not, please explain why.**

N/A

**Question 23: Do you agree that the guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation?**

Although Chelmsford Borough Council accepts that the current guidance per se does not have a presumption in favour of longer hours, the licensing process itself results in a presumption in favour of longer hours due to the licensing authority only being able to consider restricting licensing hours if a representation from an interested party or responsible authority is received. It is therefore disingenuous to claim that there is not and has never been a presumption in favour of longer hours.

**Question 24: If not, please explain why and outline any alternatives.**

See answer to Question 23.

**Questions 25 – 28**

These questions relate to issues affecting the Police and Trading Standards and therefore Chelmsford Borough Council does not deem it appropriate to comment.

**Question 29: Are you happy with the overall format of the revised guidance?**

Yes.

**Question 30: Are you happy with the overall format of the revised guidance?**

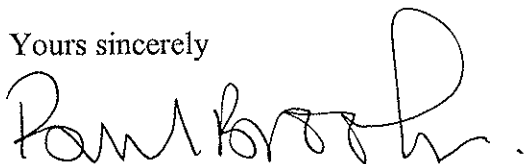
Yes.

**Question 31: Are there any other issues that you would like to see addressed in the revised guidance? If yes, please specify.**

No.

If you would like clarification on any of the responses contained within this letter please contact me by email [REDACTED] or telephone on [REDACTED]

Yours sincerely



Paul Brookes  
Environmental Services Manager