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Our ref: PDH/26508/224/RPB

19 March 2007

By email: licensingconsultation@culture.gov.uk and by post

Dear Sir

Consultation on Revised Guidance made under Section 182 of the Licensing Act 2003

We enclose a response on behalf of our client J Sainsbury's PLC.

If you have any queries, please contact the writer.

Yours faithfully



Winckworth Sherwood



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J Sainsbury plc

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16 March 2007

Dear Sir

Consultation on Revised Guidance made under Section 182 of the Licensing Act 2003

This is a response by Sainsbury's Supermarkets Limited of 33 Holborn, London, EC1N 2HT in respect of the consultation on Revised Guidance made under Section 182 of the Licensing Act 2003 dated January 2007.

We respond to the questions set out in the consultation as follows:

Question 1

Do you agree that the current Guidance on vicinity should remain unchanged?

Sainsbury's agrees that any attempt to further define 'in the vicinity' could undermine local flexibility in this area. Sainsbury's agrees that the existing Guidance should remain unchanged.

Question 2

If not, what factors do you think should be considered and why?

Not applicable.

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?

Sainsbury's agrees that the proposed wording in the revised Guidance in paragraph 3.21 is helpful in establishing whether or not music is incidental to another licensable activity.

Question 4

If not, please explain why and outline any alternative.

Not applicable.

Registered office as above
Registered numbers
J Sainsbury plc 185647 England
Sainsbury's Supermarkets Ltd 3261722 England

Question 5

Do you agree that the current Guidance on cumulative impact policies should remain unchanged?

Sainsbury's agrees that the current guidance on cumulative impact should remain unchanged. However, it should be noted that Westminster City Council has a stress policy which applies to both on and off licences. It is the experience of Sainsbury's that this policy is applied rigidly. If an application is submitted within the stress zone, the environmental health officer and police officer will make a representation which triggers a hearing. Any application outside of the Westminster City core hours will be refused notwithstanding the circumstances. There is no adequate remedy for an applicant. Sainsbury's applied to vary the hours of a store which was a few metres within the stress zone. The application was refused as it was outside of core hours. Sainsbury's sought to appeal the decision but, after several months and several pre-trial hearings, the appeal was simply not cost effective and had to be withdrawn. If this is the experience of a large company such as Sainsbury's, it can safely be assumed that smaller organisations and businesses will be unable to challenge any decision made by Westminster City Council. This therefore renders the Guidance in this respect to be ineffective.

Question 6

If not, what amendments do you think should be made and why?

The current Guidance is acceptable provided it is applied by the licensing authorities.

Question 7

Do you agree that the pool of conditions in annexes D to H should be:

Option 1: removed from the current Guidance but consider establishing an alternative central source of good practice advice?

Or

Option 2: retained and updated/expanded as necessary?

Sainsbury's accepts that for non-represented parties it is useful to have a pool of conditions in the Guidance.

However, many applicants take great care in drafting an operating schedule which can then be translated directly into conditions on the licence. It is the experience of Sainsbury's that a licensing officer will often re-draft those conditions. For example, Sainsbury's has, following consultation with a number of police licensing officers, drafted its own standard CCTV condition. Some licensing officers, when drafting the licence, impose the licensing authority's own standard condition. They argue that the drafted condition is 'consistent' with the operating schedule but, actually, its meaning may be quite different.

Guidance should make it clear that the conditions set out in the operating schedule should only be amended by the licensing officer, if those conditions are unclear, ambiguous or unenforceable. The licensing officer should not be permitted to change the conditions simply to put them into a standard form preferred by that licensing authority or the responsible authorities.

In addition, the conditions set out in the operating schedule should only be amended by the licensing officer, with the prior written agreement of the applicant.

Question 8

Do you think that there are any other options that should be considered?

See above.

Question 9

Do you think that, if retained, there is a risk that the pools of conditions may increasingly 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?

It is the experience of Sainsbury's that individual environmental health officers and police officers have already formulated their own standard conditions which they seek to have imposed on licences. These do not always come from the pool of conditions in Guidance. Sainsbury's would like to see this discouraged by Guidance.

Applicants should be free to propose their own conditions provided they are not unclear, ambiguous or unenforceable.

The pool conditions are not currently seen as exhaustive as we see many non pool conditions appearing in Licensing Authority policies and many conditions being proposed by responsible authorities that are not in Guidance and are not in the Licensing Authority's policy.

The risk of pool conditions being considered exhaustive seems remote.

Question 10

Do you think that the pools of conditions have value in promoting consistency and/or best practice?

Subject to our responses to questions 7 and 9 we do think that the pools of conditions have a value.

Question 11

Do you agree that the current Guidance on the role of ward councillors should be further clarified and expanded as proposed?

Sainsbury's supports the proposal in paragraph 4.25 of the consultation document. It should, however, be made clear that a ward councillor must have the written authority of those he or she purports to represent. Sainsbury's has had experience at hearings where a ward councillor has stated that he or she represents the views of local residents but there was no evidence to support this.

Question 12

If not, please explain why and provide brief details of any alternative proposal.

Not applicable.

Question 13

Do you agree with the proposed amendments to the Guidance on authorisation of sale?

Paragraph 10.47 should be amended. It states "A personal licence holder may authorise members of staff to make alcohol sales during the course of an evening, but may be absent at times from the premises when a transaction takes place." This should be stated to be by way of example only. Otherwise the implication is that a personal licence holder may not make the authority for sales at a time other than in the evening.

The word "responsible" in the same paragraph is unhelpful. Perhaps it should state "However, the personal licence holder giving the authority ..."

The last two lines of paragraph 10.47 are superfluous as this is covered in paragraph 10.50.

In paragraph 10.50 there is no need to refer to "the designated premises supervisor or a personal licence holder" as a designated premises supervisor will always be a personal licence holder.

Question 14

If not, please explain why.

See above.

Question 15

Do you agree that the Guidance on variations should be amended as proposed?

Yes.

Question 16

If not, please explain why.

Not applicable.

Question 17

Do you agree that the Guidance on evidence to support representations should remain unchanged?

Yes.

Question 18

If not, please explain why.

Not applicable.

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?

Guidance should make it clear that the name and address of a party must only be withheld in exceptional cases.

Question 20

If not, please explain why.

See above.

Question 21

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

Paragraph 1.23 should make it clear that licensing authorities must be restricted to consider only the impact on the licensing objectives of the licensable activities. Too many hearings have turned into a re-run of a planning application or deal with matters which have nothing whatsoever to do with licensable activities. For example, delivery times for supermarkets should only be considered, to the extent that the deliveries are of alcohol, if the licence is sought for alcohol only. The delivery times (or size of lorries) of fruit and vegetables should not be a consideration for a licensing sub-committee. It would be helpful if this was set out in the revised Guidance.

Question 22

If not, please explain why.

See above.

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?

Paragraph 1.19 suggests that the licensing authority should always consider the individual merits of a case. This is inconsistent with the Act. The licensing authority may only consider the merits of a case if its discretion is triggered by a representation. This paragraph should therefore be deleted.

In paragraph 10.20 the word "very" should be reinstated before "good reasons".

The same amendment should be made in paragraph 13.36.

Question 24

If not, please explain why and outline any alternatives.

See above.

Question 25

Do you agree that Chapter 11, explaining police powers to close premises, should be removed from the Guidance and incorporated in specific and separate advice for police officers?

Yes. However, the advice to police officers should be made public.

Question 26

If you do not agree, please explain why.

Not applicable.

Question 27

Do you agree that Chapters 12 (Sale and Supply of alcohol to children) and 14 (Other Offences) should be deleted from the Guidance?

Yes.

Question 28

If you do not agree, please explain why.

Not applicable.

Question 29

Are you happy with the overall format of the revised Guidance?

Yes.

Question 30

If not, please explain why and what format you would prefer instead.

Not applicable.

Question 31

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

Guidance should clarify the following:

1. The discretion of the licensing authority is not triggered unless there is a relevant representation. If there is no relevant representation, the application must be granted. This applies even if there is no planning permission for the premises, or if the application is inconsistent with planning conditions.
2. Planning conditions must not be repeated on the premises licence "to remind customers of their existence".
3. A licence application for a petrol forecourt store must not be rejected by a licensing authority unless a relevant representation has been made in accordance with the Act.
4. Some licensing authorities are extremely slow in issuing premises licences. Guidance should provide that licences must be issued within 10 working days of the end of a representation period (if no representations are made) or within 10 working days of the grant of a licence at hearing. It is unacceptable that there is no guidance to licensing authorities on this issue.
5. Guidance should advise that on an application to vary a premises licence to name a new designated premises supervisor only Part A of the premises licence should be submitted. Some licensing authorities insist Parts A and B of the licence must be submitted, including the original summary of the licence which is, of course, normally on display at the premises.

Yours faithfully



Nick Grant
Head of Legal Services
J Sainsbury plc