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Our ref: RC/MB
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Simon Richardson
Licensing Guidance Review Team
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Dear Simon,

Consultation on Revised Guidance to Local Authorities under the Licensing Act 2003

Thank you for the opportunity to comment on the proposed amendments to the guidance. I have the following comments to make on behalf of Leicester City Council.

Authorisation by Personal Licence Holder (Paragraphs 10.46 – 10.50)

The Licensing Act 2003 requires that every sale of alcohol made under a premises licence is authorised by a personal licence holder. To ensure personal licence holders are suitably qualified for their role they must undertake a training course and should not have been convicted of relevant offences. However, the revised advice implies that the requirements of the legislation can be met simply by every person selling alcohol having been authorised by a personal licence holder. This raises the question of whether there is any justification for the required training and criminal record check.

Paragraph 10.47 introduces the concept of a “responsible personal licence holder”, as someone who authorised another person to sell alcohol and thereby becoming responsible for that person’s actions. However, it seems unlikely that a personal licence holder could be prosecuted in these circumstances and it is unclear what offence would apply. Responsibility could perhaps fall to the designated premises supervisor, who could be removed from the premises licence at the request of a responsible authority, or perhaps a premises licence could be similarly revoked.

In view of the considerable problems and lack of compliance associated with the sale of alcohol, particularly underage sales, which is the experienced of this local authority, we suggest that the guidance requires a much stronger link between the sale of alcohol and authorisation by a personal licence holder. It has been

suggested that the local authority could require this, subject to an appropriate representation, as a condition of a licence. However, in our view this is already a requirement of the legislation.

Planning Control (13.58 – 13.61)

Managing the relationship between planning and licensing has caused difficulty for Leicester City Council, and confusion for applicants. The first sentence in Paragraph 13.58 advises that planning, building control and licensing regimes should be properly separated. This approach is supported. However, the final two sentences are confusing. Firstly, it is suggested that businesses should normally seek planning permission before applying for a licence. However, there is no reason why this should be the case, and to suggest that it should, could give rise to confusion to councillors who are making decisions on applications for licences at hearings where planning permission is simultaneously being pursued. Secondly, stating that licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the planning committee is both confusing and contradictory. Planning and licensing decisions are made under separate legislation based on different criteria. For instance planning considers residential amenity whilst licensing is concerned with public nuisance. These are related but different considerations. It is suggested therefore that the advice makes it clear that planning and licensing processes should be separated.

Variations to Premises Licences and the need for Plans (Paragraphs 8.31 – 8.35)

There has been some debate amongst local authorities nationally about whether physical alterations to a premises mean that there is a requirement for a variation to the licence, a new licence is needed, no action is necessary, or whether, as seems likely, this depends on the degree. There is also a related question of whether a new plan is needed and whether a new plan can be substituted into the existing licence when minor alterations are to take place. The proposed changes to the guidance provide no help with these questions whatsoever.

Duplication of Other Statutory Provisions (Paragraph 13.13 & Appendices E–F)

Paragraph 13.13 makes it clear that there should be no duplication of existing statutory regimes by licensing conditions. Appendices E and F then detail a wide range of potential conditions, the vast majority of which are adequately covered by existing provisions. This could lead members sitting on hearing panels to consider imposing them when there is no need. Better regulation may be achieved by slimming down these appendices considerably.

The Role of Ward Councillors (Paragraph 8.8)

The second sentence of Paragraph 8.8 states that ward councillors "... can make representations as an interested party in their own right." It is not clear whether this means that because they are a ward councillor who represents the local community they are automatically an interested party, or they may become an interested party if they live in the vicinity of a premises. Ward councillors consider that they should be allowed to make representations because of the former and this is supported by the City Council. In any case it is very important that the advice on this issue is more clearly stated.

Interested Parties Personal Details – FOIA

This section of the guidance advises on the concerns that many people have in relation to their personal details being passed to applicants for licences. The advice in Paragraph 9.17 is that the authority may decide, in certain circumstances, to withhold personal details from the applicant. Our advice to interested parties who are considering making a representation is that the licensing authority may be required to disclose these details if the applicant were to make a Freedom of Information Act request. If it were the government's advice that person details in these circumstances could be regarded as exempt information, then it would be useful if this could be explicitly stated.

Yours sincerely

A handwritten signature in black ink that reads "M.H. Broster." The signature is written in a cursive, slightly slanted style.

Mike Broster - Head of Licensing and Environmental Health